FEDERAL COURT OF AUSTRALIA

ABL18 v Minister for Home Affairs [2020] FCA 536

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| Appeal from: | *ABL18 v Minister for Home Affairs & Anor* [2019] FCCA 1178 |
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| File number: | SAD 75 of 2019 |
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| Judge: | **CHARLESWORTH J** |
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| Date of judgment: | 24 April 2020 |
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| Catchwords: | **MIGRATION** – parties to application for judicial review proposing orders by consent allowing the application – primary judge refusing to proceed in accordance with the parties’ agreed position – primary judge dismissing application for judicial review – grounds of review contending the Immigration Assessment Authority erred in construing and applying s 473DD of the *Migration Act 1958* (Cth) – no jurisdictional error as asserted – appeal dismissed |
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| Legislation: | *Migration Act 1958* (Cth) ss 5AA, 5H, 36, 473CB, 473DC, 473DD, Pt 7AA |
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| Cases cited: | *ABL18 v Minister for Home Affairs & Anor* [2019] FCCA 1178  *AUH17 v Minister for Immigration and Border Protection* [2018] FCA 388  *BVZ16 v Minister for Immigration and Border Protection* (2017) 254 FCR 221  *CHF16 v Minister for Immigration and Border Protection* (2017) 257 FCR 148  *DLB17 v Minister for Home Affairs* [2018] FCAFC 230  *DYS16 v Minister for Immigration and Border Protection* (2018) 260 FCR 260  *Hossain v Minister for Immigration and Border Protection* (2018) 264 CLR 123  *Minister for Immigration and Border Protection v BBS16* (2017) 257 FCR 111  *Minister for Immigration and Border Protection v CQW17* (2018) 264 FCR 249  *WACO v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 131 FCR 511 |
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| Date of hearing: | 10 December 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: | 41 |
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| Counsel for the Appellant: | Dr S Churches |
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| Solicitor for the Appellant: | Wallmans Lawyers |
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| Counsel for the First Respondent: | Mr P Knowles |
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| Solicitor for the First Respondent: | Sparke Helmore |
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| Counsel for the Second Respondent: | The Second Respondent filed a Submitting Notice |
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ORDERS

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|  | | SAD 75 of 2019 |
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| BETWEEN: | ABL18  Appellant | |
| AND: | MINISTER FOR HOME AFFAIRS  First Respondent  IMMIGRATION ASSESSMENT AUTHORITY  Second Respondent | |

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| JUDGE: | CHARLESWORTH J |
| DATE OF ORDER: | 24 APRIL 2020 |

THE COURT ORDERS THAT:

1. To the extent that leave is necessary, the appellant has leave to raise the argument articulated in the first ground of appeal in the amended notice of appeal filed on 19 November 2019.
2. The appeal is dismissed.

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

REASONS FOR JUDGMENT

CHARLESWORTH J:

1. This is an appeal from an order of the Federal Circuit Court of Australia dismissing an application for judicial review of a decision of the Immigration Assessment Authority: see *ABL18 v Minister for Home Affairs & Anor* [2019] FCCA 1178.
2. The appeal should be dismissed for the reasons given below.

# THE VISA APPLICATION

1. The appellant is a citizen of Sri Lanka of Hindu religion and Tamil ethnicity. He arrived in Australia by boat on 28 October 2012 as an “unauthorised maritime arrival” as defined in s 5AA of the *Migration* ***Act*** *1958* (Cth). He lodged an application for a Safe Haven Enterprise (subclass 790) visa (SHEV) on 17 August 2016.
2. For the appellant to be eligible for the SHEV, it was necessary that the Minister be satisfied that the appellant fulfilled one of the alternate criterion in s 36(2) of the Act. It relevantly provides:

(2) A criterion for a protection visa is that the applicant for the visa is:

(a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or

(aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or

…

1. The word “refugee” in s 36(2)(a) is defined in s 5H as follows:

**5H Meaning of refugee**

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a ***refugee*** if the person:

