FEDERAL COURT OF AUSTRALIA

EVW18 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2019] FCA 1363

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| Appeal from: | *EVW18 v Minister for Home Affairs* [2019] FCCA 504  |
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| File number: | NSD 449 of 2019 |
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| Judge: | **JAGOT J** |
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| Date of judgment: | 27 August 2019 |
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| Catchwords: | **MIGRATION** – appeal against a decision of the Federal Circuit Court of Australia dismissing an application for judicial review of a decision of the Immigration Assessment Authority – appeal dismissed  |
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| Legislation: | *Migration Act 1958* (Cth) ss 36(2A), 473DA, 473DC, 473DC(1), 473DC(3), 473DD, 473DE(3)(a)  |
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| Cases cited: | *Australian Retailers Association v Reserve Bank of Australia* [2005] FCA 1707*CCQ17 v Minister for Immigration and Border Protection* [2018] FCA 1641*CRW16 v Minister for Immigration and Border Protection* [2018] FCA 710*DFW16 v Minister for Immigration and Border Protection* [2018] FCA 746*EVW18 v Minister for Home Affairs* [2019] FCCA 504*Minister for Immigration and Multicultural Affairs, v Rajalingam* [1999] FCA 719*SZWBR v Minister for Immigration* [2016] FCCA 2621 |
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| Date of hearing: | 14 August 2019 |
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| Date of last submissions: | 15 August 2019 (First Respondent)21 August 2019 (Appellant) |
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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 |
|  |  |
| Number of paragraphs: | 33 |
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| Counsel for the Appellant: | The Appellant appeared in person with the assistance of an interpreter |
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| Counsel for the First Respondent: | Ms J Davidson |
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| Solicitor for the First Respondent: | HWL Ebsworth |
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| Counsel for the Second Respondent: | The Second Respondent did not appear |

ORDERS

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|  | NSD 449 of 2019 |
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| BETWEEN: | EVW18Appellant |
| AND: | MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRSFirst RespondentIMMIGRATION ASSESSMENT AUTHORITYSecond Respondent |

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| JUDGE: | JAGOT J |
| DATE OF ORDER: | 27 August 2019 |

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The appellant pay the first respondent’s costs, as agreed or taxed.

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

REASONS FOR JUDGMENT

JAGOT J:

## Background

1. This is an appeal against the orders of the Federal Circuit Court of Australia dismissing the application for judicial review of a decision of the Immigration Assessment Authority (the **IAA**) affirming a decision of the Minister’s delegate not to grant the appellant a Safe Haven Enterprise Visa, or **SHEV**: *EVW18 v Minister for Home Affairs* [2019] FCCA 504.
2. An earlier IAA decision was made on 11 October 2016. However in ***DFW16*** *v Minister for Immigration and Border Protection* [2018] FCA 746, Barker J remitted the appellant’s case back to the IAA for consideration of the matter by another member in accordance with law due to a failure to consider the exercise of the IAA’s power under s 473DC(3) of the *Migration Act 1958* (Cth). Another decision was made by a reviewer at the IAA on 22 August 2018, which like the earlier IAA decision, affirmed the decision not to grant the appellant a SHEV. It is the later decision to which the current appeal relates.
3. The appellant is a citizen of Sri Lanka. He arrived in Australia by boat in 2012. He lodged an application for a SHEV on 2 December 2015. He claimed to fear harm in Sri Lanka as a Tamil by reason of imputed political opinion, for having departed Sri Lanka illegally, and because he had been photographed holding a weapon in public and attended a Tamils Martyrs’ Day celebration in Sydney in November 2017.

