FEDERAL COURT OF AUSTRALIA

BXP18 v Minister for Home Affairs [2020] FCA 799

|  |  |
| --- | --- |
| Appeal from: | *BXP18 v Minister for Home Affairs & Anor* [2018] FCCA 3477 |
|  |  |
| File number(s): | QUD 858 of 2018 |
|  |  |
| Judge(s): | **GREENWOOD J** |
|  |  |
| Date of judgment: | 10 June 2020 |
|  |  |
| Catchwords: | **MIGRATION** – consideration of an appeal from orders of the primary judge on the footing that the primary judge erred in failing to identify contended jurisdictional error on the part of the Immigration Assessment Authority having regard to contentions that the Authority failed to identify integers of the claim, failed to address the evidence of the appellant, failed to comply with procedure required under the *Migration Act 1958* (Cth), failed to have regard to the “current circumstances” in the country to which the appellant would return should his claims be rejected, failed to find that the appellant held a well‑founded fear of a real risk of serious harm for a Convention reason and failed to find in favour of the appellant on the complementary protection claim |
|  |  |
| Legislation: | *Migration Act 1958* (Cth), ss 36(2)(a), 36(2)(aa), 473CB, 473DB(1), 473DC(1), 473DC(2) |
|  |  |
| Date of hearing: | 23 May 2019 |
|  |  |
| Date of last submissions: | 2 May 2019 |
|  |  |
| Registry: |  |
|  |  |
| Division: |  |
|  |  |
| National Practice Area: |  |
|  |  |
| Category: | Catchwords |
|  |  |
| Number of paragraphs: | 42 |
|  |  |
| Counsel for the Appellant: | The appellant appeared in person |
|  |  |
| Solicitor for the First Respondent: | A Gardner, MinterEllison |

ORDERS

|  |  |
| --- | --- |
|  | QUD 858 of 2018 |
|   |
| BETWEEN: | BXP18Appellant |
| AND: | MINISTER FOR HOME AFFAIRSFirst RespondentIMMIGRATOIN ASSESSMENT AUTHORITYSecond Respondent |

|  |  |
| --- | --- |
| JUDGE: | GREENWOOD J |
| DATE OF ORDER: | 10 JUNE 2020 |

THE COURT ORDERS THAT:

1. The appeal is dismissed.
2. The appellant pay the first respondent’s costs of and incidental to the appeal.

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

REASONS FOR JUDGMENT

GREENWOOD J:

1. These proceedings are concerned with an appeal from a decision of the Federal Circuit Court of Australia dismissing an application for the grant of the constitutional writs in relation to a decision of the Immigration Assessment Authority (“IAA”) affirming a decision of the Minister’s delegate to refuse the appellant’s application for a Safe Haven Enterprise visa (a “Safe Haven visa”).
2. The appellant claimed to be a Sunni Muslim and an ethnic Bengali from a village in Bangladesh’s Dhaka Division. He claimed to have been a supporter of the Awami League since 2005 and that, although he had never officially joined the party, he nevertheless claimed to have involved himself in Awami League party activity from 2010 by attending local party meetings and party street processions: IAA at [9]. He claimed that on 21 February 2013 he was employed, as the owner of a bus (along with 13 or 14 other bus owners), to transport several thousand Awami League supporters to a gathering in Kaliakair in celebration of a particular cultural day. The appellant claimed that he was on the bus that day accompanying his driver. He claimed that the bus that day was carrying 150 people. He claimed that he first saw that an attack upon the buses was commencing while his driver was completing the task of parking the bus in the parking area. In the written claims, the appellant claimed that there were about 100 persons armed with pistols and machetes attacking people in the area where the buses were parked. He claimed that some of the attackers had started to throw petrol at the buses setting them alight. He claimed that his driver fled. However, the IAA observed that, at the Safe Haven visa interview, the appellant’s version of these events changed in material respects: IAA at [7].
3. It is not necessary to note all the particular changes to the account of the attack identified by the IAA in its reasons. However, the changes in the version began with a further version given by the appellant in which he said that he and his driver had left the bus and were having breakfast together when the appellant saw an attack on the buses and the people commence: IAA at [3], [7]‑[9].
4. The appellant claimed that the attackers were members and supporters of the Bangladesh National Party (“BNP”) or Jamaat e‑Islami (“Jamaat”), or both: IAA at [3].
5. As to the basis upon which the appellant came to know or understand that the attackers were BNP or Jamaat supporters, he initially stated that he had heard this from others after the attack. However, in the Safe Haven visa interview, he said that he had recognised individual attackers during the attack and they were well‑known “thugs”. Other inconsistencies about this matter of identification are noted by the IAA at [8].
6. The appellant claimed that as his bus had been destroyed by fire in the incident on 21 February 2013, he made his way back to his village to be told by the Chairman of the Transport Authority, a supporter of the Awami League, that a BNP member had told the Chairman that no Awami League supporters were to be transported to the gathering that day and that the BNP member had made threats concerning the transport of Awami League supporters to the event. The appellant claimed that not long after the event, his father began receiving threatening telephone calls to the effect that the callers were going to “teach” those who had taken their buses to the event, “a lesson”. He claimed that the callers had threatened to kill the appellant and all the other bus drivers involved in the event. The appellant claimed that the threats continued on a daily basis. The appellant claimed that almost immediately after his return home after the event, he went into hiding due to fear for his safety. The appellant’s position or claim was that no threats were made to the appellant’s family members as, in the appellant’s belief, his pursuers understood that his father was well‑known in the village as a freedom fighter and the pursuers lacked the courage, in the appellant’s view, to come to the appellant’s home while his father was present: IAA at [3].
7. The appellant also claimed that he did not report the incident or the subsequent threats to the authorities, because he feared that the authorities were corrupt.
8. The appellant also claimed to fear being arrested, charged and convicted of offences related to leaving the country without proper authority, and feared being imprisoned and subjected to persecution, inhumane treatment and torture as a returning failed asylum seeker.
9. As to these matters, the IAA reached the following decision.
10. The IAA accepted that the appellant is a national of Bangladesh, a Sunni Muslim and an ethnic Bengali: IAA at [6]. It accepted that the appellant’s father was a freedom fighter, that is, he fought for the independence of Bangladesh as a separate State from Pakistan during the war of 1971: IAA at [19]. It accepted that the appellant’s father is a supporter of the Awami League although at [18], the IAA notes that the appellant’s father is not involved in organised politics and that there is no claim made of a real chance of the appellant suffering serious or significant harm on return to Bangladesh from the BNP or Jamaat on the basis of his father’s history or support for the Awami League.
11. The IAA accepted that from around 2010 until his departure from Bangladesh in March 2013, the appellant owned a bus and used it to conduct and operate a transport business in which he employed a driver: IAA at [17]. The IAA accepted that the appellant left Bangladesh by boat without a passport: IAA at [18]. However, as to the events of 21 February 2013, the IAA described aspects of the narrative of events concerning the contended identification of the attackers as “unconvincing” (IAA at [8]) and found the entire factual claims relating to the event to be the subject of a number of significant inconsistencies with the result that the decision‑maker was unable to find the appellant’s evidence about the event convincing: IAA at [7].
12. At [9] and [10], the IAA examines the appellant’s evidence and claims concerning his support since 2005 of the Awami League. The evidence given by the appellant is set out in some detail in the reasons of the IAA. The evidence concerns aspects of the appellant’s contentions about his support for the party; his attempts at voting; his version of events concerning someone having voted using his name; his contentions about voting irregularities, obtaining a passport (necessary for voting), loss of the passport and use of a passport to enrol so as to be able to vote for Awami League candidates. As to these matters recounted by the IAA at [9] and [10] of the reasons, the IAA found the appellant’s answers to questions “unconvincing” and observed that the credibility of the appellant’s claim that someone else had voted in his name was placed in “serious doubt” by his earlier evidence that he had never voted because he had not been of voting age by the time he departed the country. The IAA notes that he had been of voting age since 2004 and could have voted in the elections in 2008. The IAA did not accept that the appellant had ever enrolled to vote while in Bangladesh which raised, for the IAA, “serious doubts” about the appellant’s claims to have an interest in electoral politics and to have been a supporter of the Awami League since 2005: IAA at [10].
13. At [11], the IAA considered documents put forward by the appellant to support his claims.
14. The first was described as a document purported to have been issued on 1 March 2017 by three individuals from the appellant’s home district. The letter bears the signatures of “MNI”, “L” and “AM”. The full names are disclosed but for the purposes of these reasons I have elected to anonymise the names. The document states that the appellant was “by profession [in the] Transport business” and “an active member of a political party”. The letter also says this:

Out of jealous a group of rival political party become very seriously annoyed on him and attempted several time to kill him but fortunately escaped.

For fear of his life he has left his mother land and seeks political asylum.

Those people are so much daring & dangerous that if he comes back to Bangladesh it will not be possible to save his life.

So far as we know he took part in no activities subversive of the state or of discipline.

He bears a good moral character.

I wish him every success in life.

1. At the Safe Haven visa interview the appellant said that the three authors/signatories were members of the Awami League. The IAA observes that the letter presents as having been attested by a notary public. The letter does not expressly assert that the authors are members of the Awami League.
2. The second document bears the signature of “MD N S” who is described as “Secretary, Fulbaria Union Awami League” (the “Fulbaria document”). It also attests to the same matters described at [12] of these reasons and uses exactly the same text quoted at [12] of these reasons. The IAA observes that the Fulbaria document carries “no official Awami League letterhead”. The IAA notes that the signature block on the Fulbaria document is over‑printed with a stamp which has the same signature block details as those already typed on the document. Rather than displaying a letterhead, it simply has at the top of the document the words: “TO WHOM IT MAY CONCERN”.
3. The IAA notes that although each document (the document with the three signatures and the Fulbaria document) refers to the appellant’s membership “of a political party”, the party is not mentioned. Nor is the rival party identified, said to have attempted several times to kill the appellant: IAA at [11]. Nor is there any mention in either document of the Kaliakair event of 21 February 2013 concerning the transportation of Awami League supporters in the appellant’s bus, the destruction of the bus and the assault: IAA at [11]. The IAA also notes that although the appellant claimed to have been assaulted on one occasion and to have had threats made against his life, he had not claimed, as the documents claim, that there had been several attempts to kill him from which, fortunately, he had been able to escape: IAA at [11]. As a result of all of these considerations at [11] of the IAA’s decision, the decision‑maker said this at [11]:

… Given all this, I consider that these letters not only carry no weight as evidence of the applicant’s claims but that they raise further doubt about the credibility of the applicant’s claim to have been an Awami League supporter who was attacked and threatened for having transported Awami League supporters.

1. The appellant also relied on a medical certificate dated 6 March 2017 given by “Dr M”. The IAA notes that the appellant claimed that he has scars on his body from injuries to his head, shoulder and legs. The IAA accepted that that was so. It accepted that it was plausible that the treating Bangladesh doctor may have kept proper records of the treatment provided to patients including the appellant. The IAA accepted that the appellant had been treated for lacerations and cuts to his head, shoulder and ankle and that he was under the treatment of Dr M from 21 February 2013. However, the IAA at [15] made these observations:

… But the 6 March 2017 medical certificate and the applicant’s scars are evidence of no more than that the applicant has sustained injuries of this kind and that he received treatment for them from 21 February 2013. Such evidence says nothing about the circumstances in which these injuries were sustained and does not overcome the very serious doubts discussed above which undermine the applicant’s claim that he sustained these injuries from an attack upon him by supporters of BNP and Jamaat. Given that the applicant has provided no independent media reporting, or any Bangladesh police documentation, to substantiate his claim that there was an attack in [Kaliakair] Town of the kind he has described on 21 February 2013, given the manner in which his different accounts of this attack have proven inconsistent and unconvincing, given the unconvincing nature of the purported letters of support from the Awami League, and given the fact that the applicant has never voted and would appear to have had no interest in enrolling to vote for the December 2008 national election, I do not accept that the applicant has been a supporter of the Awami League or that on 21 February 2013 he was attacked, and subsequently threatened by, supporters of the BNP and/or Jamaat. I am therefore not satisfied that the applicant would, if he were to return to Bangladesh, face a real chance of harm from the BNP and/or Jamaat for reason[s] of being an Awami League supporter or because he has “crossed the line” by transporting Awami League supporters on 21 February 2013 when the BNP had declared that he must not do so.

1. As to the incident, said to have occurred on 21 February 2013, and the contended difficulties in engaging with the police about the attack on the bus and the people, the IAA notes at [13] that the appellant was unable to provide any police evidence of the attack because he claimed that he did not report the matter to police as it would have been necessary to bribe the police; that he had no money; and that he feared being delivered into the hands of the BNP had he made a complaint to the police. The IAA accepted that the Bangladesh police service has been affected by corruption and that in February 2013 there would still have been many police who were supporters of the BNP and/or Jamaat: IAA at [13]. The IAA notes, however, that the influence of the Awami League during this time was “far more significant” and the relationship between the BNP and the police was “generally fractious”. At [13], the IAA expressed these observations:

… I accept that it is not implausible that low level Awami League officials might be fearful of local political opponents even when in government. However, if an attack occurred on 21 February 2013 in which a number of buses were burned, and their operators seriously attacked, and if this attack had occurred nearby to, and if the buses had been the provided transport for, an Awami League gathering involving thousands of Awami League supporters, I find it implausible that such an attack of this kind would not have been made known to the Awami League’s national leadership. Given this, and given that the Awami League leadership was at this time seeking to publicise and to have arrested BNP and Jamaat leaders in relation to such attacks, and given that the Awami League leadership enjoyed far [greater] influence over the police and the news media at this time, I find it implausible that the applicant would not have been sought out by the police to give evidence if such a matter had occurred. That the applicant has provided no documentary evidence to substantiate the occurrence of an attack of this kind on 21 February 2013 … in [Kaliakair] Town, either from the police or in the form of reporting on such an event by the Bangladesh news media, raises serious doubts about his claim that such an attack occurred.