(a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or

(b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

1. The appellant claimed to fulfil each of these criteria for the following reasons:
2. during the Sri Lankan civil war he resided in a village controlled by the Liberation Tigers of Tamil Eelam (LTTE);
3. his home had been destroyed and members of his family (including his son) had been killed in the conflict;
4. he lived in a refugee camp for a year and when he returned to his village he was the village leader for two years;
5. in July, August and September 2012 he was asked by the Sri Lankan Government to identify LTTE members who were living in the village;
6. when members of the Criminal Investigation Department (CID) came to his home in 2012 he told them he could not identify any LTTE members;
7. shortly afterward he was told by an Army officer that he needed to be careful and that if he did not identify the LTTE members the Sri Lankan Army would detain and torture him;
8. members of the CID had attended his village and visited his home every night;
9. he left his home fearing his life was in danger but did not believe his family would be harmed; and
10. he fled to Australia by boat after hiding in other villagers’ homes for three days.
11. A delegate of the Minister for Home Affairs refused to grant the SHEV. That decision was automatically referred to the Authority for review under Pt 7AA of the Act.

# THE AUTHORITY’S DECISION

1. Section 473CB of the Act provides that the Secretary of the Department of Immigration and Border Protection must give to the Authority (among other things) the material that was before the delegate.
2. This appeal concerns the Authority’s refusal to consider information provided to it by the appellant in two emails, being information that was not before the delegate. The Authority’s power to get and consider new information is conferred and conditioned by s 473DC and s 473DD of the Act. They provide:

**473DC Getting new information**

(1) Subject to this Part, the Immigration Assessment Authority may, in relation to a fast track decision, get any documents or information (***new information***) that:

(a) were not before the Minister when the Minister made the decision under section 65; and

(b) the Authority considers may be relevant.

(2) The Immigration Assessment Authority does not have a duty to get, request or accept, any new information whether the Authority is requested to do so by a referred applicant or by any other person, or in any other circumstances.

(3) Without limiting subsection (1), the Immigration Assessment Authority may invite a person, orally or in writing, to give new information:

(a) in writing; or

(b) at an interview, whether conducted in person, by telephone or in any other way.

**473DD Considering new information in exceptional circumstances**

For the purposes of making a decision in relation to a fast track reviewable decision, the Immigration Assessment Authority must not consider any new information unless:

(a) the Authority is satisfied that there are exceptional circumstances to justify considering the new information; and

(b) the referred applicant satisfies the Authority that, in relation to any new information given, or proposed to be given, to the Authority by the referred applicant, the new information:

(i) was not, and could not have been, provided to the Minister before the Minister made the decision under section 65; or

(ii) is credible personal information which was not previously known and, had it been known, may have affected the consideration of the referred applicant’s claims.

1. The effect of the information contained in the emails was summarised by the Authority at [9] of its reasons. It is necessary to consider that paragraph and the passages that follow together:

9. The new information about the applicant’s circumstances provided on 1 and 4 December 2017 stated that:

* his main responsibility as head of the village was to provide new recruits to the LTTE’s air base … located about two kilometres from the applicant’s village;
* the Sri Lankan army became aware of what he did approximately one month prior to the applicant leaving Sri Lanka. The Sri Lankan army searched for the applicant and insisted that he inform and identify LTTE members or face serious consequences;
* the applicant wholeheartedly provided assistance to the LTTE including providing food and performing sentry duties located about one kilometre before the LTTE air base;
* the applicant has close relatives that were members of the LTTE and most were killed during the recent conflict that ended in 2009; and
* his father was killed by the army.

10. The applicant submitted that he did not disclose the information because he was told by other detainees in Australia that disclosure of involvement with the LTTE to the extent described would mean he could be detained indefinitely or be returned to Sri Lanka.

11. The applicant was assisted by the Refugee Advocacy Service of South Australia (RASSA) to prepare his application and statement of claims. The applicant did not make reference to the new information during his arrival or SHEV interview. During the SHEV interview the applicant was informed that it was his responsibility to raise all claims to support his application and that, if his application was refused, he may not be able to raise additional claims at a later date. The applicant was informed that details of his claims would not be shared with the authorities or public of Sri Lanka. The applicant was informed of the importance of raising his claims as soon as possible including during the SHEV interview. The applicant was given a recess during the SHEV interview to consider what he had told the delegate and whether there was anything further he needed to say. After the recess the applicant told the delegate that he had nothing further to add.