## Consideration

1. When the matter was called for hearing the appellant appeared in person, assisted by an interpreter. He made oral submissions which did not accord with any of the grounds put before the Federal Circuit Court or in his original and amended (in fact, supplementary) notices of appeal in this Court.
2. He said that he had been unsuccessful before the IAA due to alleged inconsistencies in what he had said but he had a memory problem which explained the contradictions. He referred to two letters from a Justice of the Peace which he said should have been accepted. He said that Tamils in Sri Lanka went to Christian Churches for protection and he had tendered a letter from the Pastor but the IAA did not accept that as a Hindu he would go to a Christian Church for assistance. He said that he had lived freely in Australia since 2015, taking part in the Tamil Martyrs’ festival and exposing himself as a free man. He said that he had also posted on social media. He said that those who had killed Tamils in 2009 to 2015 were about to return to power and that he had substantial evidence that he would be detained in Sri Lanka and his family had been dispersed and scattered.
3. The Minister’s counsel responded to these submissions, noting that they did not relate to any ground put previously.
4. The Minister said that nothing in the materials the appellant had put forward identified any memory impairment and the submission amounted to a dispute with the way in which the IAA had not accepted some of the appellant’s claims. I agree. This argument does not amount to a claim of jurisdictional error by the IAA.
5. The Minister said that the two letters from a Justice of the Peace were presumably a reference to letters which the IAA had referred to at [8] of its reasons and in respect of which the IAA had concluded that there were not exceptional circumstances enabling consideration of this material as required by s 473DD of the Migration Act. The IAA considered that the information in the letter was before the delegate in any event (which was an accurate observation) and thus reached the view that it was not satisfied that exceptional circumstances existed as required. I can see no error of law or reasoning in the approach of the IAA in this regard. As the Minister also submitted, it is apparent that the content of the letter relating to an attack on the appellant’s father was a matter the IAA accepted at [40] of its reasons, albeit that it did not accept the cause of the attack as propounded by the appellant. That is, it is clear that the IAA’s treatment of the letters was not the reason that the appellant’s claims were not accepted.
6. The Minister noted that the letter from the Christian Church on which the appellant relied was considered by the IAA at [9] of its reasons. The IAA was not satisfied that exceptional circumstances existed so as to enable it to give consideration to this material. Again, I see no error of law or reasoning in the IAA’s approach to this letter.
7. The Minister said the IAA had referred to the appellant’s photographs at a Tamil Martyrs’ day festival being shown on Facebook and had considered the appellant’s explanations of his attendance at that event in 2017 and in earlier years. It is apparent that the IAA gave close attention to the appellant’s contentions about his involvement in this event at [16] to [20] of its reasons. Nothing the appellant said adds to or detracts from the IAA’s process of reasoning in those paragraphs.
8. The Minister said the appellant’s claimed fear of return to Sri Lanka involved matters going to the merits of the IAA’s decision including new information which could not be considered in the appeal. I agree.
9. The appellant’s proposed amended notice of appeal referring to the IAA making a jurisdictional error of legal unreasonableness in relation to the appellant’s ability to subsist in Sri Lanka appeared to relate to [62] of the IAA’s reasons in which the IAA had accepted that the appellant may have difficulty finding work and earning an income but also noted that “…his family remains in Sri Lanka and he will be accommodated and supported by his family members on his arrival”. The particulars to this additional ground of appeal referred to the law of legal unreasonableness and proposed that the IAA had applied an arbitrary standard or assumption about the appellant’s family when in fact the appellant’s father had died in 2017 and his mother was a widow with two younger children who was finding it very hard to survive. In his submissions in reply the appellant referred to his mother also being ill. As the Minister pointed out, however, this is all new information which the appellant had not put before the IAA. Before the IAA there was evidence that the appellant’s family had supported him in that his mother arranged for him to leave Sri Lanka and paid for him to do so. The IAA’s observation at [62] of its reasons was reasonably open on the material that was available to it.
10. The Minister noted that:

The particulars in the Amended Notice refer to *BWC16 v Minister for Home Affairs* [2018] FCA 1375 at [55]-[59] and *DHK16 v Minister for Immigration and Border Protection* [2018] FCA 1353. In both of those cases, an error was made involving the making of a critical finding of fact without probative evidence (though in *BWC16* Thawley J explained that the error could be characterised in various other ways, including illogicality or irrationality, and the Authority in that case had also reached an additional arbitrary conclusion on the basis of illogical reasoning: at [58], [59]). The error in *BWC16* did not concern the imposition of “an arbitrary standard of conduct” (cf particular (b) of the Amended Notice), but rather a finding that the appellant had made a statement that he did not make, and an arbitrary finding that the appellant failed to demonstrate sufficient knowledge of a political party’s history.

