Federal Court of Australia

Tikomaimaleya v Minister for Immigration, Citizenship and Multicultural Affairs [2023] FCAFC 199

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| Appeal from: | *Tikomaimaleya v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCA 659 |
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| File number: |  |
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| Judgment of: | **RANGIAH, DOWNES AND KENNETT JJ** |
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| Date of judgment: | 14 December 2023 |
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| Catchwords: | **MIGRATION** – *Migration Act 1958* (Cth) – where Minister refused to revoke cancellation of visa – where primary judge found no jurisdictional error – whether Minister denied appellant procedural fairness – whether Minister failed to adequately engage with representations – appeal dismissed |
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| Legislation: | *Migration Act 1958* (Cth) ss 501, 501(3A) and 501CA(4) |
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| Cases cited: | *Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576  *ECE21 v Minister for Home Affairs* (2023) 297 FCR 422  *Hands v Minister for Immigration and Border Protection* (2018) 267 FCR 628  *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane* (2021) 274 CLR 398  *Plaintiff M1/2021 v Minister for Home Affairs* (2022) 96 ALJR 497  *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 228 CLR 152  *Tikomaimaleya v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCA 659 |
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| Division: | General Division |
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| Registry: | New South Wales |
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| National Practice Area: | Administrative and Constitutional Law and Human Rights |
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| Number of paragraphs: | 47 |
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| Date of hearing: | 24 November 2023 |
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| Counsel for the Appellant: | Mr JR Murphy |
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| Solicitor for the Appellant: | Hearn Legal |
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| Counsel for the Respondent: | Ms R Francois with Ms A Poukchanski |
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| Solicitor for the Respondent: | Sparke Helmore |

ORDERS

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|  | | NSD 731 of 2023 |
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| BETWEEN: | RATU TALEMO TIKOMAIMALEYA  Appellant | |
| AND: | MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS  Respondent | |

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| order made by: | RANGIAH, DOWNES AND KENNETT JJ |
| DATE OF ORDER: | 14 DECEMBER 2023 |

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The appellant pay the respondent’s costs of the appeal.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

THE COURT:

1. The appellant appeals from the judgment of a single judge of this Court in *Tikomaimaleya v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCA 659.
2. By that judgment, the primary judge dismissed the appellant’s application for judicial review of a decision of the respondent (the **Minister**) made under s 501CA(4) of the *Migration Act 1958* (Cth) (the **Act**) refusing to revoke the cancellation of the appellant’s visa.
3. We will summarise the Minister’s decision, the grounds of appeal and the reasons of the primary judge before considering the submissions.

## The Minister’s decision

1. The appellant is a citizen of Fiji who arrived in Australia in 1987. In 2010, he was granted a Resident Return (Class BB) (Subclass 155) visa.
2. On 18 June 2015, the appellant was convicted in the District Court of New South Wales of an offence of, “sexual intercourse with a person under the age of 10 years”, and was sentenced to nine years imprisonment with a non-parole period of six years.
3. On 28 March 2019, the Minister cancelled the appellant’s visa under s 501(3A) of the Act.
4. The Minister invited the appellant to make representations concerning revocation of the cancellation decision. The appellant took up that opportunity by making representations on his own behalf and also by engaging a firm of lawyers to do so.
5. On about 3 May 2019, Mr Willis, a lawyer in the firm representing the appellant, made representations in writing to the Minister. The representations followed the structure of, *Direction no. 79 - Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA*.
6. Mr Willis’ representations addressed the issue of “extent of impediments if removed” as follows:

We submit that the Applicant’s age and poor health will significantly impede his ability to establish himself in Fiji. An attached medical report describes the Applicant’s having a medical history of ‘insulin-requiring type 2 diabetes, advance chronic renal disease due to diabetic nephropathy, hypercholesterolemia, hypertension, gout, diverticular disease, cervical spondylosis and obesity...chronic renal disease.’ The medical report also details the Applicant’s prognosis in relation to his kidney function as, ‘relatively poor...I anticipate that he will eventually have end stage kidney failure requiring dialysis. Accordingly I strongly recommend that he resides in a location near a large hospital where he can have access to dialysis when this becomes necessary.’

We submit that the Applicant’s health needs would not be adequately addressed in Fiji because he would not have the financial means to access Fiji’s limited diabetic and kidney disease treatments.