1. The parties are in dispute about the proper interpretation of the next paragraph ([12]) of the Authority’s reasons. It is convenient to number and address each of its sentences separately, as the parties did in their submissions:
2. The new information could have been provided prior to the delegate’s decision and does not meet the requirements of s.473DD(b)(i).
3. I accept that the applicant could have failed to disclose all his claims at the arrival interview based on erroneous information.
4. He did not have access to representation and had recently arrived in Australia.
5. However, since the arrival interview, the applicant was released from detention in May 2013, had assistance from the RASSA to prepare his SHEV application and statement of claims and had a SHEV interview.
6. During that interview the applicant was told, on more than one occasion, to put forward all his claims as claims made after his SHEV application was determined may not be considered.
7. One of the new claims was that the applicant’s father was killed by the army.
8. However during the applicant’s arrival interview he stated that his father froze to death because he had no shelter.
9. Despite the inconsistent information about the applicant’s father’s death, I find it implausible that the applicant would continue to hold that erroneous belief after obtaining professional assistance and am not satisfied that the information is credible.
10. That being so I am not satisfied that the new information about the applicant’s circumstances meets the requirements of s.473DD(b)(ii).
11. I am also not satisfied that there are exceptional circumstances to justify considering the information.
12. The IAA is therefore not able to consider the new information.

# JUDICIAL REVIEW

1. The appellant was self-represented on his application for judicial review.
2. At the commencement of the hearing, a lawyer acting for the Minister produced a minute of orders to the effect that the application for judicial review be allowed. The orders were sought with the parties’ consent. A notation to the minute stated:

The first respondent concedes that the decision of the second respondent is affected by jurisdictional error of the kind identified in *BVZ16 v Minister for Immigration and Citizenship* (2017) 254 FCR 221 at [46]-[47] and *Minister for Immigration and Border Protection v BBS16* (2017) FCAFC 176 at [112] because the second respondent misconstrued or misapplied the term ‘exceptional circumstances’ in section 473DD of the Migration Act 1958 (Cth) in relation to new information identified in the first four dot points of paragraph [9] of its decision.

1. Notwithstanding that agreed position, the primary judge was not satisfied that the Authority had erred in the manner the parties had described. His Honour said (at [36]):

The solicitor for the first respondent submitted that the Authority’s reasons in paragraph 12 should be read as if the Authority had confined itself simply to the subject matter of the fifth dot point in paragraph 9 insofar as the requirements of s 473DD(b)(ii) of the *Act* is concerned. For the reasons already given, that does not reflect a fair reading of the whole of the Authority’s reasons. As the Court has explained, the reasoning in paragraph 12 is entirely consistent with the Authority taking into account the whole of s 473DD of the *Act* and the reasoning in paragraph 12 after the first sentence is clearly referable to the content of s 473DD(b)(ii) of the *Act*. There is no proper basis to adopt a narrow reading of the Authority’s reasons as if it had confined itself to the fifth-last dot point. There is no jurisdictional error of the kind identified in *BVZ16 v Minister for Immigration and Citizenship* (2017) 254 FCR 221 at [46] to [47]. There is no substance in the contention that the Authority misconstrued or misapplied the term ‘exceptional circumstances’ in s 473DD of the *Act* in relation to the new information identified in the first dot points at paragraph 9.

1. The primary judge went on to reject the single ground for judicial review upon which the appellant had relied and so dismissed the originating application.

# THE GROUND OF APPEAL

1. Only one ground of appeal is pressed. It is expressed as follows:

1. That the primary judge erred in failing to find that the Immigration Assessment Authority (‘the IAA’) had dealt with the ‘new information’ provided by the Appellant on 30 November 2017 (referred to in the IAA’s decision as provided on 1 and 4 December 2017: AB 152.4) in a legally incorrect manner that involved it committing jurisdictional error.

Particulars

The IAA did not properly reach a state of satisfaction when exercising its powers under s473DD(a) of the **Migration Act 1958**, in that it did not properly consider, or failed to give proper, genuine and realistic consideration to whether there existed exceptional circumstances to justify considering the new information.

