FEDERAL COURT OF AUSTRALIA

DVO18 v Minister for Home Affairs [2020] FCA 989

|  |  |
| --- | --- |
| Appeal from: | *DVO18 & Anor v Minister for Home Affairs* [2019] FCCA 3293  |
|  |  |
| File number: |  |
|  |  |
| Judge: | **O'BRYAN J** |
|  |  |
| Date of judgment: | 15 July 2020 |
|  |  |
| Catchwords: | **MIGRATION** – appeal from Federal Circuit Court of Australia – whether decision of the Immigration Assessment Authority was affected by illogicality, irrationality, unreasonableness by reason of contradictory findings – appeal dismissed  |
|  |  |
| Legislation: | *Federal Court of Australia Act* *1976* (Cth) s 24*Migration Act 1958* (Cth) ss 5J(1)(a), 5J(6), 46A(1) and 46A(2)  |
|  |  |
| Cases cited: | *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473*Attorney-General (NSW) v Quin* (1990) 170 CLR 1*DVO18 & Anor v Minister for Home Affairs* [2019] FCCA 3293*Ex parte Applicant S20/2002* (2003) 73 ALD 1*Minister for Immigration and Border Protection v SZVFW* (2018) 264 CLR 541*Minister for Immigration and Citizenship v SZJGV* (2009) 238 CLR 642*Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 61*Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259*Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611*Minister for Immigration and Multicultural and Indigenous Affairs v SGLB* (2004) 207 ALR 12*Plaintiff S157/2002 v Commonwealth of Australia* (2003) 211 CLR 476  |
|  |  |
| Date of hearing: | 7 July 2020 |
|  |  |
| Registry: |  |
|  |  |
| Division: |  |
|  |  |
| National Practice Area: |  |
|  |  |
| Category: | Catchwords |
|  |  |
| Number of paragraphs: | 39 |
|  |  |
| Counsel for the Appellants: | A Aleksov |
|  |  |
| Solicitor for the Appellants: | TranQuill |
|  |  |
| Solicitor for the First Respondent: | L Crick of Clayton Utz |
|  |  |
| Solicitor for the Second Respondent: | The Second Respondent filed a submitting notice save as to costs |
|  |  |

ORDERS

|  |  |
| --- | --- |
|  | ACD 101 of 2019 |
|   |
| BETWEEN: | DVO18First AppellantDVN18Second Appellant |
| AND: | MINISTER FOR HOME AFFAIRSFirst RespondentIMMIGRATION ASSESSMENT AUTHORITYSecond Respondent |

|  |  |
| --- | --- |
| JUDGE: | O'BRYAN J |
| DATE OF ORDER: | 15 july 2020 |

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The appellants 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

O’BRYAN J:

## Introduction

1. By notice of appeal filed on 17 December 2019, the appellants appeal from a decision of the Federal Circuit Court of Australia made on 6 December 2019 in *DVO18 & Anor v Minister for Home Affairs* [2019] FCCA 3293. The appeal is brought under s 24 of the *Federal Court of Australia Act* *1976* (Cth).
2. The appellants are Vietnamese nationals and cousins who arrived in Australia together on 25 July 2013. DVO18 is male and, at the time of his arrival in Australia, was 15 years old. DVN18 is female and, and at the time of her arrival in Australia, was 23 years old. DVN18 participated in an arrival interview on the day of her arrival on 25 July 2013 and DVO18 participated in an arrival interview on 28 July 2013.
3. By reason of the manner in which the appellants entered Australia, they were classified as “unauthorised maritime arrivals” under the *Migration Act 1958* (Cth) (**Act**) and they were prevented by s 46A(1) of the Act from making a valid application for any visa while in Australia. On 5 June 2017, a delegate of the Minister advised the appellants that the Minister had exercised the power under s 46A(2) of the Act to allow them to make a valid application for a Safe Haven Enterprise (subclass 790) visa. Accordingly, the Department proceeded to consider their applications for such visas, which had been submitted to the Department on 11 May 2017.
4. On 12 July 2017, the appellants attended an interview with the Department to discuss the claims for protection made in their visa applications and, on 27 July 2017, the appellants' representative provided post-interview submissions to the Department.
5. On 28 September 2017, the Department notified the appellants by letter that their applications for a visa had been refused by a delegate of the Minister. The letter also advised that the Department had referred the decision to the Immigration Assessment Authority (**IAA**) for review under Part 7AA of the Act.
6. On 3 October 2017, the IAA also wrote to the appellants to notify them that their visa applications had been referred to the IAA.
7. On 31 October 2017, the appellants' representative provided written submissions to the IAA.
8. On 29 June 2018, the IAA made a decision affirming the delegate's decision to refuse the appellants’ visa applications.
9. The appellants sought judicial review of the IAA’s decision by the Federal Circuit Court pursuant to s 476 of the Act, which grants the Federal Circuit Court the same original jurisdiction in relation to migration decisions as the High Court has under paragraph 75(v) of the Constitution. As such, review by the Federal Circuit Court was confined to jurisdictional error: *Plaintiff S157/2002 v Commonwealth of Australia* (2003) 211 CLR 476.
10. On 6 December 2019, the Federal Circuit Court dismissed the applications for review.
11. For the reasons that follow, the appeal from the decision of the Federal Circuit Court is dismissed with costs.

