FEDERAL COURT OF AUSTRALIA

CLN15 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2019] FCA 1854

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| Appeal from: | *CLN15 & Anor v Minister for Immigration & Anor* [2019] FCCA 1605 |
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| File number: |  |
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| Judge: | **STEWART J** |
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| Date of judgment: | 11 November 2019 |
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| Catchwords: | **MIGRATION** – appeal from a decision of the Federal Circuit Court dismissing application for judicial review of a decision of the Administrative Appeals Tribunal affirming the delegate’s decision to refuse the appellants’ application for protection visas – no error by the primary judge – appeal dismissed |
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| Legislation: | *Migration Act 1958* (Cth) ss 36(2)(a), 36(2)(aa), 476 |
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| Date of hearing: | 11 November 2019 |
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| Registry: | New South Wales |
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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: | 22 |
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| Counsel for the First Appellant: | The first appellant appeared in person assisted by an interpreter |
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| Counsel for the Second Appellant: | The second appellant did not appear |
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| Counsel for the First Respondent: | G Johnson |
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| Solicitor for the First Respondent: | Sparke Helmore Lawyers |
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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 1077 of 2019 |
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| BETWEEN: | CLN15  First Appellant  CLO15  Second Appellant | |
| AND: | MINISTER FOR IMMIGRATION CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS  First Respondent  ADMINISTRATIVE APPEALS TRIBUNAL  Second Respondent | |

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| JUDGE: | STEWART J |
| DATE OF ORDER: | 11 NOVEMBER 2019 |

THE COURT ORDERS THAT:

1. The appeal is dismissed.
2. The appellants are to pay the first respondent’s costs.

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

REASONS FOR JUDGMENT

STEWART J:

## Introduction

1. This is an appeal from the orders and judgment of the Federal Circuit Court of Australia (**FCCA**) made on 11 June 2019. The primary judge dismissed an application for judicial review of a decision of the second respondent, the Administrative Appeals **Tribunal**, which affirmed a decision of a delegate of the first respondent, the **Minister**, refusing to grant the appellants Protection (Class XA) visas.

## The Delegate’s decision

1. The first appellant is a citizen of Malaysia and applied for a protection visa on 24 November 2014. The second appellant is a citizen of Indonesia and claimed to be the de facto partner of the first appellant and was included on the first appellant’s protection visa application as a member of the first appellant’s family unit. The second appellant did not advance any separate claims as to her entitlement to the grant of a protection visa.
2. The first appellant’s claims to fear of harm were set out in the body of his visa application. In summary, he claimed to fear harm on return to Malaysia for reason of having borrowed money from “loan sharks” which he was unable to repay. He claimed that the loan sharks had threatened to kill him with knives and guns, and had physically assaulted him in the past.
3. By letter dated 23 February 2015, the first appellant was invited to attend an interview with the delegate on 30 March 2015 but he failed to attend the interview.
4. On 23 March 2015, the Minister’s delegate refused to grant the first appellant a protection visa on the basis that he was unable to be satisfied that the first appellant met the criteria for the grant of the visa, either pursuant to s 36(2)(a) or s 36(2)(aa) of the *Migration* ***Act*** *1958* (Cth).

## The Tribunal’s decision

1. The first appellant applied to the Tribunal for review of the delegate’s decision. The Tribunal invited both appellants to appear at a hearing. Only the first appellant attended.
2. The Tribunal affirmed the decision under review. It identified the issue in the case as being the credibility of the first appellant and whether on any accepted claims he met the criteria for the grant of a protection visa. The Tribunal found that the first appellant’s claims were “vague, lacking detail, inconsistent and contradictory”. The Tribunal set out the specific bases for its view that the first appellant was not a credible witness, including by reference to:
   * His having spent several years in Australia as an unlawful non-citizen prior to making his protection visa application, and without having offered satisfactory explanation for the delay;
   * His having given contradictory evidence including as to his work history;
   * His unconvincing evidence regarding the loan that was at the heart of his claims to fear of harm, which the Tribunal concluded was a fabrication;
   * His unconvincing evidence regarding his claims to have operated a business;
   * Contradictory evidence the first appellant gave in relation to any actual harm experienced in Malaysia;
   * A concern about whether the first appellant was actually a Malaysian citizen (although the Tribunal was prepared to proceed on the basis that he was).
3. For the reasons listed above, the Tribunal concluded that it did not find the first appellant to be a credible witness. The Tribunal was not satisfied that either of the appellants was a person in respect of whom Australia had protection obligations under s 36(2)(a) or s 36(2)(aa) of the Act.