1. To the extent that leave might be required to introduce the argument raised by this ground of appeal, it is plainly in the interests of justice that leave be granted in the circumstances I have described. That is most of the substantive submissions underlying the ground were considered by the primary judge, and because the appellant was self-represented at on his application for judicial review. The Minister does not oppose the grant of leave.

# the appellant’s SUBMISSIONS

1. The appellant’s submissions focus on the information summarised in the first and third dot points set out at [9] of the Authority’s reasons, namely the newly introduced claims that he had been responsible as the head of his village for providing new recruits to an LTTE air base and that he had otherwise “wholeheartedly” assisted the LTTE, including by providing food and performing sentry duties in connection with the base. I will refer to these as the LTTE support claims.
2. The ground of appeal appears to be limited to an error in the application of s 473DD(a) of the Act. However, the appellant’s oral and written submissions alleged error in the application of s 473DD as a whole, including in respect of s 473DD(b). So as not to go beyond the ground of appeal, the asserted error in relation to s 473DD(b) will be considered to the extent that it may have affected the Authority’s evaluation of whether “exceptional circumstances” existed for the purposes of s 473DD(a).
3. It was submitted that the appellant’s new claim that his father had been killed by the army was given discrete attention by the Authority at [12] of its reasons and rejected as lacking in credibility and that the Authority had wrongly tarred the LTTE support claims as lacking credibility simply because it had determined the claims in relation to the death of the appellant’s father to be implausible. It was submitted that the Authority had erred in the manner discussed by the Full Court in *WACO v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 131 FCR 511 at [42], [46], [53] and [70]. In that case, a tribunal was found to have committed jurisdictional error by failing to afford natural justice to a visa applicant before concluding that documents produced by the visa applicant had been forged to support his claims. It was submitted that it was not open to the Authority to conclude that the appellant had lied in relation to all of the new claims simply because it had made an adverse credibility finding against him in relation to the reason for his father’s death.
4. It was further submitted that the plausibility of the explanation the appellant had given for not providing the new information at an earlier time could not legitimately bear on the question of whether the information was “credible personal information” for the purposes of s 473DD(b)(ii). It was submitted that the criterion in s 473DD(b)(ii) was not concerned with the explanation given for not providing the information at an earlier time, but rather was concerned with the significance of the material to the outcome of the referred applicant’s case.
5. The asserted error in applying s 473DD(b)(ii) was said to have been material because it necessarily affected the Authority’s consideration of whether there were exceptional circumstances justifying the receipt of the LTTE support claims. It was submitted that a proper assessment of the criterion in s 473DD(a) required the Authority to consider the circumstance that the information fulfilled the criterion in s 473DD(b)(ii): namely that it was credible personal information that, if accepted, may have affected the delegate’s consideration of the claims. Any error demonstrated in the application of s 473DD(b)(ii) was material and so was properly to be characterised as jurisdictional in the sense explained by the High Court in *Hossain v Minister for Immigration and Border Protection* (2018) 264 CLR 123, so it was submitted.
6. It was submitted that the Authority’s conclusion that there were no exceptional circumstances justifying consideration of the new information was not explained in its reasons, so evidencing a failure to consider the issue altogether.

# CONSIDERATION

1. It may be accepted that a demonstrated error of the kind asserted in relation to s 473DD(b)(ii) of the Act would be material and so jurisdictional, at least on the facts of the present case. That is because an erroneous failure to categorise information as credible personal information may affect the Authority’s assessment of whether exceptional circumstances exist for the purposes of s 473DD(a), and so materially affect the outcome. As the Full Court said in *DLB17 v Minister for Home Affairs* [2018] FCAFC 230 said (at [22]) (McKerracher, Barker and Banks-Smith JJ):

