HIGH COURT OF AUSTRALIA

18 June 2014

PLANTIFF S156/2013 v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR

[2014] HCA 22

Today the High Court unanimously upheld the validity of two provisions in subdiv B of Div 8 of Pt 2 of the *Migration Act* 1958 (Cth) ("the Act"), as well as two decisions made under those provisions by the Minister for Immigration and Border Protection ("the Minister").

The plaintiff, a citizen of the Islamic Republic of Iran, entered Australia's migration zone by sea at Christmas Island on 23 July 2013. His method of entry into Australia qualified him as an "unauthorised maritime arrival" ("UMA") under s 5AA of the Act. After arriving at Christmas Island, the plaintiff was detained by an officer of the Department of Immigration and Border Protection and subsequently removed to an assessment centre on Manus Island in the Independent State of Papua New Guinea ("PNG").

The plaintiff commenced proceedings in the original jurisdiction of the High Court, challenging the validity of ss 198AB and 198AD of the Act on the ground that neither provision is supported by any head of power in s 51 of the Constitution. Section 198AB provides that the Minister may designate that a country is a regional processing country. Section 198AD provides that UMAs must be taken from Australia to a regional processing country. Where there are two or more regional processing countries, s 198AD(5) provides that the Minister must give a written direction to take a UMA, or a class of UMAs, to the regional processing country specified in the direction. The plaintiff also challenged the validity of the Minister's decision of 9 October 2012 to designate PNG as a regional processing country under s 198AB ("the designation decision") and the Minister's decision of 29 July 2013 to give a written direction under s 198AD(5) to take UMAs to PNG or to the Republic of Nauru ("the direction decision"). On 13 February 2014, a case was stated and questions reserved for the consideration of the Full Court.

The High Court unanimously held that ss 198AB and 198AD are valid under the aliens power conferred by s 51(xix) of the Constitution. The provisions operate to effect the removal of UMAs from Australia and are therefore laws with respect to a class of aliens. The Court also upheld the validity of the designation decision and the direction decision. It held that there is nothing in the text or scope of subdiv B to support the plaintiff's argument that there were relevant considerations which the Minister was obliged to, but did not, take into account in making the designation decision. The Court dismissed the plaintiff's other grounds for challenging the decisions and held that the proceedings are otherwise able to be remitted to the Federal Circuit Court of Australia.

- *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.*

Please direct enquiries to Ben Wickham, Senior Executive Deputy Registrar
Telephone: (02) 6270 6893
Email: bwickham@hcourt.gov.au Website: www.hcourt.gov.au