**IAA reasons for decision**

1. The appeal concerns only one aspect of the IAA’s decision. Nevertheless, the following is an overview of the principal conclusions of the IAA which provides context to the part of the IAA decision that is the subject of the appeal.
2. DVO18 attended secondary school in Vietnam until year 7 (repeating that grade once). From 2011 to 2013, he worked on a fishing boat for his uncle. DVN18 is tertiary educated. She commenced a pharmacy qualification in 2009, but ceased those studies in 2010 because she did not like the course. She then studied banking and finance from 2011 to 2013, but did not complete her studies as she came to Australia.
3. The IAA considered the claims for protection made by the appellants under 5 headings: (i) claims related to an incident with a Chinese shipping vessel; (ii) claims related to Catholicism; (iii) claims related to political activity in Vietnam; (iv) claims related to political activities in Australia; and (v) claims related to illegal departure, data breach and time in Australia.

#### Claims related to an incident with a Chinese shipping vessel

1. DVO18 claimed to fear harm on the basis of his and his family's profile arising from an incident in the Spratly Islands in or around 2011. DVO18 claimed that while fishing with his uncle in the Spratly Islands in Vietnamese territorial waters, a Chinese ship hit their vessel from the rear and damaged it. They sailed to one of the Spratly Islands to ask for help from the Vietnamese Navy and Sea Police, but the Police did not help them. The Police arrested them and they were beaten. They were detained for one day and a night without food. When they reached the mainland they were taken to the local police station to be questioned, but instead they were beaten and threatened not to reveal the incident or they would be imprisoned.
2. DVN18 also claimed to fear harm incidentally from this profile. She claimed that her family is on a blacklist from the incident and they have faced interference and harassment from the authorities.
3. In findings that are not challenged on this appeal, the IAA concluded that there were significant inconsistencies in DVO18’s account of the incident which involved embellishments and fabrications (at [37]), and concluded that DVN18's evidence about the impact of the fishing incident for her and her family was inconsistent and lacking in credibility (at [40]). The IAA concluded (at [41]) that it was not satisfied that the appellants, or members of their family, were or remain persons of interest to the Navy, Police or other Vietnamese authorities because of the incident that occurred in the Spratly Islands. The IAA was satisfied that the appellants and their family have not faced any threat or harm in connection with the incident, that they have no ongoing profile, and that the appellants face no chance of harm on this basis or any related profile.

#### Claims related to Catholicism

1. In their visa applications, both appellants stated that they were constantly harassed because they are Roman Catholic.
2. The IAA accepted that both appellants are Roman Catholic. However, in findings that are not challenged on this appeal, the IAA concluded that:
	1. (at [48]) it was not satisfied that DVO18 has personally faced any hardship, threat or mistreatment, been denied the ability to practise his faith, or been denied access to schooling or anything else because of his religious background;
	2. (at [58]) it was not satisfied that DVN18 faced any societal or official barriers, harassment, discrimination, mistreatment or harm in connection with her religious background, or the practise of her faith;
	3. (at [60]) it was not satisfied that the appellants attend an unregistered church or a politically active church, or that the appellants are politically or religiously active or outspoken in relation to their religious adherence;
	4. (at [61]) it was satisfied that the appellants would be able to practise freely their religion on return to Vietnam, as they have in the past, without fear of harm or interference from the authorities and that the appellants would not face a real chance of being seriously harmed due to their Catholic religion, their religious adherence, or any actual or imputed political opinion or profile arising from those factors.