In this case, the Authority said that it had considered the question of exceptional circumstances by reference to ‘all the circumstances’: see *Minister for Immigration and Border Protection v BBS16* (2017) 257 FCR 111per Kenny, Tracey and Griffiths JJ (at [104]). The Authority was not obliged to articulate its reasoning in any greater detail: *CVS16 v Minister for Immigration and Border Protection* [2018] FCA 951 per Bromwich J (at [25]-[30] and the citations therein cited). The assessment of exceptional circumstances does not require the Authority, in all cases, to consider the matters relevant to the criterion in s 473DD(b)(ii): *AQU17* (at [14]). The Authority is, however, permitted to consider these matters, including by assessing whether the information is credible: *AQU17* (at [16]). Even if the credibility of information for the purposes of s 473DD(b)(ii) is to be assessed at the lower threshold suggested by the primary judge (that is that the new information is arguable), there is no prohibition on the Authority going further when considering the requirement for exceptional circumstances. That is, the Authority may, even if it accepts a contention to be arguable, test it so as to consider for itself whether it is satisfied as to the truth of the new information. Any suggestion to the contrary would be inconsistent with the decision in *Plaintiff M174/2016* and the purposely broad range of considerations relevant to the establishment of exceptional circumstances.

1. And as White J said in *BVZ16 v Minister for Immigration and Border Protection* (2017) 254 FCR 221 (at [9]):

The requirements of paras (a) and (b) are cumulative but may nevertheless overlap to some extent. The Authority’s satisfaction that the new information could not have been provided to the Minister at the time of the s 65 decision (subpara (b)(i)) may contribute to its satisfaction that there are exceptional circumstances to justify considering the new information. So also may the Authority’s satisfaction that the new information is credible personal information which had not previously been known (subpara (b)(ii)). Accordingly, one would expect the IAA to consider the para (b) matters when considering in a given case whether the circumstances are exceptional. Obviously enough, however, the matters which may contribute to a finding that the circumstances in a particular case are exceptional may extend beyond those specified in subparas (b)(i) and (ii) and it seems improbable that the Authority could be satisfied, by reference to one matter only, that an applicant’s circumstances are not exceptional.

