



HIGH COURT OF AUSTRALIA

9 December 2020

MINISTER FOR HOME AFFAIRS v DUA16 & ANOR; MINISTER FOR HOME AFFAIRS v
CHK16 & ANOR
[2020] HCA 46

Today the High Court unanimously dismissed the appeal in *Minister for Home Affairs v CHK16 & Anor* and allowed the appeal in *Minister for Home Affairs v DUA16 & Anor*.

CHK16 and DUA16 each paid a registered migration agent to provide submissions on their behalf to the Immigration Assessment Authority ("the Authority"). The agent acted fraudulently by providing pro forma submissions to the Authority and concealing this fact from her clients in the belief that, if she disclosed this fact, her clients would not have paid for her professional services. In CHK16's case the entirety of the personal circumstances referred to in the submissions concerned the wrong person; they contained no personal information relevant to CHK16's claims. In DUA16's case the submissions contained some personal information that was relevant to DUA16's claims, but they also contained information that related to a different applicant. In both cases the Authority was unaware of the agent's fraud, but noticed that the submissions contained information that concerned another individual and disregarded this information.

The Federal Circuit Court set aside the Authority's decision in both cases on the basis that the performance of the Authority's functions had been stultified by the agent's conduct. An appeal to the Full Court of the Federal Court was dismissed by a majority of that Court. The Minister appealed to the High Court on the basis that the agent's fraud had not been shown to have had any effect on a statutory function of the Authority under Pt 7AA of the *Migration Act 1958* (Cth). By notices of contention each of CHK16 and DUA16 argued that the Full Court's decision should be upheld because it was legally unreasonable for the Authority not to have exercised its power to obtain corrected submissions, involving potentially new information, from the agent when it knew that the submissions concerned the wrong person in whole or in part.

The High Court held that the agent's fraud did not vitiate the Authority's decision because it had not been shown that the agent's fraud had affected a particular duty, function, or power of the Authority. However, the Court upheld the notice of contention in CHK16's case, concluding that it was legally unreasonable for the Authority to have failed to request submissions pursuant to s 473DC of the *Migration Act* in circumstances where it was aware that CHK16 intended to provide submissions, that those submissions might contain new information, and that the submissions in fact provided concerned the personal circumstances of another individual entirely. There was no such unreasonableness in DUA16's case because the Authority drew the reasonable conclusion that the information relating to another individual had been included by mistake.

- *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.*