Federal Court of Australia

Singh v Minister for Immigration, Citizenship and Multicultural Affairs [2023] FCA 424

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| Appeal from: | *Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FedCFamC2G 196 |
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| File number(s): |  |
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| Judgment of: | **WHEELAHAN J** |
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| Date of judgment: | 5 May 2023 |
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| Catchwords: | **MIGRATION** — appeal from decision of the Federal Circuit and Family Court of Australia (Div 2) dismissing an application for judicial review of a decision of the Administrative Appeals Tribunal — where the appellant had sought review of a decision of a delegate of the Minister to refuse to grant the appellant a temporary student visa — appellant raised 12 grounds of appeal — consideration of correct formulation of test for apprehended bias — appeal dismissed  |
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| Legislation: | *Administrative Appeals Tribunal Act 1975* (Cth) sections 2A(b) and (d)*Migration Act 1958* (Cth) sections 65(1)(a)(ii), 476, 476(2) and (4)*Migration Regulations 1994* (Cth), Sch 2, cll 572.222– 572.223, Sch 13, Part 54, cl 5404  |
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| Cases cited: | *CNY17 v Minister for Immigration* [2019] HCA 50; 268 CLR 76*Doan v Minister for Home Affairs* [2019] FCA 1172*Ebner v Official Trustee in Bankruptcy* [2000] HCA 63; 205 CLR 337*Fard v Secretary, Department of Immigration and Border Protection* [2016] FCA 417*Frugtniet v Secretary, Department of Social Services* [2021] FCAFC 127; 285 FCR 159*Khaja v Minister for Immigration and Border Protection* [2014] FCA 890*Minister for Immigration and Citizenship v SZMDS* [2010] HCA 16; 240 CLR 611*Minister for Immigration and Multicultural Affairs v Eshetu* [1999] HCA 21; 197 CLR 611*Minister for Immigration and Multicultural Affairs v Jia Legeng* [2001] HCA 17; 205 CLR 507*Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FedCFamC2G 196*SZRKF v Minister for Immigration* [2020] FCA 1389*SZRUI v Minister for Immigration, Multicultural Affairs and Citizenship* [2013] FCAFC 80*Twentyman v Secretary, Department of Social Services* [2018] FCA 1892; 163 ALD 517  |
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| Division: | General Division |
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| Registry: | Victoria |
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| National Practice Area: |  |
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| Number of paragraphs: | 46 |
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| Date of hearing: | 4 May 2023 |
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| Counsel for the Appellant | The Appellant appeared in person |
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| Solicitor for the First Respondent | Mr K Jeyakkumar of Clayton Utz |
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| Counsel for the Second Respondent | The Second Respondent filed a submitting notice, save as to costs |
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ORDERS

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|  | VID 215 of 2022 |
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| BETWEEN: | SIMRANJIT SINGHAppellant |
| AND: | MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRSFirst RespondentADMINISTRATIVE APPEALS TRIBUNALSecond Respondent |

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| order made by: | WHEELAHAN J |
| DATE OF ORDER: | 5 May 2023 |

THE COURT ORDERS THAT:

1. The appeal is dismissed.
2. The appellant pay the first 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

WHEELAHAN J:

## Introduction

1. This is an appeal from orders of the Federal Circuit and Family Court of Australia (Division 2) made 24 March 2022. The primary judge dismissed the appellant’s application for judicial review of a decision of the Administrative Appeals Tribunal made 14 November 2017 which affirmed the refusal of a delegate of the Minister to grant to the appellant a temporary student visa.

## The appellant’s visa application

1. On 30 June 2015, the appellant applied for a Student (Temporary) (Class TU) (Subclass 572) visa. Under s 65(1)(a)(ii) of the *Migration Act 1958* (Cth), the Minister is to grant a visa if satisfied, among other things, that any criteria for the visa prescribed by the regulations have been satisfied. The criteria in the *Migration Regulations 1994* (Cth) for subclass 572 visas applied at all times to the appellant’s application notwithstanding their repeal by the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016* (Cth): see, *Migration Regulations 1994* (Cth), Sch 13, Part 54, cl 5404.

