HIGH COURT OF AUSTRALIA

Public Information Officer

4 February, 2003

PLAINTIFF S157/2002 v THE COMMONWEALTH OF AUSTRALIA
and
RE MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS & REFUGEE REVIEW TRIBUNAL; EX PARTE APPLICANTS S134/2002

Plaintiff S157, intending to commence legal proceedings to challenge administrative decisions concerning his protection visa application, faced two provisions included in the Migration Act in 2001: section 474, a privative clause preventing certain administrative decisions from being made the subject of judicial review; and section 486A, imposing a 35-day limit on applications for such review. He brought an action to challenge the validity of those sections and to contest their application to his case. The merits of his proposed challenge to the administrative decisions were not in issue before the High Court of Australia. Only the validity and effect of sections 474 and 486A were in question.

The High Court's jurisdiction to grant relief against Commonwealth officers under section 75(v) of the Constitution cannot be ousted by act of Parliament. The Commonwealth accepted this and did not contend that section 474 of the Migration had totally excluded judicial review, pursuant to section 75(v), of decisions which section 474 applied. The parliamentary debates, to which the Commonwealth referred the Court, reveal that parliament did not intend the section to have that effect.

The Court held that sections 474 and 486A are valid but apply to what the Act defines as privative clause decisions. It held that decisions affected by certain kinds of error – jurisdictional error – are not privative clause decisions as defined. Accordingly, the Court held that neither section would apply to the proceedings which S157 would initiate.

In the second case, relating to Applicants S134, the High Court, by majority, rejected challenges to decisions refusing protection visas for a woman and her five children claiming Afghan nationality. They arrived by boat in 2001, apparently unaware their husband and father had arrived in 1999 and held a three-year temporary protection visa. The family claimed the Refugee Review Tribunal had erred by not taking into account the man's circumstances and that the Immigration Minister should have exercised his power to substitute a more favourable decision. The Court held that rejection of their applications was not marked by jurisdictional error, illegality or impropriety and the Minister was not bound to exercise his power.

Note: Since October 2001, the Migration Act has provided that courts cannot name plaintiffs seeking protection visas.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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