1. The Minister thus submitted that:

By contrast, a “no probative evidence” ground could not be made out in relation to the IAA’s finding at [62] concerning the appellant’s capacity to subsist. The appellant had previously provided information indicating that his family members were currently residing in Sri Lanka and that his mother had paid 3 lakhs for his departure from Sri Lanka: see eg AB at 56, 153, 170-171, 175, 217 [21]. Similarly, contrary to the assertion in the Additional Ground, the IAA's finding was not legally unreasonable or otherwise illogical or irrational. If leave is granted to rely on the proposed additional ground, it should be dismissed given the state of the evidence before the IAA.

1. I agree with the Minister’s submissions.
2. The appellant’s notice of appeal is convoluted and difficult to follow.
3. Ground 1 contends that the IAA acted unreasonably and denied the appellant procedural fairness by not considering exercising its power under s 473DC(3) of the Migration Act to obtain further information and to invite the appellant to comment on a May 2018 report of the Department of Foreign Affairs and Trade (**DFAT**). As the Minister submitted, however, the IAA was not obliged to do so having regard to the terms of s 473DA and s 473DE(3)(a) of the Migration Act. In *EKW17 v Minister for Immigration and Border Protection* [2018] FCA 1366 at [17] to [20] Bromwich J explained that he accepted the Minister’s submissions as follows which apply equally in the present case:
4. The Minister submits that the primary judge and the Authority correctly found that the requirements of s 473DE of the Migration Act did not apply to the January 2017 DFAT country report as it fell within the exception in s 473DE(3)(a). That is because, the Minister submits, the country report is clearly not information “specifically about the referred applicant and is just about a class of persons of which the referred applicant is a member”. In support of that conclusion, the Minister relies upon the single judge authority of *CKG16 v Minister for Immigration and Border Protection* [2018] FCA 362 at [15] per Rares J and *ADE17 v Minister for Immigration and Border Protection* [2018] FCA 282 at [12] and [17] per Gleeson J, in which it was accepted that the Authority has no obligation to inform a review applicant of country information of the kind referred to in s 473DE(3)(a).
5. The Minister also relied upon the consideration by the High Court of the similar phrase, “*that is not specifically about the applicant or another person and is just about a class of persons of which the applicant or other person is a member*”, in s 424A(3)(a) of the Migration Act in *Plaintiff M61/2010E v Commonwealth* [2010] HCA 41; 243 CLR 319 at [91] (emphasis added):

Thirdly, procedural fairness required the reviewer to put before the plaintiff the substance of matters that the reviewer knew of and considered may bear upon whether to accept the plaintiff’s claims. The Migration Act makes special provision about how the Refugee Review Tribunal is to conduct its reviews. It provides (s 424A(1)) that the Tribunal must give an applicant “clear particulars of any information that the Tribunal considers would be the reason, or a part of the reason, for affirming the decision that is under review”. But that obligation is subject to qualifications. In particular, it does not extend (s 424A(3)(a)) to information “that is not specifically about the applicant or another person and is just about a class of persons of which the applicant or other person is a member”.**Hence country information is treated as a class of information which need not be drawn to the attention of applicants for review by the Refugee Review Tribunal.** But those provisions were not engaged in respect of Independent Merits Reviews of the kind now under consideration or, we would add, in respect of the initial Refugee Status Assessments. The reviewer should have put to the plaintiff for his consideration and comment those aspects of country information known to the reviewer which the reviewer considered may bear upon the claims the plaintiff made. He did not.

1. It is apparent that the omission identified by the High Court in *Plaintiff M61*has been rectified in relation to the Authority by the similarly worded s 473DE(3)(a).
2. The Minister’s submissions in relation to this ground must accordingly be accepted. The primary judge was correct. The plain words in s 473DE(3)(a) mean that the Authority was under no obligation to furnish to the applicant country information of a kind that passes the threshold of exceptional circumstances in s 473DD(a). This ground of appeal must therefore fail.
3. As the Minister also submitted:

Ground one appears to represent an attempt to substitute legal unreasonableness for procedural fairness in circumventing the exclusion of the common law rules of procedural fairness effected by s 473DA(1): see *DGZ17 v Minister for Immigration and Border Protection* [2018] FCAFC 12 at [69]; [78]; ***CRW16*** *v Minister for Immigration and Border Protection* [2018] FCA 710 at [42].