## The delegate’s decision

1. On 10 March 2016, a delegate of the Minister refused the application on the ground that the appellant did not satisfy the genuine temporary entrant criteria in cl 572.223 of Sch 2 of the *Migration Regulations*. In particular, the delegate found that the appellant was using the student visa program to circumvent permanent migration programs, and was not satisfied that the appellant was a genuine applicant for entry and stay as a student.

## The review by the Tribunal

1. On 22 March 2016, the appellant filed an application with the Administrative Appeals Tribunal, seeking review of the delegate’s decision. On 6 October 2017, the Tribunal wrote to the appellant inviting him to attend a hearing on 14 November 2017. The letter requested that the appellant provide the following information to the Tribunal so that a decision could be made as quickly as possible –

1. A copy of your current Certificate of Enrolment (COE) as required for the grant of a student visa.

2. Documents that show you are currently enrolled in a course, or have an offer of enrolment in a registered course, as required for the grant of a student visa.

3. Documents that show your past studies in Australia, including copies of all your attendance certificates, academic transcripts and certificates of completion as well as documents evidencing any work related to past or intended studies in Australia.

4. An explanation of any gaps in your enrolments and any documentary evidence relevant to your explanation.

1. At the hearing before the Tribunal, the appellant failed to produce a current certificate of enrolment, and confirmed to the Tribunal in sworn evidence that he was not currently enrolled, and did not then have a current offer of enrolment in a course of study in Australia. The Tribunal therefore affirmed the decision under review, holding that the appellant did not meet the criterion in cl 572.222 of Sch 2 of the regulations that he give the Minister such a certificate.

## The application to the Federal Circuit Court

1. On 12 December 2017, the appellant commenced his application for judicial review in the Federal Circuit Court in the exercise of that Court’s jurisdiction under s 476 of the *Migration Act*. The burden on the appellant was to show some jurisdictional error affecting the Tribunal’s decision. On 23 January 2018, the appellant filed an amended application which advanced the following grounds –

1) I had genuine intention to study but the tribunal did not give me a chance to explain the reasons for the refusal..! had complete documentation to explain my credentials.

2) I was not given the complete time and proper proceedings were not followed.

3) If given an opportunity, I can explain every claim which I have mentioned in the MRT

4) I have been gravely victimized for not being given the opportunity to comment and put my case forward .

5) I hope judicial review would give me a chance to be able to successfully explain the GENUINE TEMPORARY CRITERION which is the crucial component for the respective visa.

1. At the hearing before the primary judge, the appellant was unrepresented. The primary judge went to some length to assist the appellant in addressing his case, including by explaining to the appellant the nature of a jurisdictional error, and giving illustrations. His Honour gave leave to the appellant to file written submissions after the hearing. Pursuant to that leave the appellant filed written submissions of ten pages dated 10 March 2022 to which the Minister responded.