## The FCCA decision

1. On 23 November 2015, the appellants sought to challenge the Tribunal’s decision by filing an application for judicial review in the FCCA under s 476 of the Act.
2. The appellants advanced the following three grounds:

* *Ground One:* That the Tribunal “is not fair to me and has bias against me”.
* *Ground Two*: That the Tribunal “asked me a lot of irrelevant questions, such as name of Malay states”.
* *Ground Three:* That the Tribunal “is not reasonable for questioning my credibility when I don’t remember that I helped my father with pig farmer when I was only 7 years. This is normal I forget things long time ago.”

1. Ultimately, the primary judge made orders dismissing the appellants’ application.
2. The primary judge held that the assertion in the first ground did not identify relevant error by the Tribunal. His Honour observed that the Tribunal had made adverse credibility findings against the first appellant concerning his claim to fear of harm from loan sharks. His Honour held that those findings were open on the material before the Tribunal, and that the first appellant’s disagreement with the findings did not identify relevant error. In relation to the complaint of bias, the primary judge held that no allegation of bias was properly pleaded or made out. Neither did his Honour consider that any apprehended bias arose from the Tribunal’s decision.
3. In relation to the second ground the primary judge found that it was open to the Tribunal to explore with the first appellant his claims, his knowledge in relation to his identity and his credibility. His Honour found that the first appellant had not identified any irrelevant question asked by the Tribunal. Further, the primary judge noted that the asking of questions by the Tribunal about the first appellant’s knowledge and claims did not give rise to apprehended bias.
4. In relation to the third ground the primary judge noted that the ground constituted a disagreement with the adverse credibility findings made by the Tribunal. His Honour however held that the adverse credibility findings were based on a number of considerations including the appellants’ substantial delay in applying for protection. His Honour found the adverse credibility findings were open to the Tribunal.

## Grounds of Appeal

1. In this Court the appellants advance three grounds of appeal by a Notice of Appeal filed on 8 July 2019, namely:

* *Ground 1:* That the “AAT is not fair to me and has bias against me”.
* *Ground 2:* That the “AAT is not reasonable to questioning my credibility when I don’t remember that I helped my father with big farm when I was 7 years old”.
* *Ground 3:* That “this is normal I forget things long time ago”.

1. These grounds are repetitious of the first and third grounds of the appellants’ judicial review application dismissed by the FCCA.
2. The Minister submits that the primary judge correctly determined that neither the first nor third grounds of review identified jurisdictional error by the Tribunal.
3. In relation to ground 1, the appellants’ notice of appeal fails to identify any basis upon which it might be concluded that the Tribunal was “not fair” to or showed “bias against” either appellant. As the appellants were unrepresented before me, I asked the first appellant (who said that he spoke on behalf of the second appellant as well) to identify any respects in which they say that the Tribunal was biased or unfair. He was unable to do so. On my review of the record, including scrutiny of the Tribunal’s record of decision, I am not able to identify any unfairness or bias, or any basis on which it might be said that there is a reasonable apprehension of bias. Ground 1 must fail.
4. Grounds 2 and 3 can be considered together. The Minister points out that it was the first appellant himself who had claimed to have worked as a pig farmer. The first appellant included this information at question 42 of his visa application in the section entitled “Employment history”. Further, contrary to what he told the Tribunal – that he was a pig farmer when he was only 7 or 8 years of age – his visa application form indicates that he performed this work for seven years from 2000 to 2007. According to his stated date of birth, the first appellant would have been about 32 years of age when he commenced this work.
5. Contrary to the appellants’ asserted grounds of appeal, it was clearly open to the Tribunal to question the first appellant about matters of work history raised by the first appellant in his work documentation given to the Department of Immigration and Border Protection. It was further open to the Tribunal to draw conclusions adverse to the first appellant’s credibility when he gave answers that were inconsistent with his written claims.
6. I can find no unreasonableness in the way in which the Tribunal questioned the first appellant’s credibility and the conclusions that it reached. Grounds 2 and 3 also fail.

## Conclusion

1. There was no error by the primary judge, or jurisdictional error by the Tribunal. The appeal falls to be dismissed, and there is no reason why the appellants should not pay the Minister’s costs.

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| I certify that the preceding twenty-two (22) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Stewart. |

Associate:

Dated: 11 November 2019