FEDERAL COURT OF AUSTRALIA

AUW18 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2020] FCA 1280

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| Appeal from: | *AUW18 v Minister for Immigration & Anor* [2019] FCCA 1809  |
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| File number: |  |
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| Judge: | **ANASTASSIOU J** |
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| Date of judgment: | 7 September 2020 |
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| Catchwords: | **MIGRATION** – appeal from Federal Circuit Court – whether Administrative Appeals Tribunal erred – no error – appeal dismissed  |
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| Legislation: | *Migration Act 1958* (Cth)  |
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| Cases cited: | *AUW18 v Minister for Immigration & Anor* [2019] FCCA 1809  |
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| Date of hearing: | 20 November 2019  |
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| Date of last submissions: | 20 November 2019 |
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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: | 15 |
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| Counsel for the Appellant: | The appellant appeared in person  |
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| Solicitor for the First Respondent: | Ms A. Lucchese of Sparke Helmore Lawyers |
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| Counsel for the Second Respondent: | The second respondent filed a submitting notice  |

ORDERS

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|  | NSD 1118 of 2019 |
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| BETWEEN: | AUW18Appellant |
| AND: | MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRSFirst RespondentADMINISTRATIVE APPEALS TRIBUNALSecond Respondent |

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| JUDGE: | ANASTASSIOU J |
| DATE OF ORDER: | 7 SEPTEMBER 2020  |

THE COURT ORDERS THAT:

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

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

REASONS FOR JUDGMENT

ANASTASSIOU J:

1. The appellant appeals from a decision of the Federal **Circuit Court**: *AUW18 v Minister for Immigration & Anor* [2019] FCCA 1809. The Circuit Court found no error in the decision of the second respondent, the Administrative Appeals **Tribunal**, which had affirmed a decision to reject the appellant’s application for a protection **visa** made by a delegate of the first respondent, the **Minister** for Immigration, Citizenship, Migrant Services and Multicultural Affairs.
2. For the reasons that follow the appeal is dismissed.

# Background

1. The appellant previously resided in a village in or near Kota Kinabalu, Sabah, Malaysia. He arrived in Australia on 13 November 2016 on an Electronic Travel Authority visa.
2. On 6 February 2017 the appellant applied for the protection visa the subject of this appeal. On 28 April 2017 he attended a protection visa interview. On 21 July 2017 a delegate of the Minister refused to grant the visa.
3. On 25 July 2017, the appellant sought merits review of the delegate’s decision in the Tribunal. He appeared before the Tribunal on 9 January 2018 via video link and gave evidence. On 23 January 2018 the Tribunal affirmed the delegate’s decision and provided him with its Decision Record.
4. In short, the appellant’s application was made on the following basis. He is a Muslim from a Muslim area in Malaysia. He claimed that while he was a minor he had a sexual relationship with an 18 year old woman from his village out of wedlock. He claimed that he and the woman were caught by members of the community, who punished them by tying them up. He claimed that as a result of the relationship the woman’s family had reported him to the police alleging the sexual intercourse was a rape, and also reported him to an Islamic group. He claimed that all three of those parties were searching for him with intent to imprison or harm him. As such, he feared harm if returned to Malaysia.
5. The Tribunal accepted that the appellant knew the woman he claimed to have had a relationship with, but did not accept that he had an improper relationship with her, whether including sexual intercourse or otherwise, and did not accept he left Malaysia in fear of harm. The Tribunal also found that there was no real risk of significant harm as a necessary and foreseeable consequence of the appellant being removed from Australia to Malaysia.
6. On 21 February 2018 the appellant sought judicial review of the Tribunal’s decision in the Circuit Court. The appellant’s grounds of application were verbatim as follows:

1. To review application

2. There is an error in decision

3. It is requested to sent back my application to Administrative Appeals Tribunal

1. He also filed an affidavit in support of his application, which in total stated as follows:

1. To review application

2. There is error in my application

1. The appellant appeared in person before the Circuit Court. On 27 June 2019 the primary judge dismissed his application for judicial review. The primary judge stated as follows (at [12]-[14]):

12. Grounds 1 and 3 simply relate to the purpose of the application and are not proper grounds of review. Ground 2 is a bald assertion and is not accompanied by any particulars as to any perceived error in the decision. I am reasonably satisfied the Tribunal correctly instructed itself as to the relevant criteria for the assessment of a refugee protection application and/or complementary protection, and I note in this regard in particular paragraphs 37 to 44 of the Tribunal’s decision.