## The primary judge’s reasons

1. The primary judge’s reasons for judgment (**J**) are published: *Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FedCFamC2G 196. His Honour’s reasons are clear and thorough, and it is therefore unnecessary to recount them in detail. I will, however, refer to the essential elements.
2. In relation to the appellant’s grounds of review, the primary judge at J[30] took a beneficial approach and treated the grounds as raising the following claims –
3. the Tribunal incorrectly interpreted and applied the criteria in clause 572.223 (grounds 1 and 5); and
4. the Tribunal denied the applicant a meaningful opportunity to participate (grounds 2 and 4).
5. The primary judge held at J[31] that the appellant’s ground 3 invited impermissible merits review, and therefore it did not need to be addressed.
6. As to the question whether the Tribunal incorrectly interpreted and applied the criteria in cl 572.223, the primary judge held that the Tribunal had no obligation to make findings in relation to the genuine temporary entry criteria because the evidence was that the appellant did not hold a current certificate of enrolment, citing *Khaja v Minister for Immigration and Border Protection* [2014] FCA 890 at [22] (Mortimer J). As a consequence, a necessary criterion for the issue of a visa in clause 572.222 was not satisfied, and this was dispositive of the application for review before the Tribunal. His Honour held that there was no jurisdictional error in this regard.
7. As to the question whether the Tribunal denied the appellant a meaningful opportunity to participate in the review, his Honour referred to an invitation by the Tribunal to the appellant to attend the hearing, a request for evidence in that invitation, the appellant’s failure to provide any material relating to his enrolment in a course of study as requested, the fact that the Tribunal asked the appellant at the hearing whether he had any such evidence, and the appellant’s response to the Tribunal that he was not then currently enrolled and did not have an offer of enrolment in a course of study. His Honour concluded at J[55] that the appellant had been given ample opportunity to present his case and to provide evidence that would have assisted him.
8. At J[56]-[59] the primary judge addressed an oral submission by the appellant that the decision of the Tribunal was affected by bias in the nature of pre-judgment. His Honour held that there was nothing in the materials to indicate that the Tribunal was not open to persuasion and was satisfied that no issue of bias arose.
9. The primary judge then addressed in some detail a number of concerns raised by the appellant in his written submissions that were filed after the hearing. In summary, the primary judge addressed the appellant’s concerns as follows –
10. at J[64]-[71] his Honour held that any delay by the Tribunal in hearing and determining the appellant’s application for review did not amount to jurisdictional error, noting that the Tribunal gave *ex tempore* reasons on the day of the hearing;
11. at J[72]-[75] his Honour held that the appellant’s complaints about the advice given to him by a migration agent did not give rise to any jurisdictional error;
12. at J[76]-[79] his Honour held that the Court had no jurisdiction in relation to several grievances that the appellant expressed about the Department’s approach to his application, referring to subsections 476(2) and (4) of the *Migration Act*;
13. at J[80]-[81] his Honour rejected again the appellant’s claims of bias, noting that in the absence of a confirmation of enrolment there was only one decision open to the Tribunal;
14. as to a claim by the appellant that he was not afforded an opportunity to have an interpreter before the Tribunal, and that this amounted to a denial of procedural fairness, his Honour held at J[82]-[87] that there was no evidence that the appellant failed to understand what was being said to him or what was required of him, that there was no evidence that the appellant had requested an interpreter, and accordingly no error was established;
15. as to a submission by the appellant that it was unreasonable for the Tribunal to give an *ex tempore* decision, and that he should have been provided an opportunity to make post-hearing submissions to the Tribunal, his Honour held at J[90] that there was no evidence that the appellant had requested an adjournment, or any reason to think that the Tribunal should have been alive to the fact that the appellant needed more time, and in the circumstances the Tribunal proceeded in a manner that was entirely open to it;
16. at J[92]-[100] the primary judge rejected the idea that the Tribunal ignored relevant material or considered irrelevant material, pointing again to the fact that the appellant did not produce a current certificate of enrolment to the Tribunal when afforded an opportunity to do so; and
17. at J[101]-[104] the primary judge rejected an unparticularised claim that the Tribunal’s decision was illogical, irrational, or unreasonable, citing *Minister for Immigration and Citizenship v SZMDS* [2010] HCA 16; 240 CLR 611 at [130]-[131] (Crennan and Bell JJ), and holding that the Tribunal’s reasons were entirely sound.
18. For all the above reasons, the primary judge concluded that the application for judicial review should be dismissed.