#### Claims related to political activity in Vietnam

1. DVN18 made various claims to having been involved in political and religious protests in Hanoi.
2. In findings that are not challenged on this appeal, the IAA concluded (at [70]) that DVN18’s claims related to political activities and attendance at protests in Vietnam were a contrivance; that she was not politically active in Vietnam, whether at protests or otherwise; and that she has no adverse political profile from her time in Vietnam.

#### Claims related to political activities in Australia

1. This appeal concerns this fourth category of claims made by the appellants. The appellants claimed, and the IAA accepted, that they attended an anti-Vietnam protest outside Parliament House in Canberra in March 2015 (coinciding with a visit of the Vietnamese Prime Minister) and another protest at the Vietnamese Embassy in Canberra in 2017. A YouTube video of the first protest exists which shows the appellants and identifies them by their first names. In the video, DVN18 is critical of the Vietnamese government. The appellants claim to fear harm as a result of the Vietnamese intelligence agency seeing the video and recognising them, and claim that they will be tortured on return to Vietnam.
2. In reasoning that is challenged on this appeal, the IAA reached the following conclusions:

77. The evidence before me indicates that the applicants attended one protest In March 2015 and another protest In May 2017. The applicants have attended protests two during their entire time in Australia. They have provided evidence that they attend church In Canberra, but provided no other evidence of political activity, engagement with political groups, engagement with the Vietnamese community, or even political activity on social media. The limited nature of their activities indicates that the applicants have not otherwise been politically active. This leads me to conclude that their attendance at these protests was superficial, likely designed to strengthen their claims to be owed protection. Were it otherwise, I consider they would have shown a more significant or frequent engagement with political or community activities in Australia. While I accept they do not support the current Vietnamese government, I consider their political views are likely low level. For this reason, I have not disregarded their conduct entirely under s.5J(6). However, having regard to all of the above, I am not satisfied they are genuinely politically active or outspoken about these issues, or that they would be politically active or outspoken on return to their country.

78. I have considered whether the applicants would face a real chance of harm based on the evidence of their political activities in Australia, both in terms of their attendance at protests, the evidence of this on YouTube, and information from the data breach. Based on the transcripts, I accept [DVN18] is identified by her first name …, her image is shown and she is critical of the Vietnamese government in her comments. I accept [DVO18] is identified by his first name … and his image is shown. It is not clear whether the second video is published anywhere, but I accept [DVO18] is critical of the government.

79. I accept the video from YouTube is publicly available and has been viewed approximately 16,000 times. I also accept that the fact that the applicants have sought protection in Australia could have been determined by the Vietnamese authorities through either the data breach, or the length of time they have spent in Australia.

80. I have found the applicants have no past adverse political profile from their time in Vietnam. I have not accepted that the applicants are on black lists. I am satisfied they are not known to the Vietnamese authorities. I note the delegate's observation that there are some 185,000 Vietnamese people in Australia. Weighing everything, I consider the chance that the applicants would be identified from the YouTube video by the Vietnamese authorities, that they would have an adverse political profile arising from the video, or would be targetted by the authorities (or any other person) as a result of the video and their participation in the protest, to be remote.

81. Alternatively, while the applicants may have made anti-government statements, I consider the nature of their participation was low level. There is no suggestion that the applicants were involved in the organisation of these protests, or that they have other active roles in political or activist groups. While the country information before me highlights the risks to political activists, dissidents and bloggers, leaders and organisers, it does not indicate that persons who hold low-level political views are at a real chance or risk of harm for those reasons. I consider the same would be the case for the video on YouTube. If the authorities did identify the applicants, such as through a dob in, I accept they would be seen as participating in a protest, and [DVN18] speaking out against the government, but I am satisfied they would not be seen as political activists, dissidents, leaders or organisers, or persons of interests for the government or the Communist Party. Instead, I am satisfied the authorities would assess them as low level participants in a political protest, albeit critical of the government.

82. If the applicants were to continue to be politically active on return to the country, I consider it plausible that they may come to the adverse attention of the authorities. DFAT states that individuals and groups who protest against the Government or openly criticise the Communist Party are likely to attract adverse attention from the authorities. Actively protesting against land confiscation, human rights issues or the government's handling of issues will result in protests being shut down, police intimidation and harassment. DFAT assesses low-level protesters and supporters often feel intimidated by police presence, and are sometimes detained and released the same day by authorities. There were a few reported cases of uniformed and plain-clothes officers using violence to break up protests in 2016, such as beating protesters with batons to disperse crowds. That assessment further underpins my finding above that their low level involvement would not lead them to be persons of interest or that they would have an adverse profile simply from attending a protest.