1. In *CRW16* Flick J said this at [42]:

Both the content of the rules of procedural fairness and the principle of *unreasonableness* must necessarily be constrained by the statutory context. Although unnecessary to resolve the argument, it is difficult to see how “unreasonableness” could so operate as to confer a procedural entitlement upon a claimant which is otherwise excluded, expressly or impliedly, by the terms of Pt 7AA. Not only would such a conclusion potentially run contrary to the scheme set forth in Pt 7AA; it would also potentially prejudice the intended legislative intent behind s 473DA(1). Such a construction would only henceforth invite grounds of review being reformulated to characterise an alleged procedural deficiency as being *unreasonable* rather than a denial of *natural justice*. On such an approach, a draftsman could avoid the constraints imposed by s 473DA by re-characterising a ground of review as *unreasonableness* rather than a requirement of *natural justice*.

(emphasis in original).

1. The Minister submitted, and I accept that:

The appellant has not attempted to (and could not) demonstrate that any failure by the IAA to exercise or considering exercising its discretion to seek comment on the updated country information pursuant to s 473DC(3) was unreasonable in the sense described in *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332. It remains entirely unclear why the appellant contends that legal reasonableness required the IAA to consider the exercise of its discretion under s 473DC to seek new information from him. While the IAA relied on country information different to that relied upon by the delegate, this by itself is insufficient to support a conclusion of unreasonableness in the legal sense: ***CCQ17*** *v Minister for Immigration and Border Protection* [2018] FCA 1641 at [54] per Thawley J. The appellant has not suggested, for example, that the 2018 DFAT Report was used by the IAA in a manner that gave rise to any new issue, or that it was used in a way that was materially different to the way the delegate had used the equivalent 2015 DFAT country information report: see *CCQ17* at [54].

1. In *CCQ17* at [54] Thawley J said the following, which is also apt in the circumstances of the present case:

…assuming there was failure to consider exercising the discretion under s 473DC, such a failure does not have the characteristics of being legally unreasonable. The appellant did not show that the way in which the 2017 DFAT Report (which itself was “new information”) was used by the Authority gave rise to any new issue; nor did the appellant show that the principle of legal unreasonableness otherwise required the Authority to consider its discretion under s 473DC to seek new information from the appellant. The appellant did not show, for example, that the 2017 DFAT Report was used in a way which was materially different to the way in which the delegate had used the 2015 DFAT Report and the other country information which had been before him. Indeed the appellant conceded, properly, that the two reports were used in the same way to support materially similar conclusions. The only matters which the appellant relied upon were the fact the reports had different dates and that they were not identical. This is not sufficient to support a conclusion that it was legally unreasonable to fail (assuming that to be the case) to consider exercising the discretion under s 473DC.

1. Otherwise the particulars to ground 1 are unintelligible as raising as any different point from those considered above.
2. Ground 2 contends that the IAA failed to respond to the appellant’s claim to fear significant harm in Sri Lankan prisons by reason of being imprisoned on pre-trial remand for up to two weeks. However, the IAA in fact dealt with this claim at [73] of its reasons. The IAA accepted that it was likely the appellant would be investigated and detained for up to a few days on his return to Sri Lanka but did not accept that his exposure to detention for this period would involve significant harm within the meaning of s 36(2A) of the Migration Act. The decision to which reference is made in the particulars to this ground, *SZWBR v Minister for Immigration* [2016] FCCA 2621 is of no apparent relevance to the present matter.
3. Ground 3 contends that the change of government and the new country information mean that the IAA’s decision has become legally unreasonable. The information in the particulars to this ground was not before the IAA as it post-dates the IAA’s decision. The IAA’s decision could not have become legally unreasonable by subsequent events. The decision to which reference is made in this ground, *Australian Retailers Association v Reserve Bank of Australia* [2005] FCA 1707 at [457] to [459], does not provide any support for the appellant’s contentions. The other particulars to this ground also relate to information that was not before the IAA, the report of UN Special Rapporteur Ben Emmerson QC dated 23 July 2018. The appellant did not refer to this report in his submission to the IAA dated 25 July 2018. The IAA was not bound to have regard to this report. It was legally reasonable for the IAA to have no regard to this report in those circumstances.
4. Ground 5 contends that the IAA was obliged to take into account the possibility that that the appellant’s claims concerning the past were true, citing *Minister for Immigration and Multicultural Affairs, v Rajalingam* [1999] FCA 719; (1999) 93 FCR 220. As the Minister submitted, in *Rajalingam*:

…Sackville J (North J agreeing) found that there are circumstances in which the Tribunal must take into account the possibility that alleged past events occurred, even though it find that those events probably did not occur [at [60]]. That obligation is triggered “[o]nly if a fair reading of the reasons allows the conclusion that the RRT had a real doubt that its findings on material questions of fact were correct” [at [66]]. If the Tribunal has no real doubt that its factual findings are correct, it does not have to consider the possibility that alleged past events occurred.

