FEDERAL COURT OF AUSTRALIA

VWYJ v Minister for Immigration & Multicultural & Indigenous Affairs [2006] FCAFC 1

MIGRATION – visa – protection visa – disqualification because of war crimes, crimes against humanity or serious non-political crimes – whether jurisdictional error by Administrative Appeals Tribunal

PRACTICE AND PROCEDURE – judgments and orders – interlocutory or final – order dismissing application for extension of time to appeal from decision of Administrative Appeals Tribunal – leave to appeal – whether extension of time to apply should be granted – whether any prospect of success on appeal

Migration Act 1958 (Cth) ss 5(1), 36, 417, 474(1), 474(2), 477(1), 483, 500(1)(c)
Judiciary Act 1903 (Cth) s 39B
Administrative Appeals Tribunal Act 1975 (Cth) ss 44(1), 44(2A)
Federal Court of Australia Act 1976 (Cth) s 24(1A)
Federal Court Rules O 52 r 10

Convention relating to the Status of Refugees. Opened for signature 28 July 1951. 189 UNTS 150 (entered into force 22 April 1954) art 1F

VWYJ v Minister for Immigration & Multicultural & Indigenous Affairs [2005] FCA 658 affirmed
VAX v Minister for Immigration & Multicultural & Indigenous Affairs [2005] AATA 143 affirmed
Tuite v Administrative Appeals Tribunal (1993) 40 FCR 483 cited
Clements v Independent Indigenous Advisory Committee [2003] FCAFC 143 (2003) 131 FCR 28 cited
Vranic v Commissioner of Taxation [2002] FCAFC 26 (2002) 67 ALD 798 followed
Arquita v Minister for Immigration & Multicultural Affairs [2000] FCA 1889 (2000) 106 FCR 465 considered
Singh v Minister for Immigration & Multicultural Affairs [2000] FCA 1125 (2000) 102 FCR 51 cited

VWYJ v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS
VID 361 of 2005

GRAY, KIEFEL AND LANDER JJ
16 MARCH 2006
MELBOURNE

GENERAL DISTRIBUTION

IN THE FEDERAL COURT OF AUSTRALIA

VICTORIA DISTRICT REGISTRY **VID 361 of 2005**

ON APPEAL FROM A SINGLE JUDGE OF THE FEDERAL COURT OF AUSTRALIA

BETWEEN:	**VWYJ** **APPELLANT**
AND:	**MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS** **RESPONDENT**

JUDGES:	**GRAY, KIEFEL AND LANDER JJ**
DATE OF ORDER:	**16 MARCH 2006**
WHERE MADE:	**MELBOURNE**

THE COURT ORDERS THAT:

1. The time within which the appellant was required to apply for leave to appeal be extended, so as to permit him to apply for leave to appeal on 16 November 2005.

2. The appellant's oral application for leave to appeal be dismissed.

3. The appeal, instituted by notice of appeal filed on 21 April 2005, be dismissed.

4. The appellant pay the respondent's costs of the proceeding.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

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AND:	**MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS** **RESPONDENT**
JUDGES:	**GRAY, KIEFEL AND LANDER JJ**
DATE:	**16 MARCH 2006**
PLACE:	**MELBOURNE**

REASONS FOR JUDGMENT

GRAY J:

The nature and history of the proceeding

1 By notice of appeal, filed on 21 April 2005, the appellant seeks to appeal from the judgment of a single judge of the Court, given on 18 April 2005. See *VWYJ v Minister for Immigration & Multicultural & Indigenous Affairs* [2005] FCA 658. The learned primary judge dismissed an application for an extension of the time in which to appeal, and struck out a notice of appeal, from a decision of the Administrative Appeals Tribunal ('the AAT'). His Honour also ordered that the appellant pay the costs of the respondent, the Minister for Immigration and Multicultural and Indigenous Affairs ('the Minister').

2 The appellant is a citizen of Lebanon. He applied for a protection visa. By s 36 of the *Migration Act 1958* (Cth) ('the Migration Act'), there is a class of visas to be known as protection visas. Section 36(2) provides that a criterion for a protection visa is that the person

applying for it be a non-citizen in Australia to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. The terms 'Refugees Convention' and 'Refugees Protocol' are defined in s 5(1) of the Migration Act to mean respectively the *Convention relating to the Status of Refugees done at Geneva on 28 July 1951*, and the *Protocol relating to the Status of Refugees done at New York on 31 January 1967*. It is convenient to call these two instruments, taken together, the 'Convention'. In general, Australia has protection obligations under the Convention to a person who:

> *'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country'.*

3 In the present case, it is necessary to have regard to art 1F of the Convention, which provides relevantly:

> *'The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:*
>
> *(a) he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;*
>
> *(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee'.*

4 A delegate of the Minister applied art 1F of the Convention and refused to grant a protection visa to the appellant, because of the appellant's participation in the massacre of civilians in the Palestinian refugee camps at Sabra and Shatilla in Lebanon on 16-18 September 1982. Pursuant to s 500(1)(c) of the Migration Act, the appellant applied to the AAT for review of that decision on the merits. The AAT heard his application on 1 December 2004, and gave a decision affirming the decision under review on 16 February 2005. See *VAX v Minister for Immigration & Multicultural & Indigenous Affairs* [2005] AATA 143.