## The appellant’s appeal to this Court

### Preliminary matters

1. The appellant’s appeal to this Court relies on twelve grounds of appeal. In accordance with the Court’s usual practice in appeals, the appellant was ordered to file written submissions before the hearing. However, the appellant failed to comply with this order.
2. The Court arranged for a Punjabi interpreter to attend to assist the appellant at the hearing. The organisation of the interpreter was in response to a request that the appellant made by email to the Court. Although the hearing proceeded with the assistance of an interpreter, I am satisfied by reference to the appellant’s written submissions to the primary judge and his email communications to this Court that the appellant has the means of comprehending and composing written communications in English to a reasonable standard.
3. At the outset of the appeal, I explained to the appellant the nature of the appeal as being an appeal by way of re-hearing where the appellant had to demonstrate some error in the primary judge’s decision. In relation to the underlying question whether there was jurisdictional error in the Tribunal’s decision, I directed the appellant’s attention to the primary judge’s explanation of the nature of a jurisdictional error at J[25], and supplemented it with my own explanation. I explained to the appellant that judicial review was not concerned with a review of the merits of the Tribunal’s decision but with the lawfulness of the Tribunal’s decision.

### Refusal of adjournment

1. I asked the appellant to identify what documents he had brought to court. The appellant stated that he possessed a copy of the court book that was before the primary judge, and a copy of the Minister’s written submissions filed in this Court on 6 April 2023. When I inquired about the appeal book, the appellant confirmed that he had received a copy of the appeal book by email, but stated that he could not open the document. The appellant accepted that he had not contacted the Minister’s solicitors about any difficulties that he had experienced in opening the electronic appeal book. Documents submitted to the Court by the Minister’s solicitors showed that the appellant was served with a hard copy of the appeal book by express post to his address for service. The appellant denied receiving the hard copy of the appeal book, stating that he had recently moved house. I had the court officer give the appellant printed copies of his notice of appeal and the primary judge’s reasons and I stood the matter down for about 20 minutes to give the appellant an opportunity to reflect before commencing his submissions.
2. Upon resumption, the appellant asked for more time to prepare written submissions, claiming that he had been distracted by some domestic circumstances. Granting additional time to the appellant would have involved an adjournment of the hearing. I refused this application because I was satisfied that the appellant had received a copy of the orders of the Court providing for the filing of written submissions, and that he had received a copy of the Minister’s submissions that had been filed on 6 April 2023. The appellant had an ample opportunity to respond to the Minister’s submissions and to prepare his case. I was also satisfied that the Minister’s solicitors had effected service of the appeal book by a method authorised by the Rules. I took the view that it was for the appellant to take steps to help himself if he had experienced difficulty opening the electronic copy of the appeal book. I formed no view about the appellant’s claim that he had not received a hard copy of the appeal book. There was no practical injustice to the appellant because he had available to him a copy of the court book, and it was otherwise his responsibility, given the time that he had available, to come to court prepared to advance submissions to support his grounds of appeal.

### The appellant’s submissions

1. I invited the appellant to address submissions to the Court. The appellant submitted that, at the time of the delegate’s decision, he did have a certificate of enrolment. He submitted that he was unaware of the time it would take for his application for review to come on for hearing in the Tribunal, and whether he should “start studying”. The appellant stated that he had lost eight years of his life, and that he just wanted some time to complete his study. He stated that had he been granted the visa for which he applied, he would have finished his studies by now and returned. The appellant stated that he would accept a condition on a visa that he would undertake no further study and that he would not apply for anything else.
2. The appellant submitted that when he attended before the Tribunal, the Tribunal had already made up its mind about its decision. In relation to the decision of the primary judge, the appellant submitted that his Honour did not consider his submission that he had (at that point) been waiting seven years for justice, and that he had referred to all the study that he had completed.
3. At the conclusion of the appellant’s submissions, I drew the appellant’s attention to his grounds of appeal and asked whether he had any submissions directed to those grounds. The appellant responded by stating he had no more submissions.

### Consideration

1. Although the appellant’s submissions were confined in their scope, and pointed to very little in the way of claimed error by the primary judge, I will address the appellant’s grounds of appeal in turn.

#### 1. The Federal Circuit Court of Australia made an error in giving judgment.

1. This is a high-level claim of error by the primary judge, which as a matter of substance does not identify any appealable error: see *SZRKF v Minister for Immigration* [2020] FCA 1389 at [22] (Farrell J) and the cases cited therein. I therefore reject it.