…

We submit that the Applicant would not be able access the treatment he needs to manage his worsening kidney disease and diabetes because his age and illness would prevent him from earning enough money to pay for medical care. Furthermore, we submit that any money we would earn would be spent on medical treatment at the expense of his other basic needs.

We submit that the Applicant’s lack of a support network combined with his low employment prospects, due to his age, low level of education and ill health, and his need for expensive medical treatment would preclude him from establishing himself and maintaining basic living standards if he was returned to Fiji. Therefore, we submit that the impediments the Applicant would face if returned to Fiji should weigh heavily in favour of revocation.

(Errors in the original.)

1. On 18 October 2021, the Minister made a decision not to revoke the decision cancelling the appellant’s visa. The parts of the Minister’s reasons which assume significance in the appeal appear under the heading, “Extent of impediments if removed to Fiji”, and include the following:

71. Mr Willis states that Mr TIKOMAIMALEYA would not be able to access the medical treatment needed to manage his kidney disease and diabetes, and his age and illnesses would prevent him from earning sufficient money to pay for the medical treatment. Mr Willis submits the impediments that Mr TIKOMAIMALEYA would face if returned to Fiji should ‘*weigh heavily in favour of revocation*’...

72. Whilst I see no reason to doubt that Mr TIKOMAIMALEYA will have access to health services, and treatment in Fiji, equivalent to the general population; I accept that the standard and ease of access is far inferior to the available healthcare and treatment Mr TIKOMAIMALEYA would have in Australia. I further accept and the evidence supports that Mr TIKOMAIMALEYA’s significant health needs, especially his kidney function, may not be adequately addressed in Fiji, which could likely result in a further deterioration of his physical and mental health. I also accept that Mr TIKOMAIMALEYA’s age, health issues and the poor economic situation in Fiji are all likely to be impediments to him finding employment in Fiji. This weighs significantly in favour of revocation.

73. However it is not clear why Mr TIKOMAIMALEYA’s family in Australia could not provide him with at least some financial assistance to access some medication and treatment in Fiji. I note that Mr TIKOMAIMALEYA’s wife works full time and that his adult son also states that he is employed. I also note that Mr TIKOMAIMALEYA has worked and paid taxes in Australia and as noted by the Judge King has ‘*rarely been without a job, and...has not claimed unemployment benefits*’…This suggests that Mr TIKOMAIMALEYA is likely to have some superannuation that could contribute to assisting him with paying for his medication and other healthcare needs in Fiji.

…

75. Overall, I find that Mr TIKOMAIMALEYA will face substantial practical and emotional hardship upon a return to Fiji, due to his age, lack of family and social support and limited employment opportunities. I also find that Mr TIKOMAIMALEYA’s physical and mental health will deteriorate if returned to Fiji due to the limited medical services and treatment in the country equipped to address his significant health needs.

(Emphasis in original.)

## The grounds of appeal

1. The Notice of Appeal contains the following grounds:

1. The learned primary judge erred by failing to uphold ground 1 of the amended originating application on the basis that the Respondent denied the Appellant procedural fairness by failing to give him adequate notice of, or an adequate opportunity to respond to, the suggestion that the Appellant’s family would pay for medication and medical treatment in Fiji or the Appellant would have superannuation to cover it.

**Particulars**

(i) Before the learned primary judge, the Appellant by ground 1 of his amended originating application asserted that he was denied procedural fairness by not being given the chance to comment on two issues. The first of those issues related to a statement the Appellant had made to Corrective Services (**first issue**). The second of those issues was the suggestion that the Appellant’s family would pay for medication and medical treatment in Fiji or the Appellant would have superannuation to cover it (**family support and superannuation issue**).

(ii) The Appellant does not seek to appeal the primary judge’s conclusion that there was no denial of procedural fairness on the first issue.

(iii) The Appellant asserts by ground 1 in this Court that the learned primary judge erred in his conclusion in respect of the family support and superannuation issue.

(iv) That erroneous conclusion was at least partially the result of the learned primary judge’s mischaracterisation of the Minister’s decision as *not* entailing any suggestion that the Appellant’s family would pay for medication and medical treatment in Fiji or the Appellant would have superannuation to cover it (see [52] of the decision of the learned primary judge).

(v) An error-free analysis should have led the learned primary judge to conclude that:

a. the Appellant was denied procedural fairness by not being given adequate notice of, or an adequate opportunity to respond to, the family support and superannuation issue; and

b. had the Appellant been afforded procedural fairness, he could have put on evidence and submissions as to his family’s limited financial resources and the fact that he himself had a superannuation balance of $0 as at 27 March 2015.

