HIGH COURT OF AUSTRALIA

29 May 2013

PLAINTIFF M79/2012 v MINISTER FOR IMMIGRATION AND CITIZENSHIP

[2013] HCA 24

Today a majority of the High Court held that the decision of the Minister for Immigration and Citizenship ("the Minister") to grant the plaintiff a temporary safe haven visa was valid and that the plaintiff's application for a protection visa was not valid.

The plaintiff arrived at Christmas Island in February 2010 without a visa to enter or remain in Australia, and was placed in immigration detention. Because Christmas Island is an excised offshore place under the *Migration Act* 1958 (Cth) ("the Act"), the plaintiff was prevented from making a valid application for a protection visa by s 46A(1) of the Act.

The Minister has a power under s 195A of the Act to grant a visa of a particular class to a person in immigration detention if the Minister thinks that it is in the public interest to do so, without regard to any criteria for that visa contained in the Migration Regulations 1994 (Cth) and certain specified provisions of the Act. In the exercise of that power, the Minister granted each of the plaintiff and 2,382 other people in like circumstances two visas: a temporary safe haven visa, permitting a stay of seven days, and a bridging visa, permitting a stay of between three and 12 months (six months in the plaintiff's case).

On the plaintiff's release from detention, s 46A(1) of the Act no longer applied to prevent the making of a valid protection visa application. However, the grant of a temporary safe haven visa engaged a similar statutory bar, imposed by s 91K of the Act. The Minister stated that, had it not been possible to grant the temporary safe haven visa simultaneously with the grant of the bridging visa, the Minister would not have exercised his power to grant the bridging visa. This was because, the plaintiff having been released from immigration detention, the grant of the bridging visa alone would have enabled the plaintiff to lodge a valid application for a protection visa in circumstances where the protection claim was already being dealt with under existing alternative processes.

The plaintiff applied for a protection visa. The Minister treated that application as invalid. The plaintiff applied to the High Court for an order to quash the decision of the Minister to issue the temporary safe haven visa and an order requiring the Minister to consider the plaintiff's application for a protection visa according to law.

The plaintiff submitted that the decision to grant him the temporary safe haven visa was invalid, because s 195A did not authorise the grant of a temporary safe haven visa except to afford temporary safe haven, and because the decision was made for the improper purpose of preventing the plaintiff from making other visa applications.

The High Court rejected those arguments. A majority of the Court held that it was open to the Minister to grant a temporary safe haven visa by reference to its legal characteristics and consequences, unconstrained by the purpose for which that class of visa was created under the Act. The purpose for which the Minister granted the visa was not beyond the power conferred by

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s 195A(2) of the Act. Accordingly, the decision to grant the temporary safe haven visa was valid and the plaintiff's application for a protection visa was invalid.

- *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.*