#### 2. The Federal Circuit Court failed to consider facts presented by way of written submissions to the court.

1. The primary judge’s reasons addressed the material components of the appellant’s case in a most comprehensive manner. To the extent that the appellant complained that the primary judge did not consider the appellant’s written submission that he had been waiting years for justice, this was not a submission that was capable of addressing any jurisdictional error by the Tribunal, and the judge was not required to give reasons in relation to it. Otherwise, there is no basis to conclude that the primary judge did not consider the appellant’s written submissions in their totality, because it is clear from J[28] that the judge addressed the post-hearing submissions to the extent that they addressed the issue of jurisdictional error.

#### 3. The Federal Circuit Court acted bias in considering facts given by the Administrative Appeals Tribunal.

1. There is no proper basis for this ground of appeal, and none was suggested by the appellant during argument.

#### 4. It is a jurisdictional error in itself when the facts provided were not considered by the Federal Circuit Court judge because these facts were the basis of the case and why it was refused in the first place.

1. Like the first ground of appeal, the fourth ground is high-level and does not descend to identifying any particular fact that was not considered by the primary judge. To the extent that the appellant submitted that the primary judge did not consider his written submissions, I have rejected that submission for the reasons given in relation to the second ground.

#### 5. The jurisdiction error that occurred at the Department of Immigration and Administrative Appeals Tribunal was that the decision maker ignored relevant material.

1. This ground of appeal is directed to a claimed jurisdictional error by the delegate. This was outside the scope of the appellant’s application to the court below, which was a challenge to the decision of the Tribunal. Further, as the primary judge pointed out at J[78], the court below had no jurisdiction in relation to a primary decision, which relevantly includes a decision that is reviewable under Part 5 of the *Migration Act*: see*,* subsections 476(2)(a) and (4). There is therefore no merit in the fifth ground of appeal.

#### 6. Also a jurisdictional error is that the Tribunal member relied on irrelevant material and did not give me the opportunity to be heard for facts I was presenting.

1. The primary judge dealt comprehensively with the appellant’s claims of jurisdictional error by the Tribunal, holding at J[81] that once the Tribunal was satisfied that the appellant did not have a certificate of enrolment so as to engage cl 572.22 of Sch 2 of the regulations, the Tribunal did the only thing that was open to it, namely to affirm the delegate’s decision. No error has been shown in the judge’s analysis.

#### 7. The original refusal decision and review hearing were both biased.

1. The primary judge considered the appellant’s claims of bias at J[56]-[59] and J[80]-[81]. There was an error at J[57(b)] in the primary judge’s formulation of the test for determining whether there is apprehended bias, which the judge posed as whether –

the Tribunal, in the case of apprehended bias, conducted itself in a way that a fair-minded person *would* reasonably believe that the Tribunal *had not* brought an impartial mind to deciding the applicant’s case.

(My emphasis.)

1. This formulation is not supported by authority. The primary judge cited the reasons of Allsop CJ in *SZRUI v Minister for Immigration, Multicultural Affairs and Citizenship* [2013] FCAFC 80 at [2], where the Chief Justice referred to the fact that there could be no debate about the formulation of the relevant test because it was governed by High Court authority. The High Court authority to which Allsop CJ must be taken to have referred includes *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63; 205 CLR 337 where at [6] Gleeson CJ, McHugh, Gummow and Hayne JJ formulated what has become known as the “double might” test –

Where, in the absence of any suggestion of actual bias, a question arises as to the independence or impartiality of a judge (or other judicial officer or juror), as here, the governing principle is that, subject to qualifications relating to waiver (which is not presently relevant) or necessity (which may be relevant to the second appeal), a judge is disqualified if a fair-minded lay observer *might* reasonably apprehend that the judge *might* not bring an impartial mind to the resolution of the question the judge is required to decide. That principle gives effect to the requirement that justice should both be done and be seen to be done, a requirement which reflects the fundamental importance of the principle that the tribunal be independent and impartial. It is convenient to refer to it as the apprehension of bias principle.