2. The learned primary judge erred by failing to uphold ground 2 of the amended originating application on the basis that the Respondent failed to engage, in the required legal sense, with the representations relating to the ‘extent of impediments if removed’.

**Particulars**

(i) Before the learned primary judge, the Appellant by ground 2 of his amended originating application asserted that the Respondent failed to properly engage with and consider, in the required legal sense, the evidence and issues relating to the ‘extent of impediments if removed’ arising from the Appellant’s circumstances (including ill-health, financial status, age, employability, intellectual functioning and lack of social and community ties in Fiji) and in particular failed to confront:

a. The prospect that removal would cause the death of the Appellant;

b. The prospect that the Appellant would be unable to subsist in Fiji; and

c. The impact the consequences of removal would have on the Appellant’s family in Australia.

(ii) The Appellant asserts by ground 2 in this Court that the learned primary judge erred in his conclusion that the Respondent had engaged, in the required legal sense, with the representations relating to the ‘extent of impediments if removed’.

(iii) That erroneous conclusion was at least partially the result of the learned primary judge’s misunderstanding that it is no part of a court’s task on review for jurisdictional error of the alleged nature to consider the degree or quality of the decision-maker’s evaluation of the representations nor to consider whether the decision-maker has taken into account the human consequences of the outcome of the decision (see [67] of the decision of the learned primary judge).

(iv) An error-free analysis should have led the learned primary judge to conclude that:

d. The Respondent had failed to properly engage with and consider, in the required legal sense, the evidence and issues relating to the ‘extent of impediments if removed’; and

e. That failure was material.

(Emphasis in the original.)

1. It may be observed that the grounds of appeal reflect two of the grounds of judicial review that were rejected by the primary judge.

## The reasons of the primary judge

1. The primary judge first considered the submission that the appellant was denied procedural fairness by not being given the chance to comment upon the Minister’s suggestion that his family would pay for medication and medical treatment in Fiji or he would have superannuation to cover such expenses.
2. The source of this “suggestion” was [73] of the Minister’s reasons. The primary judge held that the observations at [73] were not a suggestion that the appellant’s wife and son *would* pay for medication and medical treatment in Fiji, or that the appellant *would* have superannuation to cover such expenses, much less a finding to that effect. His Honour considered these were observations that the appellant had not satisfied the Minister that the appellant or his family would not be able to pay for his medical treatment in Fiji.
3. The primary judge considered the appellant’s true complaint to be that he was not told of the flaw in his case, namely the absence of evidence proving that the cost of his medical treatment could not be borne by his family or paid from his superannuation entitlements, and was not given an opportunity to supplement his evidence. His Honour considered that it was not part of the Minister’s obligation to point out such a flaw and invite the appellant to remedy it, citing *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane* (2021) 274 CLR 398 at [32].
4. The primary judge also noted that the Minister’s observations at [73] did not prevent the Minister from concluding that the impediments to the appellant were significant and should be counted in the appellant’s favour in the exercise of the discretion. His Honour held that it followed that the observations made at [73] were not a step in the Minister’s reasoning to his conclusion, much less a step which was central to his reasoning.
5. The primary judge held that the Minister had not failed to afford procedural fairness to the appellant.
6. The primary judge turned to the appellant’s ground that the decision-maker failed to properly engage with and consider, in the required legal sense, the evidence and issues relating to the “extent of impediments if removed” arising from the appellant’s circumstances, including his ill health, financial status, age, employability, intellectual functioning and lack of social and community ties in Fiji.
7. The primary judge observed that the appellant’s submissions relied heavily upon views expressed in *Hands v Minister for Immigration and Border Protection* (2018) 267 FCR 628 at [3]. The appellant submitted that the Minister was required to confront the human consequences of the appellant’s removal to Fiji, namely that he would likely die from kidney disease in circumstances where he would be unable to obtain dialysis. The submission continued that the Minister failed to do so and, instead, the reasons were an example of “mechanical formulaic expression and predigested shorthand expressions” which hid “a lack of the necessary reflection upon the whole consideration of the human consequences involved”: see *Hands* at [3].
8. The primary judge rejected the appellant’s submissions, noting that the Minister was required to read, identify, understand and evaluate the appellant’s representations and that the reasons suggest the Minister did so. His Honour also considered that the representation that the appellant would likely die in Fiji rested upon the proposition that he would not be able to afford treatment in Fiji, but the Minister was not satisfied that the appellant could not afford such treatment.
9. The primary judge considered that following *Plaintiff M1/2021 v Minister for Home Affairs* (2022) 96 ALJR 497 and *ECE21 v Minister for Home Affairs* (2023) 297 FCR 422 at [6] and [8], the appellant’s submissions relying upon the degree or quality of the Minister’s evaluation of the representations, and in particular taking into account the human consequences of the outcome of his decision, were misplaced.
10. Accordingly, the primary judge dismissed the appellant’s application for judicial review.

