



HIGH COURT OF AUSTRALIA

6 September 2017

AARON JOE THOMAS GRAHAM v MINISTER FOR IMMIGRATION AND BORDER PROTECTION;
MEHAKA LEE TE PUIA v MINISTER FOR IMMIGRATION AND BORDER PROTECTION
[2017] HCA 33

Today the High Court held by majority that s 503A of the *Migration Act* 1958 (Cth) ("the Act") is invalid to the extent that s 503A(2)(c) would apply to prevent the Minister for Immigration and Border Protection ("the Minister") from being required to divulge or communicate certain information to the High Court when the Court is exercising its jurisdiction under s 75(v) of the Constitution, or to the Federal Court when the Court is exercising its jurisdiction under s 476A(1)(c) and (2) of the Act, to review a purported exercise of power by the Minister under s 501, 501A, 501B or 501C of the Act, to which the information was relevant.

Mr Graham is a New Zealand citizen who has resided in Australia since 1976. Mr Te Puia is also a New Zealand citizen and has resided in Australia since 2005. The Minister cancelled Mr Graham's visa and Mr Te Puia's visa under s 501(3) of the Act. Section 501(3) confers power on the Minister to cancel or refuse a visa if the Minister reasonably suspects that the person does not pass the character test set out in the Act, and if the Minister is satisfied that cancellation or refusal is in the national interest. In making each decision, the Minister considered information purportedly protected from disclosure by s 503A of the Act. Section 503A(2)(c) prevents the Minister from being required to divulge or communicate information to a court or a tribunal (among other bodies) when reviewing a purported exercise of power by the Minister under s 501, 501A, 501B or 501C of the Act, to which the information is relevant.

Mr Graham brought proceedings in the High Court's original jurisdiction seeking writs of prohibition to prevent the Minister taking action on his decision to cancel his visa, and a writ of certiorari quashing the decision. Mr Te Puia sought to have the Minister's decision set aside. The parties stated a special case and questions of law arising for the opinion of the Full Court. The questions of law included whether s 503A(2) of the Act was invalid on the ground that it required a federal court to exercise judicial power in a manner inconsistent with the essential character of a court or the nature of judicial power, or on the ground that it so limited the right or ability of affected persons to seek relief under s 75(v) of the Constitution as to be inconsistent with the place of that provision in the constitutional structure.

A majority of the High Court held that Parliament cannot enact a law which denies to the High Court when exercising jurisdiction under s 75(v) of the Constitution (or to another court when exercising jurisdiction conferred under s 77(i) or (iii) by reference to s 75(v)) the ability to enforce the legislated limits of an officer's power. The practical impact of s 503A(2)(c) was to prevent the High Court and the Federal Court from obtaining access to a category of information which was relevant to the purported exercise of the power of the Minister that was under review, and which was for that reason relevant to the determination of whether or not the legal limits of that power and the conditions of the lawful exercise of that power had been observed. To that extent, s 503A(2)(c) amounted to a substantial curtailment of the capacity of a court exercising jurisdiction under or derived from s 75(v) to discern and declare whether or not the legal limits of power conferred on the Minister by the Act have been observed.

The High Court also held by majority that the decisions of the Minister to cancel Mr Graham's visa and Mr Te Puia's visa were invalid by reason that the Minister acted on a wrong construction of s 503A(2), as the Minister wrongly understood the provision to prevent the Minister from in any circumstances being required to divulge or communicate certain information including to a court engaged in judicial review of the impugned decisions.

- *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.*