1. In the present case the IAA did not express its reasons in terms that would suggest it was in any real doubt about the correctness of its findings. As such he IAA did not have to take into account the possibility that it was wrong.
2. The particulars to ground 4 involve separate contentions. The appellant contends that the IAA was bound under s 473DC of the Migration Act to “put the inconsistencies” to the appellant for comment. As the Minister explained, leave would be required to raise this ground as it was not put to the Court below. In any event, the background to this contention is that, as explained by the Minister:
3. The appellant’s case was previously remitted to the IAA by this Court on the basis that it unreasonably failed to consider the exercise of its power under s 473DC(3) of the Act to invite the appellant to comment on apparent inconsistencies between his invalid 2013 protection visa application and his SHEV application: see *DFW16 v Minister for Immigration and Border Protection* [2018] FCA 746 at [64], [71]. The IAA referred to this decision in its reasons at [2].
4. The appellant provided a submission to the IAA on 20 July 2018. The cover email to that submission referred to the circumstances of the remittal of the matter to the IAA by Barker J and to subsequent correspondence from the IAA, complaining that “there was no signal to me that I should make submissions or seek to give new information to the IAA about any apparent inconsistencies in the two applications for the purpose of the IAA’s reconsideration”. The email continued:

“I contend that the IAA unreasonably failed to consider exercising its power to get more information from me by inviting me, pursuant to s 473DC(3) of the Migration Act 1958, to deal with the apparent inconsistencies between my 2013 protection visa application and the grounds advanced on the SHEV application …”

1. The IAA referred to submissions made to it following this Court’s decision (which it took into consideration), stating that it considered the appellant’s submissions dated 20 and 25 July 2018 to be his opportunity to explain why there are inconsistencies in the evidence he provided in his 2013 and 2015 applications for protection; and that s 473DD was satisfied in respect of this “new” information. The IAA subsequently addressed inconsistencies in the appellant’s evidence (at [30]) and stated (at [34]) that it had had regard to the appellant’s submission about the previous reviewer’s findings relating to inconsistencies in his evidence over time, acknowledging his complaint about the unfairness of the IAA process relying on information in his entry interview and his 2013 protection visa application without giving him an opportunity to comment. The IAA noted that the appellant in his submission had itemised the paragraphs in which the previous reviewer had referred to inconsistencies in the appellant’s evidence and explained that at no point in the appellant’s submission did he address the reasons for the inconsistencies in his evidence between his 2013 and 2015 applications for protection.
2. In these circumstances the Minister is right that this is not a case in which the IAA failed to consider whether or not to exercise its power under s 473DC. The IAA must be inferred to have considered its power under that provision by reason of the fact that it recorded its view that the appellant had had an opportunity to explain the inconsistencies. The appellant having had that opportunity, it must follow that the IAA did not consider that there was any reason for it to get any documents or information from the appellant about the same issue under s 473DC(1) of the Migration Act. As the Minister submitted the “case is thus distinguishable from cases addressing whether the IAA’s failure to consider whether to exercise its power under s 473DC in respect of inconsistencies in a visa applicant’s evidence was legally unreasonable: see eg *DPI17 v Minister for Home Affairs* [2019] FCAFC 43 (DPI17)”. The Minister continued:

It is accepted that the powers conferred on the IAA by Div 3 of Pt 7AA (including s 473DC) are conferred on the implied condition that they are to be exercised within the bounds of reasonableness: see *DPI17* at [35], citing the plurality judgment in *M174/2016 v Minister for Immigration and Border Protection* (2018) 353 ALR 600. It is also the case that having regard to s 473DA, the starting point for analysis in a case of this kind asserting legal unreasonableness is not a “natural justice lens”: DPI17 at [37], *DGZ16 v Minister for Immigration and Border Protection* (2018) 258 FCR 551 at [69], [72] (the Court). Close attention to the particular facts and circumstances in which an issue of legal unreasonableness is raised is critical: *DPI16* at [42]; see also at [47] (addressing the particular facts and circumstances arising in that case, which are distinguishable from the present case, the appellant evidently being on notice of the issue concerning inconsistencies between his invalid 2013 and valid 2015 visa applications).