(My emphasis, footnotes omitted.)

1. These principles are appropriately adapted to administrative decision-makers, such as the Tribunal: *Minister for Immigration and Multicultural Affairs v Jia Legeng* [2001] HCA 17; 205 CLR 507 at [98]–[100] (Gleeson CJ and Gummow J) and [179]–[180] (Hayne J); *CNY17 v Minister for Immigration* [2019] HCA 50; 268 CLR 76 (***CNY17***) at [50] (Nettle and Gordon JJ), [132] (Edelman J).
2. However, the primary judge’s incorrect formulation of the principles was not material. Upon my review of the material before the primary judge I agree with the judge’s finding at J[58] that there is nothing in the material to indicate that the Tribunal was not open to persuasion. Indeed, the fact that prior to the hearing the Tribunal specifically requested the appellant to provide evidence of a certificate of enrolment prior to the hearing, and informed the appellant that the certificate was required for the grant of a visa, show that the Tribunal acted fairly towards the appellant. For the Tribunal to be alive to an issue that was essential to the exercise of its jurisdiction to review, and then to focus on that issue, was not pre-judgment. Nor might a hypothetical fair-minded lay observer who was cognisant of the statutory requirements for the grant of the student visa for which the appellant applied reasonably consider that the Tribunal might have pre-judged the matter or otherwise might not have brought an impartial mind to its review function: see *CNY17* at [51], [60] and [92] in relation to imputing knowledge of the statutory scheme to the fair-minded lay observer.
3. For these reasons, there is no substance to the seventh ground of appeal.

#### 8. In paragraph 36 of the judgement, the judge states the applicant did not present a confirmation of enrolment and the reasons why this was the case was presented to the judge via written submission. The tribunal member should have given time to get the confirmation of enrolment if the entire case was only dependent on the enrolment confirmation.

1. It was no part of the primary judge’s function on judicial review to consider the merits of the Tribunal’s decision to proceed to affirm the delegate’s decision without giving the appellant a further opportunity to obtain a certificate of enrolment in circumstances where the Tribunal had requested this document prior to the hearing. At J[36], the primary judge noted that the appellant was asked by the Tribunal to provide evidence of the sort required, and that nothing that might have assisted the appellant was provided. Indeed, the appellant confirmed to the Tribunal that he was not then enrolled in a course of study. In this regard, the primary judge set out an extract from [6] of the Tribunal’s statement of reasons where this finding was made. I agree with the primary judge’s conclusions on this issue at J[90] –

There is, again, simply no evidence that the applicant requested an adjournment or any reason to accept that the Tribunal should have been alive to the fact that the applicant needed “more time” to present his case. On his own evidence the applicant did not have a confirmation of enrolment. Nor did he indicate that he would get one in the foreseeable future. In the circumstances, the Tribunal proceeded in a manner that was entirely open to it.

1. For the above reasons, the eighth ground of appeal is rejected.

####  9. In paragraph 38 of the judgement the judge stated that he agrees that the Tribunal had no obligation to make finding of genuine temporary entrant and this is a big jurisdictional error because it was the reason why my student visa was refused by the department of immigration. had I not had a genuine temporary entrant criteria issue I would have had the confirmation of enrolment and there would not have been an issue. The applicant was not given any further time.

1. There was no error by the primary judge in holding at J[38] that the Tribunal was under no obligation to make findings in relation to whether the appellant satisfied the genuine entrant criteria for the grant of the visa. That topic was not material to the Tribunal’s decision which rested on the dispositive finding that the appellant did not meet the criteria in cl 572.22 of Sch 2 of the regulations.

#### 10. The applicant was not represented in the Tribunal and some assistance could have been given and a 7 day post hearing time to present a confirmation of enrolment was justifiable in this circumstance.

1. This ground of appeal covers the same territory as the eighth ground, which I have rejected. I reject this ground on the same basis, namely that I agree with the primary judge’s conclusions at J[90], which I have set out above.

