FEDERAL COURT OF AUSTRALIA

He v Minister for Immigration and Border Protection [2018] FCA 1846

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| Appeal from: | *He v Minister for Immigration* [2018] FCCA 1419 |
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| File number: | NSD 1061 of 2018 |
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| Judge: | **PERRAM J** |
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| Date of judgment: | 27 November 2018 |
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| Catchwords: | **MIGRATION** – appeal from Federal Circuit Court – whether Court erred in dismissing appeal from Administrative Appeal Tribunal – whether error in Tribunal’s consideration of exceptional reasons for grant of student visa – where Appellant did not appear at Tribunal hearing |
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| Date of hearing: | 8 November 2018 |
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| Registry: | New South Wales |
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| Division: | General Division |
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| National Practice Area: |  |
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| Category: | Catchwords |
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| Number of paragraphs: | 6 |
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| Counsel for the Appellant: | The Appellant appeared in person with the assistance of an interpreter |
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| Solicitor for the First Respondent: | Ms A Davyskib of Minter Ellison |
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| Counsel for the Second Respondent: | The Second Respondent filed a submitting notice save as to costs |

ORDERS

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|  | | NSD 1061 of 2018 |
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| BETWEEN: | CAIXI HE  Appellant | |
| AND: | MINISTER FOR IMMIGRATION AND BORDER PROTECTION  First Respondent  ADMINISTRATIVE APPEALS TRIBUNAL  Second Respondent | |

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| JUDGE: | PERRAM J |
| DATE OF ORDER: | 27 NOVEMBER 2018 |

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The Appellant pay the Respondents’ costs.

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

REASONS FOR JUDGMENT

PERRAM J:

1. This is an appeal from orders made by the Federal Circuit Court by Manousaridis J on 1 June 2018: *He v Minister for Immigration* [2018] FCCA 1419. His Honour dismissed with costs Mr He’s application to quash a decision of the Administrative Appeals Tribunal. The Tribunal had affirmed on 27 October 2016 an earlier decision of a delegate of the Minister not to grant Mr He a Student (Temporary) (Class TU) visa.
2. In his notice of appeal in this Court, Mr He puts forward only one ground of appeal. This is that he met all the conditions for the grant of the student visa. This is not a ground available in this Court.
3. The primary judge at [2]-[7] explained the complex set of provisions regulating the grant of such a visa to a person in the position of Mr He in terms which are not suggested by Mr He to be wrong. The bottom line is that he was required to demonstrate the existence of exceptional reasons. An invitation from the original delegate to specify such reasons was not taken up by Mr He and neither did he appear at the Tribunal hearing to advance such exceptional reasons. In those circumstances, the decision of the Tribunal to affirm the delegate’s earlier refusal was inevitable.
4. The primary judge could detect no error in the Tribunal’s consideration of the Appellant’s visa application and neither can I. His Honour also considered whether the non-appearance of Mr He at the Tribunal hearing had resulted in a breach of procedural fairness or some other legal problem but concluded that it had not. No appeal is bought from that conclusion but, in the interests of completeness, I should record that his Honour’s treatment appears entirely correct.
5. At the hearing of the appeal Mr He tendered a letter of offer from Castle College dated 12 October 2015. It has no bearing on the issues before the Court.
6. The appeal is dismissed with costs.

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| I certify that the preceding six (6) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Perram. |

Associate:

Dated: 27 November 2018