83. I accept there are risks to people who are politically active in Vietnam. However, I am satisfied that their political activities in Australia did not genuinely or credibly reflect the low level nature of their political opinions. I accept that in many ways the applicants have, as the representative contends, become 'westernised', and that they would have grown accustomed to the freedoms in this country. However, even in the context of a society like Australia where they have freedom of speech, they only attended two protests. They otherwise did not engage in political activities. What they did do over the last few years was work, study, develop their skills and attend church. I am satisfied that is what they would do on return to Vietnam and I am satisfied they would have no adverse profile arising from such activities.

84. I consider that if they returned to Vietnam, they would not be involved in political protests or other politically charged activities. For clarity, and to address the submissions made to the IAA, I am satisfied this would not be the applicants modifying their behaviour to avoid serious harm, or that they would be more inclined to be politically active if they were able to exercise such rights without fear of significant harm. Instead, I find this would be a genuine reflection of the low level nature of any political views they hold.

85. Having regard to all the circumstances, I am satisfied the applicants would not face a real chance of being seriously harmed due to their low level or imputed political opinion, as a result of their limited political activities in Australia, through the fact that the Vietnamese authorities may determine they applied for protection (considered further below), any actual or imputed political opinion from their religious or other background, and/or one the basis of any other related profile. For clarity, I find they would not face a real chance of harm on the basis of their political opinions or profile should they return to Vietnam.

#### Claims related to illegal departure, data breach and time in Australia

1. The appellants claim to fear that if they are returned to Vietnam as failed asylum seekers that they would be harmed by the authorities because they would be perceived as traitors for complaining about Vietnam to a foreign government; they will be seen as “westernised”; and the authorities will be suspicious of them.
2. In findings that are not challenged on this appeal, the IAA concluded that:
	1. (at [94]) it was satisfied that the appellants would not face a real chance of serious harm on the basis that they sought asylum in Australia, or that any additional profile or opinion (for example anti-government, anti-Communist or political traitors) would be imputed to them that would put them at a real chance of being seriously harmed on their return to Vietnam;
	2. (at [96]) it was satisfied that there is no real chance of the appellants facing serious harm on return to Vietnam as asylum seekers, as people who left the country illegally, because of their time in a western country (Australia), or on the basis of any other actual or imputed profile or political opinion considered in the IAA’s reasons.

## Proceedings in the Federal Circuit Court

1. By an amended application for review filed in the Federal Circuit Court on 18 January 2019, the appellants sought review of the decision of the IAA on two grounds. Ultimately, only one ground of review was pressed, which was as follows:

The decision of the IAA is affected by illogicality, irrationality, unreasonableness or some other unspecified error.

Particulars

The reasons given at [77]-[84] do not make sense, justifying an inference that the Tribunal did not have any lawful reason for rejecting the claim that the applicants may engage in a higher level of political activity against the Vietnamese government if returned to Vietnam.

1. The Federal Circuit Court dismissed the application for review. It concluded that the IAA’s findings at [77]-[84] of its reasons were not illogical, irrational or unreasonable. Specifically, the Court concluded that the IAA’s findings that the appellants’ political activity in Australia was “low-level”, and that it was unlikely that the appellants would be involved in political activity if they were returned to Vietnam, were supported by the evidence.