## Consideration

### Ground 1: Alleged denial of procedural fairness

1. The appellant’s first ground of appeal asserts that the appellant was denied procedural fairness by the Minister failing to give him adequate notice of, or an adequate opportunity to respond to, “the suggestion that the Appellant’s family would pay for medication and medical treatment in Fiji or the Appellant would have superannuation to cover it”.
2. The appellant’s submission focusses on [73] of the Minister’s reasons, where the Minister stated:

However it is not clear why Mr TIKOMAIMALEYA’s family in Australia could not provide him with at least some financial assistance to access some medication and treatment in Fiji. I note that Mr TIKOMAIMALEYA’s wife works full time and that his adult son also states that he is employed. I also note that Mr TIKOMAIMALEYA has worked and paid taxes in Australia and as noted by the Judge King has *‘rarely been without a job, and ... has not claimed unemployment benefits’*…This suggests that Mr TIKOMAIMALEYA is likely to have some superannuation that could contribute to assisting him with paying for his medication and other healthcare needs in Fiji.

1. The appellant submits that in this passage, the Minister made findings or drew adverse conclusions that:
2. the appellant’s family could provide him with at least some financial assistance to access some medication and treatment in Fiji;
3. the appellant was likely to have some superannuation that could contribute to assisting him with paying for his medication and other healthcare needs in Fiji.
4. The appellant submits that these were not obvious or natural findings or conclusions, so that the Minister was required to give the appellant notice that they may be made and give him an opportunity to make submissions in response.
5. The appellant’s lawyers had represented to the Minister that, “the [appellant’s] health needs would not be adequately addressed in Fiji because he would not have the financial means to access Fiji’s limited diabetic and kidney disease treatments”. The Minister engaged in an evaluation of that representation at [71]-[73], observing that the lawyers had represented that the appellant, “would not be able to access the medical treatment needed to manage his kidney disease and diabetes, and his age and illnesses would prevent him from earning sufficient money to pay for the medical treatment”. The Minister’s subsequent analysis indicates that he understood the appellant’s lawyers to be submitting that the appellant would not have *any* access to any diabetic and kidney disease treatments in Fiji.
6. The Minister did not accept that the appellant would have no accessto any of the medical treatment needed to manage his kidney disease and diabetes in Fiji. The Minister found at [72] that the appellant would have the same access to health services and treatment as the general population. However, the Minister expressly accepted at [72] that the appellant’s significant health needs may not be adequately addressed in Fiji, and that his age, health issues and the poor economic situation in Fiji were likely to be impediments to him finding employment in Fiji. The Minister considered that these matters weighed significantly in favour of revocation.
7. The Minister went on at [73] to consider the lawyers’ assertion that the appellant lacked any financial means to access any other diabetic and kidney disease treatments. The Minister was satisfied that the appellant did not have the financial means to pay for all of the treatment he required. That is apparent from the Minister’s references to the possibility of the appellant’s family providing, “some financial assistance to access some medication and treatment”, and to the possibility of access, “to some superannuation that could contribute”. However, the Minister was not satisfied that the appellant lacked the means to pay for *any* treatment. The Minister was not so satisfied because the appellant’s material had not demonstrated that his family lacked the means and willingness to pay for some treatment and that he lacked superannuation funds that would allow him to do so.
8. Contrary to the appellant’s submission, the Minister cannot be understood as making a finding that the appellant’s family would pay, or was likely to pay, or the appellant had, or was likely to have, superannuation to pay, for medication and medical treatment in Fiji. The Minister’s finding was that he was not satisfied of the accuracy of the appellant’s contention that he was unable to pay for any of the treatment he required. The Minister’s absence of satisfaction came from the absence of any explanation about why the appellant’s family members would not pay for some of his treatment and why the appellant could not pay for some of his treatment from the superannuation he could be expected to have accumulated. These were matters that the Minister evidently considered the appellant needed to have addressed in order to make his broad representation that he could not pay for any of the treatment he needed in Fiji persuasive. Nevertheless, the Minister’s finding involved a conclusion adverse to the appellant.
9. An assessment under s 501CA(4) of the Act of whether the Minister is satisfied there is “another reason” why the visa cancellation decision should be revoked is undertaken by reference to the case made by the former visa holder by their representations: *Plaintiff M1* at [22]. In *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 228 CLR 152, in the context of an application for review of a decision to refuse a protection visa, the High Court observed at [40] that, although it is not useful to speak in terms of onus of proof, “it is for the applicant …to establish the claims that are made”. Similarly, it is for the former visa holder to put forward representations and supporting material that is sufficiently comprehensive and persuasive to allow the Minister to be satisfied that another reason exists to revoke the cancellation decision.
10. In the present case, the appellant advanced a contention that he was unable to pay for any diabetic and kidney disease treatments in Fiji. It was for the appellant to place material before the Minister that was adequate and sufficient to allow the Minister to be satisfied of that matter.
11. In *SZBEL* at [29],the High Court endorsed the following passage from *Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576 at 591-592:

Where the exercise of a statutory power attracts the requirement for procedural fairness, a person likely to be affected by the decision is entitled to put information and submissions to the decision-maker in support of an outcome that supports his or her interests. That entitlement extends to the right to rebut or qualify by further information, and comment by way of submission, upon adverse material from other sources which is put before the decision-maker. It also extends to require the decision-maker to identify to the person affected any issue critical to the decision which is not apparent from its nature or the terms of the statute under which it is made. The decision-maker is required to advise of any adverse conclusion which has been arrived at which would not obviously be open on the known material. Subject to these qualifications however, a decision-maker is not obliged to expose his or her mental processes or provisional views to comment before making the decision in question.

1. In *Alphaone*, the Full Court also held at 591:

The subject is entitled to respond to any adverse conclusion drawn by the decision-maker on material supplied by or known to the subject which is not an obvious and natural evaluation of that material.

(Citations omitted.)

1. The appellant’s lawyers had contended that, “he would not have the financial means to access Fiji’s limited diabetic and kidney disease treatments”. The adverse conclusion reached by the Minister was that he was not satisfied of the accuracy of that contention. The Minister’s conclusion cannot be described as not obviously open on the material before the Minister. In these circumstances, procedural fairness did not require the Minister to give the appellant notice of his proposed conclusion and give him an opportunity to comment.
2. The appellant’s first ground of appeal must be rejected.

### Ground 2: Alleged failure to adequately engage with the representations

1. The appellant’s second ground of appeal alleges that the primary judge erred by failing to hold that the Minister failed to engage, in the required legal sense, with the representations relating to the “extent of impediments if removed”.
2. The appellant argued in the appeal that a principle can be drawn from *Hands* that the greater the adverse consequences of a decision for the person affected, the higher must be the level of engagement by the decision-maker with the representations made by the person.
3. In *Hands*, Allsop CJ (Markovic J agreeing) observed at [3]:

By way of preliminary comment, it can be said that cases under s 501 and the question of the consequences of a failure to pass the character test not infrequently raise important questions about the exercise of Executive power. Among the reasons for this importance are the human consequences removal from Australia can bring about. Public power, the source of which is in statute, must conform to the requirements of its statutory source and to the limitations imposed by the requirement of legality. Legality in this context takes its form and shape from the terms, scope and policy of the statute and fundamental values anchored in the common law…The consequences of these considerations are that where decisions might have devastating consequences visited upon people, the obligation of real consideration of the circumstances of the people affected must be approached confronting what is being done to people. This obligation and the expression of its performance is not a place for decisional checklists or formulaic expression. Mechanical formulaic expression and pre-digested shorthand expressions may hide a lack of the necessary reflection upon the whole consideration of the human consequences involved. Genuine consideration of the human consequences demands honest confrontation of what is being done to people. Such considerations do not detract from, indeed they reinforce, the recognition, in an assessment of legality, that those entrusted with such responsibility be given the freedom of lawful decision-making required by Parliament.

(Citations omitted.)