1. As the Minister put it, in the present case the appellant was aware that the inconsistencies between his invalid 2013 protection visa application and his SHEV were relevant. He had the first IAA decision addressing those inconsistencies. He was aware that that decision had been set aside because of the unreasonableness of the IAA failing to consider exercising its power under s 473DC in respect of those inconsistencies. His email to the IAA on 20 July 2018 complaining that the IAA had not considered whether to exercise its power to obtain new information from him on this very issue and attached a submission which listed and quoted from the first IAA decision addressing the inconsistencies. In circumstances where the appellant had the opportunity to address the inconsistencies, there was not legal unreasonableness in the IAA not exercising its powers under s 473DC. As the Minister submitted the IAA’s position:

…did not lack an evident or intelligible justification, in circumstances where the appellant’s 20 July 2018 email and submission to the IAA plainly indicated his awareness of this issue and sought to respond to it and the IAA had determined to take the appellant’s 2018 submissions into account. The fact that, as the IAA found, the appellant did not substantively engage with the reasons for the inconsistencies between his invalid 2013 protection visa application and his 2015 SHEV application does not render the IAA’s approach unreasonable, nor did it lead to jurisdictional error.

1. Ground 5 contends that the appellant submitted his statutory declaration dated 3 November 2016 and written submissions dated 11 December 2016 and testimonials to the IAA prior to the making of the decision by the reviewer who said the requirements of s 473DD of the Migration Act are not met at [11] and [17]. The Minister said:

…the Court does not have before it a statutory declaration dated 3 November 2016 or written submissions dated 11 December 2016, which are referred to in the ground as material that the appellant presumably claims the IAA should have considered. The ground is difficult to understand and given that it refers to material not before the Court, leave should not be granted to raise it for the first time on appeal.

1. To the extent that the appellant did rely on a statutory declaration dated 31 August 2016 the IAA at [11] of its reasons explained that there was ample opportunities for the appellant to put this information before the delegate. As there was no explanation as to why the appellant had not done so the IAA was not satisfied that there were exceptional circumstances to justify the consideration of this material under s 473DD. As the Minister said, there is nothing in the IAA’s reasoning suggestive of any error in this regard and, contrary to particular (d), it is not apparent that the IAA relied on an unduly narrow construction of “exceptional circumstances” to reach its decision. I am not satisfied that the IAA misconstrued and misapplied s 473DD as posited at particular (f). Nor do I consider that particulars (g) and (h) concerning the earlier decision of Barker J in *DFW16*which set aside the initial IAA decision and remitted the matter to the IAA discloses any ground of review which has not already been disposed of above. Particular (i) contains an allegation of actual bias by the IAA. As the Minister submitted:

Such an allegation is serious and must be “distinctly made and clearly proved”: *Minister for Immigration and Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507 at [69] per Gleeson CJ and Gummow J. Disbelief of every aspect of an applicant’s claim is insufficient to establish actual bias: *SBBA v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCAFC 90 at [15], citing *Sun Zhan Qui v Minister for Immigration and Ethnic Affairs* (1997) 81 FCR 71 at 134. The FCC correctly held (in addressing ground 3 below) that there was no basis for the contention that the IAA did not bring an open mind to the determination of the appellant’s application on the merits. There is no evidence before this Court that could possibly demonstrate actual bias, or error on the part of the FCC in rejecting such a claim.

1. On 22 August 2019 the appellant filed further submissions. These submissions detailed the background of his various applications and appeals. The submissions also repeated the appellant’s contentions which have otherwise been considered and rejected above.

## Conclusion

1. Nothing in the material which has been advanced indicates any error by the Federal Circuit Court. Accordingly, the appeal must be dismissed with costs.

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| I certify that the preceding thirty-three (33) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Jagot. |

Associate:

Dated: 27 August 2019