## Consideration of the appeal

1. By their notice of appeal filed on 17 December 2019, the appellants raise a single ground of appeal: that the Federal Circuit Court erred in not accepting the appellants’ ground of review advanced in that court, alleging that the decision of the IAA was affected by illogicality, irrationality, or legal unreasonableness.
2. An appeal to the Federal Court under s 24 of the *Federal Court of Australia Act* *1976* (Cth) is by way of rehearing. Accordingly, the Court must determine whether the Federal Circuit Court was correct to find that the decision of the IAA was not affected by jurisdictional error of the kind alleged by the appellants: *Minister for Immigration and Border Protection v SZVFW* (2018) 264 CLR 541.
3. The appellants submitted that the IAA’s reasoning at [77]-[84] of its decision does not make sense in that it contains contradictory findings. The appellants’ argument involved the following steps.
	1. Section 5J(6) of the Act provides that, in determining whether a person has a well-founded fear of persecution for one or more of the reasons mentioned in paragraph 5J(1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee. The proviso will be satisfied if the person engaged in the conduct for a purpose other than strengthening the person's claim to be a refugee, even if the person also engaged in the conduct for the purpose of strengthening the person's claim to be a refugee (in other words, the person engaged in the conduct for more than one purpose): *Minister for Immigration and Citizenship v SZJGV* (2009) 238 CLR 642 at [13] per French CJ and Bell J and at [60]-[61] per Crennan and Kiefel JJ (considering the predecessor provision, s 91R(3) of the Act, which was in materially the same terms as s 5J(6)).
	2. At [77], the IAA concluded that s 5J(6) did not apply so as to preclude the IAA from having regard to the appellants’ conduct in Australia (attending two protests). Therefore, the IAA must have been satisfied that the appellants’ conduct in Australia had been engaged in otherwise than for the purpose of strengthening their claims to be refugees, and that they genuinely hold political views opposed to the Vietnamese government, albeit at a low level.
	3. Despite reaching that conclusion, the IAA proceeded to make its decision upon contradictory findings. At [77], the IAA concluded that it was not satisfied that the appellants are genuinely politically active or outspoken about political issues, or that they would be politically active upon any return to Vietnam. At [83], the IAA concluded that it was satisfied that the appellants’ political activities in Australia did not genuinely or credibly reflect the low level nature of their political opinions.
	4. The contradictory findings of the IAA were material to the IAA’s ultimate findings that, if the appellants returned to Vietnam:
		1. (at [84]) they would not be involved in political protests or other politically charged activities; and
		2. (at [85]) they would not face a real chance of harm on the basis of their political opinions or profile.
4. The respondent submitted that the IAA’s reasoning was not contradictory as claimed by the appellants. The IAA’s finding for the purposes of s 5J(6) was that, while the appellants’ attendance at the two protests in Canberra was likely designed to strengthen claims to be owed protection, the appellants nevertheless held low level political views and therefore the IAA was satisfied that their attendance at the protests was not engaged in solely for the purpose of strengthening their protection claims. The IAA's conclusion (at [77]) that it was not satisfied that the appellants were "genuinely politically active or outspoken about these issues, or that they would be politically active or outspoken on return" went to its overall assessment of the political profile of the appellants. This finding was based on the fact that the appellants had only attended two protests and had not otherwise been politically active in Australia. The respondent submitted that there is no illogicality or unreasonableness in the IAA accepting that the appellants may have had multiple motivations to attend protests in Australia but then concluding that the fact of attending the protests did not sufficiently demonstrate that the appellants were, more generally, politically "active or outspoken". The respondent further submitted that, even if the IAA’s decision involved illogical reasoning as submitted by the appellants, the error was not material to the decision.
5. The relevant legal principles were not in dispute between the parties. A decision will involve jurisdictional error if it is based on reasoning that is irrational, illogical or not based on findings or inferences of fact supported by logical grounds: *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611 at [131]-[137] per Gummow J; *Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002* (2003) 73 ALD 1 at [9] per Gleeson CJ and at [34]-[37] per McHugh and Gummow JJ; *Minister for Immigration and Multicultural and Indigenous Affairs v SGLB* (2004) 207 ALR 12 at 20 per Gummow and Hayne JJ; and *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 61 at [40] per Gummow ACJ and Kiefel J (in dissent as to the result) and [119] and [130] per Crennan and Bell JJ. In assessing the appellants’ ground of appeal, I have also kept in mind the following principles:
	1. first, the Court must avoid the danger of straying into merits review: *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at 35-37 per Brennan J;
	2. second, the decision-maker’s reasons should not be scrutinised “minutely and finely with an eye keenly attuned to the perception of error”: *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 272 per Brennan CJ, Toohey, McHugh and Gummow JJ; and
	3. third, it is necessary to read the decision-maker’s reasons in light of the whole case as it was before the decision-maker, so that the materiality of the issue about which complaint is made can be assessed in the context in which the matter was conducted before the decision-maker: *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473 at [1] per Gleeson CJ.