1. His Honour’s view was affirmed in *Minister for Immigration and Border Protection v BBS16* (2017) 257 FCR 111 at [102] – [103] (Kenny, Tracey and Griffiths JJ). See also *CHF16 v Minister for Immigration and Border Protection* (2017) 257 FCR 148 at [17] – [18] (Gilmour, Robertson and Kerr JJ) and *DYS16 v Minister for Immigration and Border Protection* (2018) 260 FCR 260 at [31] – [33] (Tracey, Murphy and Kerr JJ) and *Minister for Immigration and Border Protection* *v CQW17* (2018) 264 FCR 249 (McKerracher, Murphy and Davies JJ).
2. Whilst the Authority may not be compelled to consider any circumstances fulfilling either criterion in s 473DD(b) when performing the essentially evaluative task in s 473DD(a), it is well established that it may do so. In my view it follows that an error in the Authority’s construction or application of s 473DD(a) may affect the exercise of the power to consider new information if it could be shown that the Authority might have arrived at a different conclusion about the existence or non-existence of “exceptional circumstances” for the purposes of s 473DD(a) had it not so erred. For an error in the application of s 473DD to be material (and so properly characterised as jurisdictional), it must then be shown that the error may have affected the ultimate outcome of the exercise of the Authority’s powers on the review.
3. Returning to the present case, I am not satisfied that the Authority erred in concluding that the LTTE support information was not “credible” within the meaning of s 473DD(b)(ii). To explain why that is so it is necessary to address the numbered sentences extracted at [10] above.
4. The first sentence is not controversial. There is no question that the LTTE support information could have been provided prior to the delegate’s decision. The appellant did not submit otherwise.
5. By the second and third sentence, the Authority accepted that the appellant’s failure to disclose “all his claims” at his arrival interview could be explained by the appellant acting on erroneous information, as he was not represented at that time and had recently arrived in Australia. That sentence introduces the question of whether the appellant’s explanation for not disclosing all of the new claims before the delegate’s decision should be accepted. The sentences that follow must be read in that context.
6. By the fourth sentence, the Authority found that the appellant had been released from detention in May 2013 and had received assistance from a refugee assistance service including for the preparation of his application for the SHEV and his statement of claims. No issue is taken with those factual findings.
7. By the fifth sentence, the Authority found that the appellant had been told more than once during his SHEV interview that he should put forward all of his claims because claims made after the application was determined may not be considered. No issue is taken with those findings. Clearly they relate to all of the new claims.
8. By the sixth and seventh sentences, the Authority identified an inconsistency between the new claim that the appellant’s father had been killed by the army and an earlier claim to the effect that his father had frozen to death because he had had no shelter. There can be no doubt that the claims were inconsistent.
9. There is a dispute as to the proper interpretation of the eighth sentence. In my view, the Authority’s conclusion that it was implausible that the appellant would “continue to hold that erroneous belief after obtaining professional assistance” is plainly a reference to the appellant’s belief that if he revealed the full extent of his LTTE involvement, he would be detained indefinitely or returned to Sri Lanka. By that finding, the Authority must be understood as having rejected as implausible (and hence untrue) the asserted explanation the appellant had given for failing to provide the information earlier. Read in context, the Authority’s conclusion that it was not satisfied that “the information” was credible is to be understood as a reference to all of the new information referred to at [9] of the Authority’s reasons, not only that information relating to the cause of the death of the appellant’s father.
10. The words “that being so” at the commencement of the ninth sentence reinforce that “the new information about the applicant’s circumstances” (being all of the information) was not considered to be credible and for that reason did not satisfy the requirement of s 473DD(b)(ii).
11. Whether the appellant laboured under an erroneous belief about the consequences of divulging the information at an earlier time was a question of fact. It was open to the Authority to reject the facts the appellant had asserted in that regard. The circumstance that the appellant had given an implausible explanation for failing to provide the information at an earlier time was clearly relevant to the criterion in s 473DD(b)(ii). That is because the rejection of the asserted explanation had the consequence that the appellant had no acceptable explanation for not revealing the information until after the delegate’s decision. That left it open to the Authority to conclude that the information was not credible. Whilst poorly phrased, the Authority’ reasons clearly indicate that it considered the new information to have been recently constructed.
12. The Authority’s reasons should be understood as taking into account the direct inconsistency in the appellant’s accounts as to how his father had died in drawing that conclusion. I accept that the clumsy mixing of subject matter in the eighth sentence does introduce some ambiguity as to the particular topic the Authority is there intending to address. However, as I have said, the Authority’s rejection of the explanation as implausible must be understood as informing its conclusion that all of the new information was not credible. It was permissible for the Authority to reason in that way. Its consequential finding concerning the credibility of the information itself was sufficient to support its conclusion that the requirements of s 473DD(b)(ii) had not been met. The inconsistency in respect of the claims about the appellant’s father is to be understood as furnishing an additional (albeit unnecessary) basis for concluding that the new claim about the father’s death lacked credibility. Whilst the words “despite the inconsistent information about the applicant’s father’s death” introduce some confusion, I am not satisfied that they are demonstrative of error.
13. Nor did the Authority err in the conclusion (expressed in its tenth sentence) that there were no exceptional circumstances justifying the receipt of the information. That conclusion must be understood as one based on the earlier conclusion that the explanation for the late provision of the information could not be accepted and the consequential conclusion that the information was not credible. It applies to the information summarised in all five dot points, not only that relating to the appellant’s father. On this appeal, the appellant did not point to circumstance that would constitute “exceptional circumstance” other than the facts alleged in support of his explanation for not providing the information earlier and the related assertion that the information was credible. Neither premise was accepted by the Authority.
14. As there is no error affecting the Authority’s conclusion in relation to s 473DD(b)(i) or (ii), there is no error in the application of s 473DD(a) of the particular kind contended for by the appellant. Moreover, as the Authority’s power to consider new information depends upon satisfaction of the accumulative criteria in both s 473DD(a) and (b), any error in the application of subs (a) will be immaterial as no error is shown in the application of subs (b): *AUH17 v Minister for Immigration and Border Protection* [2018] FCA 388 at [33].
15. It follows that the primary judge did not err in dismissing the application for judicial review notwithstanding the concession that had been made by the Minister in the proceedings at first instance.
16. The appeal should be dismissed.

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| I certify that the preceding forty-one (41) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Charlesworth. |

Associate:

Dated: 24 April 2020