HIGH COURT OF AUSTRALIA

4 December 2024

PEARSON v COMMONWEALTH OF AUSTRALIA & ORS;
JZQQ v MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS & ANOR;
TAPIKI v MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICLTURAL AFFAIRS
[2024] HCA 46

Today, the High Court unanimously held that the construction of s 501(7)(c) of the *Migration Act 1958* (Cth) ("*Migration Act*") so as to exclude aggregate sentences of 12 months or more, adopted by the Full Court of the Federal Court of Australia in *Pearson v Minister for Home Affairs* (2022) 295 FCR 177 ("*Pearson (No 1)*"), was incorrect. Section 501(7)(c) provides that "[f]or the purposes of the character test, a person has a substantial criminal record if ... the person has been sentenced to a term of imprisonment of 12 months or more". Section 501(3A)(a)(i) is to the effect that a person's visa must be cancelled if the person does not pass the character test because of s 501(7)(a), (b) or (c).

The plaintiff in a proceeding commenced in the original jurisdiction of this Court, and the appellants in the two appeals from decisions of the Full Court, were convicted of multiple offences. They each received an aggregate sentence of 12 months or more. Their visas were purportedly subject to mandatory cancellation under s 501(3A) of the *Migration Act* on account of those aggregate sentences. The delegate of the relevant Minister decided not to revoke those decisions. The Administrative Appeals Tribunal ("the AAT") affirmed those decisions.

On 22 December 2022, the Full Court published reasons in *Pearson (No 1).* The effect of *Pearson (No 1)* was that the decisions to cancel each of the plaintiff's and the appellants' visas were invalid, as were the decisions refusing to revoke those cancellations and affirming those refusals. On 17 February 2023, the *Migration Amendment (Aggregate Sentences) Act 2023* (Cth) came into force. Items 4(3), 4(4) and 4(5)(b)(i) of Sch 1 to that Act purported to retrospectively validate the decisions to cancel each of the plaintiff's and the appellants' visas, the decisions not to revoke those cancellations and, on the defendant's and respondents' cases, the decisions to affirm those decisions not to revoke those cancellations.

Each of the plaintiff and the appellants contended that, on their proper construction, items 4(3), 4(4) and 4(5)(b)(i) did not validate the decisions of the AAT affirming the decisions not to revoke the cancellation of their visas. They also contended that items 4(3), 4(4) and 4(5)(b)(i) were invalid principally on the basis that they constituted an impermissible interference with the judicial power of the Commonwealth vested in courts by Ch III of the *Constitution*. In one of the appeals, the Minister contended that *Pearson (No 1)* was wrongly decided. The Minister renewed special leave applications in matters concerning the plaintiff and the other appellant on the same basis.

The High Court held that *Pearson (No 1)* was wrongly decided, meaning that none of the decisions impugned by the plaintiff and the appellants were invalid by reason that an aggregate sentence was taken into account in making those decisions. Thus, items 4(3), 4(4) and 4(5)(b)(i) were not, and did not need to be, engaged.

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, Executive Registrar & Head of Public Affairs
Telephone: (02) 6270 6893 Fax: (02) 6270 6868
Email: enquiries@hcourt.gov.au Website: www.hcourt.gov.au