#### 11. The time frame that took the applicant to be heard at the Tribunal was 18 months and that is a long time to be heard. it has delayed the applicant’s life to proceed ahead and is now behind many years from his peers.

1. At J[64]-[71], the primary judge considered the question whether the Tribunal’s delay in hearing the appellant’s application for review of the delegate’s decision amounted to a jurisdictional error. His Honour pointed out that there had been no delay by the Tribunal member in completing the review, because an *ex tempore* decision was given on the day of the hearing. As to the period between the filing of the application and the hearing, his Honour held that while this was perhaps not quick enough for the applicant, the timeframe could not be seen as unjust or in any way indicative of a failure to address the applicant’s concerns as soon as administratively possible. His Honour concluded that while the delay was undoubtedly frustrating for the applicant, there was nothing in relation to this issue that went to jurisdictional error.
2. His Honour cited the Tribunal’s objective in s 2A(b) of the *Administrative Appeals Tribunal Act 1975* (Cth) –

**2A Tribunal’s objective**

In carrying out its functions, the Tribunal must pursue the objective of providing a mechanism of review that:

…

(b) is fair, just, economical, informal and quick; and

…

1. Section 2A(d) of the *Administrative Appeals Tribunal Act* is aspirational or exhortatory in nature, and is not a source of directly enforceable rights and obligations: *Fard v Secretary, Department of Immigration and Border Protection* [2016] FCA 417 at [80] (Griffiths J), citing *Minister for Immigration and Multicultural Affairs v Eshetu* [1999] HCA 21; 197 CLR 611 at [108] (Gummow J); *Twentyman v Secretary, Department of Social Services* [2018] FCA 1892; 163 ALD 517 at [79] (Wigney J); *Doan v Minister for Home Affairs* [2019] FCA 1172 at [37], [49] (Griffiths J). For these reasons, the primary judge was correct to hold that the fact that the Tribunal listed the appellant’s application for hearing some time after filing, did not give rise to any error that was reviewable by the Court.

#### 12. I request that my submission that the applicant, myself, provided to the Federal Circuit court be carefully assessed as I have stated a fact that the case officer at the Department made an error with.

1. In relation to the twelfth ground of appeal, I have considered the submissions dated 10 March 2022 that the appellant provided to the court below. The submissions were addressed by the primary judge to the extent that they raised any issue of jurisdictional error. The twelfth ground is directed to claimed errors by the delegate that were raised in the appellant’s written submissions. These claimed errors involved allegations that the delegate did not adequately assess the appellant’s application, did not afford the appellant an opportunity to comment on adverse information, that the appellant was not competently represented during the period when his application was before the Department, that the delegate was biased, that the delegate made an error in taking account of the fact that the appellant had made two short trips out of Australia in determining whether the genuine temporary entrant criteria were met, that the delegate erred in his assessment of the appellant’s academic advancement and had failed to understand correctly the courses that the appellant had pursued, disputing that he had cancelled his enrolment in some of the courses on which the delegate had relied in assessing his academic progress.
2. It was not necessary for the primary judge to consider these submissions because they were not relevant to whether the Tribunal made some jurisdictional error in affirming the delegate’s decision on review. The Tribunal made its decision on the ground that the appellant did not provide the Tribunal with a current certificate of enrolment and therefore did not satisfy the criteria in cl 572.222 of Sch 2 of the regulations. Otherwise, judicial review of the delegate’s decision was not within the jurisdiction of the court below. The twelfth ground is therefore rejected.

## Conclusion

1. The appeal will be dismissed with costs.

## Postscript

1. Shortly after 1.00 pm today, in circumstances where judgment was listed for 2.15 pm, the appellant sent an email to my associate copied to the Minister’s solicitors setting out further submissions. No leave was given to the appellant to make further submissions, and they have not been considered: see *Frugtniet v Secretary, Department of Social Services* [2021] FCAFC 127; 285 FCR 159 at [85] and the cases cited therein.

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| I certify that the preceding forty-six (46) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Wheelahan. |

Associate:

Dated: 5 May 2023