



HIGH COURT OF AUSTRALIA

11 May 2022

PLAINTIFF M1/2021 v MINISTER FOR HOME AFFAIRS
[2022] HCA 17

Today the High Court answered questions stated in a special case, the primary question being whether, in deciding whether there was "another reason" to revoke the cancellation of the plaintiff's visa pursuant to s 501CA(4)(b)(ii) of the *Migration Act 1958* (Cth) ("the Act"), a delegate of the then Minister for Immigration and Border Protection ("the Delegate") was required to consider the plaintiff's representations which raised a potential breach of Australia's international non-refoulement obligations where the plaintiff was able to make a valid application for a protection visa. Ultimately, what divided the parties was not if those representations should have been considered, but how.

The plaintiff, a citizen of the Republic of South Sudan, entered Australia as the holder of a Global Special Humanitarian visa, which is not a protection visa. In October 2017, the plaintiff's visa was cancelled pursuant to s 501(3A) of the Act ("the Cancellation Decision"). The plaintiff sought revocation of the Cancellation Decision. He relevantly made representations that if he were returned to South Sudan he would face persecution, torture and death, and he did not think it was possible to remove him to South Sudan due to "non-refoulement obligations". In August 2018, the Delegate decided not to revoke the Cancellation Decision. The Delegate considered that it was unnecessary to determine whether non-refoulement obligations were owed because the plaintiff could make a valid application for a protection visa, and the existence or otherwise of those obligations would be fully assessed in the course of processing such an application.

The High Court, by majority, answered the primary question to the effect that: the Delegate was required to read, identify, understand and evaluate the plaintiff's representations that raised a potential breach of Australia's international non-refoulement obligations; Australia's international non-refoulement obligations unenacted in Australia were not a mandatory relevant consideration; and to the extent Australia's international non-refoulement obligations are given effect in the Act, one available outcome for the Delegate was to defer assessment of whether the plaintiff was owed the non-refoulement obligations on the basis that it was open to the plaintiff to apply for a protection visa. The majority held that the Delegate's reasons recorded that they had read, identified, understood and evaluated the plaintiff's representations. Their Honours held that, having proceeded on the basis that non-refoulement obligations could be assessed in accordance with the specific mechanism chosen by Parliament for responding to protection claims in the form of protection visa applications, it was reasonable and rational for the Delegate to not give weight to potential non-refoulement obligations as "another reason" for revoking the Cancellation Decision. The Delegate did not fail to exercise the jurisdiction conferred by s 501CA(4) of the Act or deny the plaintiff procedural fairness, and the Delegate's reasons did not reflect a misunderstanding of the operation of the Act. The majority further held that where the cancelled visa is not a protection visa, and a decision-maker defers assessment of whether non-refoulement obligations are owed to permit a former visa holder to avail themselves of the protection visa procedures provided for in the Act, it may be necessary for the decision-maker to take account of the alleged facts underpinning that claim where those facts are relied upon in support of "another reason" why the cancellation decision should be revoked. In this case, the Delegate sufficiently considered the issues of fact presented by the plaintiff's non-refoulement claims.

- *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.*