1. Having regard to all of these matters, the IAA did not accept critical elements of the factual claims of the appellant and, in particular, that the appellant was a supporter of the Awami League or that he was attacked on 21 February 2013: see the above discussion. The IAA was not satisfied that the appellant would face a real chance of either serious or significant harm, should he return to Bangladesh, from the BNP or Jamaat (IAA at [15]) due to the contended events of 21 February 2013 or “because he has ‘crossed the line’ by transporting Awami League supporters on 21 February 2013 when the BNP declared that he must not do so”: IAA at [15]. Nor did the IAA accept that the appellant would face a real chance of serious or significant harm from the BNP or Jamaat due to his father’s support for the Awami League or his father’s role as a freedom fighter who continues to support the Awami League or upon the basis of the appellant being imputed with support for the Awami League or opposition to the BNP and/or Jamaat for the reason of being his father’s son: IAA at [16]. Nor did the IAA accept that the appellant would face “a real chance of harm of any kind from the kind of political violence which can sometimes occur in Bangladesh if he were to return to Gazipur District, even if he were to resume employment in the transport industry”: IAA at [17]. Nor did the IAA accept that he would face a real chance of harm by reason of his having departed Bangladesh illegally (or otherwise without the authority of the Bangladesh Government) or on the ground of being a returning failed asylum seeker: IAA at [18].
2. At [23], the IAA reflected on all the analysis it had set out in the reasons for decision and concluded that it was not satisfied that the appellant would face a real chance of experiencing harm of any kind if the appellant were to return to Bangladesh.
3. I have set out these findings in some detail having regard to the grounds of appeal to this Court and the contended errors of the part of the primary judge in addressing the grounds upon which the appellant sought judicial review before the Federal Circuit Court.
4. As to the findings of the primary judge, it should be noted that at [6] the primary judge notes that the appellant was directed to file any amended application before that Court by a particular date and file written submissions by a particular later date. The appellant did not file any amended application nor any written submissions. The grounds on which the appellant asserted jurisdictional error on the part of the IAA, before the primary judge, were these.
5. *First*, the IAA was said to have engaged in jurisdictional error because it “failed to consider each integer of my claim”; or because it “failed to take into account the whole of the oral and written evidence” of the appellant in determining whether the appellant held a well‑founded fear of persecution for a Convention reason or whether the complementary protection claim was made out.
6. As to the *content* of those general high level claims, the appellant purported to provide particulars of those claims. Those particulars involve these considerations:
	1. The appellant contended that his “oral and written evidence” was “true and correct”.
	2. The appellant contended that the IAA either “mistook” the facts or “misunderstood” the facts.
	3. The appellant contended that his representative had provided “reasonable and possible oral and written evidence” in support of his claim.
	4. The appellant contended that the IAA “did not accept his evidence as genuine”.
	5. The appellant contended that he, “as a truthful witness” gave evidence to the IAA that because of his family’s “long‑time political association” with the Awami League Party, he and his family suffered harm from the leaders of the BNP.
	6. The appellant contended that he and his family “worked for” the Awami League and that he had been threatened by BNP workers and that these matters were not addressed.
	7. The appellant contended that he claimed to live in fear because he did not have reasonable protection from local authorities and this claim was not addressed.
	8. The appellant contended that he had claimed, before the IAA, that recent information about atrocities committed by the BNP had not been addressed by the IAA.
7. It can be immediately seen, as to ground 1 before the primary judge, that in the main the appellant’s contentions as to jurisdictional error on the part of the IAA amount to emphatic disagreement with the conclusions reached by the IAA upon which it could not reach a state of satisfaction in favour of acceptance of the factual matters central to the claims made by the appellant. Rather, the IAA was satisfied that it could not accept the claims for the reasons identified and discussed above.
8. The *second* ground of challenge was that the IAA engaged in jurisdictional error “when it discarded all the oral and written submission[s] without giving any solid evidence of cumulative credibility concern in the finding of reasons”. As to the *content* of that ground, the appellant claims that the IAA misunderstood the evidence, focused on inconsistencies, mistook the facts, misconstrued the facts and believed that the appellant had fabricated the claims. Again, these contentions essentially express emphatic disagreement with the conclusions without isolating particular facts which were mistaken, misunderstood or not otherwise addressed.
9. The *third* ground of challenge before the primary judge was that the IAA failed to apply the correct test for determining whether s 36(2)(aa) of the *Migration Act 1958* (Cth) (the “Act”) was engaged. One aspect of that matter should be noted. The appellant provided the following particular of that ground:

During interview, I clearly indicate that I did not understand interpreter interpretation English to Bengali or Bengali to English. Because my local Bengali accent is very much different from regular Bengali speaking.

