FEDERAL COURT OF AUSTRALIA

DZZ18 v Minister for Home Affairs [2019] FCA 2016

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| Appeal from: | *DZZ18 v Minister for Home Affairs & Anor* [2019] FCCA 1247 |
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| File number: | QUD 339 of 2019 |
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| Judge: | **REEVES J** |
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| Date of judgment: | 20 November 2019 |
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| Catchwords: | **MIGRATION** |
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| Legislation: | *Migration Act 1958* (Cth) |
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| Cases cited: | *DZZ18 v Minister for Home Affairs & Anor* [2019] FCCA 1247 |
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| Date of hearing: | 20 November 2019 |
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| Registry: | Queensland |
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| Division: | General Division |
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| National Practice Area: | Administrative and Constitutional Law and Human Rights |
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| Category: | Catchwords |
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| Number of paragraphs: | 16 |
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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: | Mr J Kyranis of Sparke Helmore |
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| Counsel for the Second Respondent: | The Second Respondent filed a Submitting Notice |

ORDERS

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|  | | QUD 339 of 2019 |
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| BETWEEN: | DZZ18  Appellant | |
| AND: | MINISTER FOR HOME AFFAIRS  First Respondent  ADMINISTRATIVE APPEALS TRIBUNAL  Second Respondent | |

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| JUDGE: | REEVES J |
| DATE OF ORDER: | 20 NOVEMBER 2019 |

THE COURT ORDERS THAT:

1. The appeal filed 28 May 2019 is dismissed.
2. The appellant is to pay the first respondent’s costs fixed in the sum of $3,500.
3. The name of the first respondent is amended to Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs.

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

EX TEMPORE REASONS FOR JUDGMENT

REEVES J:

1. This is an appeal from a decision of a Federal Circuit Court judge delivered on 8 May 2019 (*DZZ18 v Minister for Home Affairs & Anor* [2019] FCCA 1247). In that judgment, the primary judge dismissed an application for judicial review of a decision of the Administrative Appeals Tribunal (the Tribunal) made on 10 July 2018, which in turn affirmed a decision of a delegate of the Minister made on 28 March 2017 to refuse the appellant’s applications for protection visas for herself and her two children.
2. The background to the appellant’s applications is summarised at [1]–[5] of the primary judge’s judgment.
3. The claims that the appellant made in support of her applications for protection visas are summarised at [7] and [8] of the primary judge’s decision.
4. At [6] and [10]–[17], the primary judge summarised the Tribunal’s reasons for rejecting the appellant’s application for merits review.
5. There were three grounds of review before the primary judge. They are set out at [9] of his judgment. They were:

*1. The decision of the … Tribunal is affected by jurisdictional error in that it did not comply with its obligation to put adverse information relied upon as part of the reason for decision to the [appellant] for comment, in accordance with S424A of the Migration Act 1958.*

*2. The Tribunal failed to ask appropriate questions, and incorrectly applied the test.*

*3. The Tribunal appeared to be biased.*

(Errors in original; italics in original)

1. With respect to ground of review 1, the primary judge concluded (at [19]) that “there was no information which the Tribunal was required to give to the [appellant] for the purpose of comment or response. Such ground is without merit”.
2. With respect to ground of review 2, the primary judge concluded (at [20]) that “[t]here was no error on the part of the Tribunal in its approach to the claims made to it by the [appellant]”.
3. Finally, with respect to ground of review 3, the primary judge concluded (at [21]) that:

There is nothing on the face of the reasons of the Tribunal which suggests that the Tribunal was in any way biased. The reasons reflected a reasoned approach to the claims made to the Tribunal. The reasons were clear and concise and relevantly contained adverse findings on credibility. No evidence of bias was apparent.

1. The primary judge (at [22]–[24]) made three further observations as to why there was no merit in the claim of bias made in that ground of review. Ultimately, the primary judge concluded (at [25]) that the appellant had not demonstrated any jurisdictional error on the part of the Tribunal.
2. There are four grounds of appeal before this Court. They are:
3. Federal Circuit Court failed to consider the [Tribunal] acted in breach of the rules of procedural fairness.
4. The [Tribunal] is affected by jurisdictional error in that it did not put adverse information relied upon as part of the decision to the [appellant] for comment.
5. The [Tribunal] failed to consider the risk of being harmed if the [appellant] return to her own country.
6. The [Tribunal] applied wrong test.

(Errors in original; capitalisation of all words removed)

1. Grounds of appeal 1 and 3 were not raised before the Federal Circuit Court. The appellant has applied for leave to raise them for the first time before this Court. The Minister has opposed that application. For the following reasons, that leave is refused and all of the grounds of appeal are dismissed.
2. I will deal firstly with the two grounds of appeal for which leave is sought. With respect to ground of appeal 1, the appellant has not provided any particulars of the lack of procedural fairness alleged. She has also not provided any written or oral submissions in support of that allegation. Additionally, she has provided no explanation as to why that ground of appeal was not raised as a ground of review before the Federal Circuit Court.
3. Looking at the reasons of the primary judge, there is nothing on the face of those reasons to demonstrate any failure to provide procedural fairness to the appellant in the hearing before his Honour. To the contrary, they show that the primary judge dealt with the appellant’s application for judicial review fairly and appropriately. In short, there is nothing to show that this ground of appeal has any merit.
4. With respect to ground of appeal 3, it suffers from the same deficiencies. Moreover, on its face, it plainly seeks a merits review of the Tribunal’s decision, which is not open on an appeal to this Court.
5. Grounds of appeal 2 and 4 are similar to grounds of review 1 and 2 respectively before the Federal Circuit Court. Similarly with her other grounds of appeal, the appellant has not provided any written or oral submissions in support of these two grounds of appeal. It is therefore difficult to discern exactly what error she alleges was made by the primary judge. Having considered the primary judge’s reasons with respect to the corresponding grounds before him at [19] and [20] of his decision, I do not consider any error is present in those reasons.
6. Since none of the appellant’s grounds of appeal has any merit, her notice of appeal must be dismissed. The orders of the Court will be:

1. The appeal filed 28 May 2019 is dismissed.

2. The appellant is to pay the first respondent’s costs fixed in the sum of $3,500.

3. The name of the first respondent is amended to Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs.

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| I certify that the preceding sixteen (16) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Reeves. |

Associate:

Dated: 20 January 2019