6. In my view, the findings of the IAA that are criticised by the appellants do not involve illogical reasoning. Although, respectfully, the IAA’s findings suffer from a lack of clear expression, I consider that the IAA’s reasoning process is able to be discerned and does not reveal jurisdictional error.
7. Both the appellants and the respondent agreed that the IAA found that, in respect of the appellants’ attendance at two political protests in Australia, the proviso to s 5J(6) was fulfilled and the IAA was not required to disregard that conduct. The IAA’s reasoning for that conclusion is expressed at [77]. It involves the following elements:
	1. The appellants had only attended two protests during their entire time in Australia (at the time of the decision, a period of approximately 5 years).
	2. There was no other evidence that the appellants had engaged in political activity, engaged with political groups, or engaged with the Vietnamese community or political activity on social media, indicating that the appellants had not otherwise been politically active while in Australia.
	3. The IAA found that the appellants’ attendance at the protests in Australia, in so far as it can be characterised as political activity, was “superficial”.
	4. The IAA was satisfied that the appellants do not support the Vietnamese government, but the expression of that political view of the appellants was at a “low level”. In the context of the reasons, the phrase “low level” can be understood as a summary of the immediately preceding findings to the effect that the expression of the appellants’ political view had not gone further than attendance at two protests in the course of 5 years, and is to the same effect as the IAA’s finding that the attendance at the protests was superficial.
	5. However, the IAA was satisfied that, because the appellants did not support the Vietnamese government, their attendance at the protests was not solely for the purpose of strengthening their claims to be refugees and, accordingly, the IAA was not required to disregard the attendance at the protests.
8. The appellants submitted that the final sentence of [77] contradicts the preceding findings. I disagree. In the final sentence of [77], the IAA concludes that it is not satisfied that the appellants are genuinely politically active or outspoken, or that they would be politically active or outspoken on return to Vietnam. Read in context, in my view it is clear that the IAA’s conclusion draws a distinction between the “superficial” or “low level” political expression of the appellants, involving attendance at two protests in the space of 5 years, and being politically active or outspoken. As submitted by the respondent, the final sentence of [77] is concerned with the level of political activity. That conclusion is reinforced by the IAA’s further reasoning at [81], where the IAA equates having a “low level” political view with not being involved in the organisation of protests and not having an active role in political or activist groups. There is no necessary contradiction or inconsistency between that finding and the IAA’s conclusion regarding the proviso to s 5J(6).
9. The appellants also submitted that the second sentence of [83] contradicts the findings concerning the proviso to s 5J(6). There is some force in the appellants’ submission. In the second sentence of [83], the IAA stated that it is satisfied that the political activities of the appellants in Australia did not genuinely or credibly reflect the low level nature of their political opinions. It is not at all clear what the IAA meant by that sentence. The IAA had previously found that the political activities of the appellants in Australia was confined to their attendance at the two protests in Canberra. Inferentially, the IAA had found that that activity was a genuine expression of their political view that they do not support the Vietnamese government; but the IAA had found that that political expression was at a low level. Those earlier findings render the second sentence of [83] somewhat incoherent.
10. Despite the apparent incoherence of the second sentence of [83], the remainder of the IAA’s reasoning in [77]-[84] is, in my view, coherent and I do not consider that the overall coherence of the IAA’s reasons is undermined by the difficulty with the second sentence of [83]. The consistent finding of the IAA, supported by the evidence before it, is that, while in Australia, the appellants had engaged in very little political activity or expression. Further, the IAA had earlier found that the appellants were not politically active in Vietnam in the past (at [71]). The IAA found that the appellants have no past adverse political profile from their time in Vietnam and the prospect of the Vietnamese authorities becoming aware of their attendance at the protests in Australia was remote (at [80]). Even if their attendance at the protests became known, the IAA found that the Vietnamese authorities would assess them as low level participants in a political protest, albeit critical of the government, but not as political activists, dissidents, leaders or organisers, or persons of interests for the government or the Communist Party (at [81]). While there are risks to people who are politically active in Vietnam (at [82] and [83]), the IAA concluded that the appellants would not be involved in political protests or other politically charged activities if returned to Vietnam (at [84]). The IAA based that conclusion on the appellants’ previous conduct both in Vietnam and in Australia (at [83] and [84]). Based on the foregoing, the IAA was satisfied the appellants would not face a real chance of harm on the basis of their political opinions or profile should they return to Vietnam (at [85]).
11. For those reasons, I do not consider that the IAA’s reasons at [77]-[84] involve jurisdictional error on the basis of illogicality, irrationality or unreasonableness.

## Conclusion

1. In my view, the ground of appeal does not identify jurisdictional error on the part of the IAA, nor any error on the part of the Federal Circuit Court. The appeal should be dismissed with costs.

|  |
| --- |
| I certify that the preceding thirty-nine (39) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice O'Bryan. |

Associate:

Dated: 15 July 2020