1. The appellant submits that the reasons of the plurality in *Plaintiff M1* at [25] are consistent with the consequences of a decision being a consideration informing the degree of effort required by a decision-maker. The plurality held:

24 Consistently with well-established authority in different statutory contexts, there can be no doubt that a decision-maker must read, identify, understand and evaluate the representations. Adopting and adapting what Kiefel J (as her Honour then was) said in *Tickner v Chapman*, the decision-maker must have regard to what is said in the representations, bring their mind to bear upon the facts stated in them and the arguments or opinions put forward, and appreciate who is making them. From that point, the decision-maker might sift them, attributing whatever weight or persuasive quality is thought appropriate. The weight to be afforded to the representations is a matter for the decision-maker. And the decision-maker is not obliged ‘to make actual findings of fact as an adjudication of all material claims’ made by a former visa holder.

25 It is also well-established that the requisite level of engagement by the decision-maker with the representations must occur within the bounds of rationality and reasonableness. What is necessary to comply with the statutory requirement for a valid exercise of power will necessarily depend on the nature, form and content of the representations. The requisite level of engagement – the degree of effort needed by the decision-maker – will vary, among other things, according to the length, clarity and degree of relevance of the representations. The decision-maker is not required to consider claims that are not clearly articulated or which do not clearly arise on the materials before them.

26 Labels like ‘active intellectual process’ and ‘proper, genuine and realistic consideration’ must be understood in their proper context. These formulas have the danger of creating ‘a kind of general warrant, invoking language of indefinite and subjective application, in which the procedural and substantive merits of any [decision-maker’s] decision can be scrutinised’. That is not the correct approach. As Mason J stated in *Peko-Wallsend*, ‘[t]he limited role of a court reviewing the exercise of an administrative discretion must constantly be borne in mind’. The court does not substitute its decision for that of an administrative decision-maker.

(Emphasis added; footnotes omitted.)

1. It is a sufficient answer to the appellant’s argument to say that neither *Hands* nor *Plaintiff M1* establishes any legal principle that the greater the adverse consequences of a decision, the greater the level of engagement there must be by the decision-maker with the representations of the person affected. Neither case suggests that there is some fixed standard or measure of the degree of effort and attention the decision-maker must apply to the representations or any aspect of them.
2. In any event, it cannot be accepted that the Minister failed to engage in “an active intellectual process”, or give “proper, genuine and realistic consideration”, or apply the “requisite level of engagement” to the appellant’s representations. It is apparent from the Minister’s reasons that he directly engaged with the representations concerning the seriousness of the consequences for the appellant if he were removed to Fiji. The Minister recounted that the appellant is aged 67 and has insulin-dependent type two diabetes, advanced chronic renal disease and other medical conditions, and believes his health would deteriorate and he would suffer from psychological/mental health issues if removed to Fiji. The Minister summarised a medical report which detailed the appellant’s medical conditions and stated that the prognosis in relation to his kidney function was “relatively poor”. The Minister noted that the doctor anticipated that the appellant would eventually have end stage kidney failure requiring dialysis and strongly recommended that he reside in a location near a large (Australian) hospital where he could have access to dialysis when it becomes necessary.
3. The Minister expressly referred to the representation that the appellant would not be able to access the medical treatment needed to manage his kidney disease and diabetes. The Minister accepted that the appellant’s significant health needs, especially in respect of his kidney function, may not be adequately addressed in Fiji, which could likely result in further deterioration of his physical and mental health. The Minister expressly found that the appellant’s health issues, along with economic factors, weighed significantly in favour of revocation.
4. The appellant submits, by reference to *Hands* at [3] that the Minister’s reasons involved “decisional checklists or formulaic expression” or “mechanical formulaic expression and pre- digested shorthand expressions” which “hide a lack of the necessary reflection upon the whole consideration of the human consequences involved”. In view of the Minister’s direct engagement with the consequences for the appellant if he were removed to Fiji, that submission cannot be accepted. The Minister accepted that the consequences of the appellant’s removal to Fiji would result in further deterioration of his physical and mental health and weighed significantly in favour of revocation. There is nothing in the Minister’s reasons to indicate that his level of engagement with the appellant’s representations was so inadequate as to give rise to jurisdictional error. Further, it was not suggested that the decision was irrational or legally unreasonable.
5. The appellant’s second ground must be rejected.

## Conclusion

1. The appellant has not established either of his grounds of appeal. The appeal must be dismissed.
2. The appellant should pay the Minister’s costs of the appeal.

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| I certify that the preceding forty-seven (47) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justices Rangiah, Downes and Kennett. |

Associate:

Dated: 14 December 2023