1. As to ground 1, the primary judge observed that the appellant had not provided particular examples of evidence not considered or misunderstood and found that the conclusions reached by the IAA were open: primary judge at [20] and [21]. As to the failure to consider relevant information about atrocities, the primary judge observed that the appellant had failed to identify the information he was relying on and where it might be found: primary judge at [22].
2. As to ground 2, the primary judge found that the IAA had considered the appellant’s claims and evidence and “each piece of evidence in support of these claims”. The primary judge found that the findings were open and the reasons “cogent”: primary judge at [24].
3. As to ground 3, the primary judge found that the IAA correctly summarised the test to be applied when considering s 36(2)(aa) and applied the correct test to its findings: primary judge at [26] and [27].
4. As to the matter concerning the interpreter, the primary judge said this at [28] and [29]:

28. The Applicant otherwise asserted that he couldn’t understand the interpreter during the interview with the delegate. But there is nothing in the material which suggests that there was any such problem at any time, or that the issue was raised by the Applicant at the delegate interview stage. It has not been demonstrated by the Applicant that the standard of interpretation at the interview was so inadequate that the Applicant was deprived of a real and meaningful opportunity to present his claims.

29. The Applicant has failed to demonstrate any inadequacy in relation to interpretation. No jurisdictional error has been established. It follows that that ground is also without merit.

1. The appellant seeks to establish error on the part of the primary judge by reference to the following grounds, framed essentially in the language adopted by the appellant:

**Grounds of appeal**

1. The [primary judge] … failed error of law and relief under the [J]udiciary Act. He failed to find that the [IAA] has not found any evidence in relation to my claims and thus its decision influenced by sufficient doubt.

2. The [primary judge] … failed to hold that the IAA made an error of law when it did not take up and separately deal with the factual issues. The IAA failed to find low profile political activists are mostly persecuted because of their role for the party like Divided Group Awami League. The IAA failed to understand the persecution until political killing in Bangladesh under present dictatorial role in Bangladesh. The IAA member concluded that I will not suffer from any harm if I go to Bangladesh, which is not feasible.

3. I was denied procedural fairness when the IAA member made opinion based on assumption and possibilities without any proper investigation. The IAA failed to assess the current situation in Bangladesh where thousands of Divided Group Awami League workers are arrested and killed by so called crossfire and harassed by the autocratic present Awami League Government & the Authority. In addressing danger to me, the IAA undermined the danger I will face if I am compelled to return [to] Bangladesh as returned asylum seeker. And also, I came by boat in Australia only [to] protect my life.

4. Besides, the [IAA] did not follow the proper procedure as required by the Act in arriving [at] its decision in deciding my protection visa merit review application. Thus, the procedures that were required by the [A]ct or regulations to be observed, in connection with the making of the decision were not observed.

