FEDERAL COURT OF AUSTRALIA

Dhingra v Minister for Immigration and Border Protection [2018] FCA 719

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| Appeal from: | Application for extension of time: *Dhingra v Minister for Immigration & Anor* [2017] FCCA 2889  |
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| File number: |  |
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| Judge: | **COLLIER J** |
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| Date of judgment: | 21 May 2018 |
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| Catchwords: | **MIGRATION** – application for extension of time to appeal from decision of the Federal Circuit Court of Australia – student visa – claim that Court Book not served in primary proceedings – where ground or grounds of appeal lack merit – application dismissed  |
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| Legislation: | *Federal Court Rules 2011* (Cth) r 36.05 |
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| Date of hearing: | 21 May 2018 |
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| Registry: |  |
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| Division: |  |
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| National Practice Area: |  |
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| Category: | Catchwords |
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| Number of paragraphs: | 11 |
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| Counsel for the Applicant: | The Applicant appeared in person with the assistance of an interpreter |
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| Counsel for the Respondents: | Mr J Byrnes |
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| Solicitor for the Respondents: | MinterEllison |

ORDERS

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|  | QUD 713 of 2017 |
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| BETWEEN: | SAHIL DHINGRAApplicant |
| AND: | MINISTER FOR IMMIGRATION AND BORDER PROTECTIONFirst RespondentADMINISTRATIVE APPEALS TRIBUNALSecond Respondent |

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| JUDGE: | COLLIER J |
| DATE OF ORDER: | 21 MAY 2018 |

THE COURT ORDERS THAT:

1. The oral application for adjournment be refused.
2. The application for extension of time filed on 11 December 2017 be dismissed.
3. The applicant pay the costs of the first respondent, to be taxed if not otherwise agreed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

COLLIER J:

1. This is an application for an extension of time pursuant to r 36.05 of the *Federal Court Rules* *2011* (Cth) to appeal from a decision of the Federal Circuit Court of Australia given orally on 6 November 2017 in which the primary Judge dismissed an application to review a decision of the Administrative Appeals Tribunal (**Tribunal**). The Tribunal had affirmed a previous decision of a delegate of the Minister to refuse the applicant a Vocational Education and Training Sector (subclass 572) student visa (**visa**).
2. The application for extension of time was filed on 11 December 2017.
3. The applicant relies on only one ground of appeal from the decision of the Federal Circuit Court, namely:

1. The appellant was denied natural justice in that he was not provided with a copy of the Court Book.

2. (Appellant will amend the Notice of Appeal when he receives the Reasons for the Decision)

1. There is no record of the applicant seeking to amend the proposed notice of appeal.
2. An extension of time in which to file a notice of appeal from a decision of the Federal Circuit Court is not automatically given. This Court must be satisfied, *inter alia*, that the applicant has given a satisfactory explanation for failure to comply with time limits, that the respondent will not be prejudiced by any extension of time, and that the proposed ground(s) of appeal have merit.
3. The “Court Book” in this case is, I understand, a reference to the Court Book in the proceedings in the Federal Circuit Court. In this case I am satisfied that the proposed ground of appeal entirely lacks merit. I so conclude because:
* First, the transcript of the hearing of the Federal Circuit Court does not support the applicant’s claim. Before the primary Judge the applicant sought an adjournment of the case to enable him to hire a lawyer – there was no mention of his alleged failure to receive the Court Book at any time during the Federal Circuit Court proceedings.
* Second, in any event the Minister submits that it served a copy of the Court Book on the applicant in advance of the Federal Circuit Court hearing. I granted the Minister leave to rely on the affidavits of Ms Alison Faron, an executive assistant with the law firm advising the Minister, dated 14 May 2018, in which Ms Faron deposed that she caused a covering letter and enclosed Court Book to be posted to the applicant’s address for service on 17 August 2017. This evidence is not contested, other than by a general statement of the applicant from the Bar Table that he did not receive the Court Book. However I also note that the applicant at the hearing this afternoon conceded that the address for service recorded on his application for extension of time was his correct address. This is the address to which the hard copy of the Court Book was, according to Ms Faron’s evidence, despatched.
1. The sole ground of appeal on which the applicant proposes to rely has no prospect of succeeding.
2. This afternoon at the hearing the applicant also submitted that he had not received the Application Book in respect of this application. The directions of Registrar McCormick of 11 January 2018 required the lawyers for the Minister to prepare, file and serve the Application Book within ten business days of 11 January 2018.
3. The Minister tendered, and relied on, an affidavit of Ms Danisha Amirtharaj affirmed 21 May 2018. Ms Amirtharaj, an executive assistant employed by MinterEllison Lawyers acting for the Minister, deposed that she had caused a hard copy of the Application Book to be sent to the applicant at his address for service on 30 January 2018. The applicant sought an adjournment of today’s hearing, to enable him to seek legal advice, and employment to pay for a lawyer.
4. The Application Book contains no more than the decision record of the Tribunal, a copy of the decision of the primary Judge, and a sealed copy of the order of the primary Judge. Service on 30 January 2018 was outside the ten business days ordered by Registrar McCormick, however by only one day. The applicant made no submissions taking issue with this. I also note that these events occurred almost four months ago. I am satisfied that a copy of the Application Book was served on the applicant. In my view there is no basis on which an adjournment should be granted.
5. In my view the application for extension of time should be dismissed, with costs.

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| I certify that the preceding eleven (11) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Collier. |

Associate:

Dated: 21 May 2018