13. I am satisfied the Tribunal considered the evidence offered by the applicant. The applicant had a real and meaningful opportunity to provide additional evidence to strengthen his claims. There is no evidence of any procedural or any other statutory breach by the Tribunal of the requirements under the various sections.

14. Based on the inconsistencies within the information offered by the applicant in his written and oral claims, as well as the minimal information that was available to them, the Tribunal appropriately assessed the evidence and came to a conclusion that was open to them to reject his claims on credibility grounds. …There was no legal irrationality or unreasonableness in the conclusions the Tribunal came to. There is no jurisdictional error apparent in the decision of the Tribunal.

(citations omitted)

# Present appeal

1. On 16 July 2019 the appellant filed a notice of appeal in this Court. The notice of appeal set out the following grounds of appeal:

1. The Hon. Judge failed to consider that the Tribunal acted in a manifestly unreasonable way when dealing with the applicant claim and ignoring the aspect of persecution and harm in terms of Sec.91R of the Act [presumably a reference to the *Migration* ***Act*** *1958* (Cth)]. The Tribunal failed to observe the obligation amounted to a breach of Statutory Obligation.

2. The learned Federal Judge has dismissed the case without considering the legal and factual errors contained in the decision of the AAT.

1. The appellant did not file written submissions. He appeared at the hearing of the appeal in person and made oral submissions with the assistance of an interpreter. He submitted that his parents had separated as a result of being harassed by the woman’s family, and did not want to see him. He said further that he was suffering from depression and was on anti-depressant medication. He did not make any submissions concerning his grounds of appeal or the submissions made by counsel for the Minister. However unfortunate the appellant’s personal circumstances are they do not have any bearing on the disposition of this appeal.
2. The first respondent’s written submissions state as follows:

17 The notice of appeal filed on 16 July 2019 raises two grounds (AB 115-117).

18 The first ground of appeal contends that the primary judge failed to consider that the Tribunal acted in a “*manifestly unreasonable way*” in respect of the appellant’s claims and ignored the “*aspect of persecution and harm in terms of Sec.91R of the Act*”. The appellant contends that this amounted to a breach of the Tribunal’s statutory obligations.

19 No such contentions were raised in the Federal Circuit Court. There is no error in the primary judge not addressing a contention that was not put to the Court. The Tribunal rejected the appellant’s claims on the basis of its adverse credibility findings. As the primary judge held, the Tribunal’s findings were reasonably open to it on the material before it and the appellant has not articulated any manner in which the Tribunal acted legally unreasonably in fulfilling its statutory review obligations under Part 7 of the Act.

20 Finally, it should be noted that s 91R was repealed by the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* for applications for protection visas made on or after 16 December 2014. As the appellant made an application for a protection visa on 3 February 2017, s 91R had no application.

21 The second ground asserts that the primary judge dismissed the appellant’s application without considering the legal and factual errors in the Tribunal’s decision. The appellant has not provided any particulars indicating what the legal and factual errors are so as to render this ground meaningful. Nor were any meaningful grounds advanced in the Federal Circuit Court proceedings which it could be said this ground pertains to. Again, as the primary judge held, the Tribunal’s findings, including as to credit, were reasonably open on the material before it.

22 There is no appellable error in the primary judge’s reasons. The appeal should be dismissed.

1. The first respondent’s submissions should be accepted. There is no error in the decision of the primary judge.

# Disposition

1. The appeal is dismissed.

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| I certify that the preceding fifteen (15) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Anastassiou . |

Associate:

Dated: 7 September 2020