1. Although these four grounds are awkwardly expressed, I propose to address the grounds on the basis that the appellant contends, by *ground 1*, that the IAA failed to find, in its analysis, any evidence in support of the appellant’s claims and thus failed to address the appellant’s evidence in relation to the claims; that, by *ground 2*,the IAA did not address the factual issues (which is inherent in the claim that the IAA “did not take up and separately deal with the factual issues”) and reached a conclusion that the appellant would not suffer serious or significant harm which is said to be irrational or illogical (which seems to be inherent in the language “not feasible”); that, by *ground 3*, the appellant was denied procedural fairness because the IAA acted on assumptions and possibilities rather than investigating the evidence put before it; and, by *ground 4*, the IAA failed to discharge its statutory review function as required by the Act.
2. None of these grounds have any merit. None of the grounds demonstrate error on the part of the primary judge.
3. As to ground 1, the IAA identified the claims of the appellant and the facts identified by the appellant said to support the appellant’s claim to hold a well‑founded fear of a real risk of serious harm or significant harm for a Convention reason should he return to Bangladesh. It identified the factual foundation for the claims in considerable detail and examined the oral evidence of the appellant and the various versions of events given by the appellant. It also identified documents relied upon by the appellant. It identified the basis for the difficulty it found in relying upon those documents. It identified its reasons, consequent upon an analysis of all of the evidence for reaching its conclusion on the key factual claims causing it to be unable to reach a state of satisfaction about the various elements of the claims under s 36(2)(a) and s 36(2)(aa) of the Act. The contended error on the part of the primary judge is not established. The primary judge was correct to conclude that the findings were open on the evidence and that the IAA had conducted an examination of the evidence. The findings of the IAA were neither illogical nor irrational. They were based upon an evaluation of the evidence in the context of the claims which caused the IAA to reach the conclusion it did.
4. As to ground 2, much of what is said in relation to ground 1 is true of ground 2. A proper reading of the reasons of the decision‑maker reveals that the claims were identified; evidence going to the claims was identified and tested; to the extent that the IAA had difficulties in accepting the evidence of the appellant (recognising that it found the appellant’s evidence unconvincing and the subject of identified inconsistencies), it identified those difficulties in a process of reasoning by reference to the evidence. To the extent that the appellant contends that the IAA ought to have accepted that he faced a real risk of serious or significant harm on the various bases contended for by the appellant, he is simply disagreeing with the finding of the IAA. His disagreement with the finding is not based upon a demonstrated failure by the IAA to consider particular evidence. Nor is it based upon a demonstrated failure to have regard to *particular* aspects or integers of the claims. The claims are simply phrases asserted at a high level of generality. The truth of the matter is that the IAA did investigate the evidence in considerable detail. The grounds of appeal to this Court asserting error on the part of the primary judge represent emphatic disagreement with the findings of the IAA and a challenge to the findings of the primary judge on the basis that the primary judge ought to have found in favour of the emphatic disagreement of the appellant with the findings of the IAA.
5. As to ground 3, the appellant contends that the IAA acted upon *assumptions* and *possibilities* without undertaking *any proper investigation*. I have already examined in these reasons the claims of the appellant identified by the IAA, the evidence going to those claims and the IAA’s treatment of that evidence. It cannot properly be said that the IAA acted upon assumptions and possibilities without regard to an investigation of the claims and the evidence in relation to those claims. An element of ground 3 is that the IAA failed to assess the “current situation in Bangladesh” concerning the contended position of Awami League workers and their circumstances and that the IAA, in addressing the danger faced by the appellant, “undermined” the scope of that danger by failing to have regard to these contended current circumstances.
6. The appellant seems to be suggesting that the IAA, as part of its review function, was required to investigate circumstances in Bangladesh with a view to informing itself of the “current situation in Bangladesh”. It must be remembered that the IAA reached its conclusions on the footing that it rejected the factual claims of the appellant. In any event, the Minister correctly points out that the IAA is required to conduct its review by reference to material referred to it under s 473CB of the Act without accepting or requiring new information and without interviewing the appellant: s 473DB(1)(a) and (b). Although s 473DC(1) provides that the IAA may seek documents or information not before the Minister or the delegate at the time of the decision, s 473DC(2) makes clear that the IAA has no duty to do so.
7. As already mentioned, it is clear that the IAA conducted an extensive investigation of the claims and the facts in reaching its decision. No error on the part of the primary judge is demonstrated by reference to ground 3.
8. As to ground 4, the appellant says that the IAA failed to discharge its statutory review function as required by the Act by failing to follow the proper procedure required by the Act. The appellant has failed to identify any failure of procedure on the part of the IAA and thus it is virtually impossible to address the contention. In circumstances where an appellant seeks to demonstrate error on the part of the primary judge in failing to find jurisdictional error on the part of an administrative decision‑maker on the footing that the decision‑maker has failed to comply with statutory requirements relating to procedure, it is essential for the appellant to identify the statutory framework; identify the mandated procedure required by that statutory framework; identify the failure on the part of the decision‑maker to comply with the relevant procedure; and identify the failure on the part of the primary judge to find error (assuming, for the sake of the argument, that the question had been raised before the primary judge, which in this case, it was not).
9. Having regard to all of these matters, the appeal must be dismissed with costs.

|  |
| --- |
| I certify that the preceding forty‑two (42) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Greenwood. |

Associate:

Dated: 10 June 2020