

PRESS RELEASE

19 April 2007

High Court rules law affecting migrants as invalid

The High Court yesterday declared as invalid a Commonwealth law that sought to restrict the Constitutional powers of the High Court: **Bodruddaza v The Minister for Immigration and Multicultural Affairs**.

Nigel Dobbie, of Parish Patience Immigration, solicitor for Mr Bodruddaza states:

“The Commonwealth government passed s486A of the Migration Act 1958, a law that put an absolute time limit on the ability of the High Court to review migration decisions. This was clearly an unlawful restriction on the High Court’s powers under s75(v) of the Constitution to restrain Commonwealth officers from acting unlawfully and outside of their powers.” All seven justices of the High Court agreed.

The High Court confirmed that its jurisdiction under s75(v) exists to maintain the federal compact by ensuring that propounded laws are constitutionally valid and that ministers and other official action is lawful and within jurisdiction.

The High Court found that s486A was inflexible in its operation, because it did not allow for a range of vitiating circumstances; for example:

- where there had been bribery
- where there had been actual bias but the visa applicant did not find that out until after the time to appeal had passed
- where the visa applicant’s agent was apparently at fault, with the result that the applicant was too late to appeal (in Mr Bodruddaza’a case, by one day)
- where a person was physically incapacitated, such that he or she could not lodge the appeal

The High Court also confirmed that it did not accept a notion that some unfairness must be expected and tolerated.

This unanimous judgment protects individuals and businesses across the board from unlawful acts of Commonwealth officers. ***“If this law had been held as being valid, it could have been, in principle, applied to other areas of law affecting the everyday lives of Australians; for example, corporations, tax and so forth. Hopefully, the government will not try to again pass laws that will unbalance the separation of the powers that makes Australia a great democracy.”***

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