5 On 4 April 2005, the appellant filed in the Court an application for an extension of time to file and serve a notice of appeal from the AAT's decision. The appellant also produced an application to the Court, invoking the jurisdiction conferred on the Court by s 39B of the *Judiciary Act 1903* (Cth) ('the Judiciary Act'), seeking review of the AAT's decision. It does not appear that this document was ever filed, although it bears the same date as the application for an extension of time and the notice of appeal. The primary judge referred to it as a 'draft application for review'.

6 On 18 April 2005, the primary judge heard the application for an extension of time and made the orders referred to in [1].

7 On 21 April 2005, the appellant filed in the Court a notice of appeal. According to that notice of appeal, the appellant seeks to appeal from 'the whole of the interlocutory judgment of' the primary judge, given on 18 April 2005.

The AAT's reasons

8 The AAT's reasons for decision indicate that it gave careful attention to the evidence that was before it. It found that, in 1982, the appellant was an officer in the Lebanese Christian Phalange Militia. The massacre of civilians in the Sabra and Shatilla refugee camps was precipitated by the assassination of the leader of the Phalange party, Bashir Gemayel, by means of a bomb blast, on 14 September 1982. Over a 36-hour period, from the afternoon of Thursday 16 September 1982 until Saturday 18 September 1982, the Phalange Militia was in the refugee camps. During that time, hundreds of civilians – men, women, children and babies – were killed, and other atrocities were committed. There was no doubt that the appellant was present in the camps for at least part of that period.

9 The AAT found that, at different times in the process of dealing with his application for a protection visa, the appellant had given three different versions of his involvement in the massacre.

10 In the first place, the appellant had given evidence to the Refugee Review Tribunal at an early stage that, after entering the camps, he and his men overcame resistance from Palestine Liberation Organisation ('PLO') fighters. They then encountered non-combatants. On seeking orders from Elie Hobeika, who was in charge of the operation, the appellant was told to leave nobody alive and was threatened that he would die if he left anybody alive. The appellant's claim then was that, if he had not obeyed those orders, he and possibly his family would have been killed in retribution. He did not say that he had refused to carry out the order. The AAT accepted the respondent's contention that there was a clear implication that the appellant acted in accordance with the order. He said that he was present in the camp for two days and one night and thereafter had to go into hiding to avoid investigations. The AAT also referred to written submissions from the appellant's then solicitor, in support of his claim to have a well-founded fear of persecution. The tenor of these submissions was that the appellant had acted under duress in what was described as 'his involvement in these…terrible actions', and that his involvement needed to be understood in the context of the struggles in Lebanon at the time. The AAT also referred to a submission by the appellant's then solicitor, in support of an application to the then Minister for Immigration and Multicultural Affairs for the exercise of the power, given by s 417 of the Migration Act, to substitute a more favourable decision. In that submission, the solicitor said that the appellant had 'followed' an order to open fire on civilians. The AAT took the view that the first version of events was given at a time when the appellant was unaware of the disqualifying effect of art 1F of the Convention, and was relying on his role in the massacres as providing the basis for his well-founded fear of persecution, if he should return to Lebanon.

11 The second version of events identified by the AAT was in a statutory declaration of the appellant, dated 20 March 1998. In that version, the appellant was nominally in charge of approximately 30 soldiers from his unit. After five hours of sporadic engagement with some PLO forces, he came across civilians. He asked for orders from his commander and was told to leave nobody alive. He was unable to do what was asked of him and let the civilians pass. They were later killed by other militia forces. He was powerless to stop what was going on. He left the camp with a friend at about 2.00 am on Friday 17 September 1982 and returned later that morning, by which time the massacres had occurred. He said that he had not seen

the admissions previously made by his solicitor, and denied that he had told the solicitor that he had killed women and children.

12 The third version identified by the AAT was given in sworn evidence at the AAT's hearing. In this version, the appellant was in command of only seven soldiers, not 30, when he entered the camps. An officer of higher rank was present, directing the appellant. The appellant was unaware that there were women and children in the camps and did not know they were refugee camps. When he discovered civilians, he requested orders from the superior officer, and overheard orders on the radio from the commander to the effect that he wanted no-one alive. The appellant then allowed civilians to pass, including women and children. He left the camps with a friend at about 2.00 am on 17 September 1982. After he returned, he and his men withdrew from the camps during that morning.

13 The AAT took the view that the appellant was attempting progressively to downgrade his role in the massacres, once he understood the disqualifying effect of art 1F. The AAT found that there was a high probability that the appellant was engaged directly in the slaughter of civilians during the Sabra/Shatilla massacre. It rejected his accounts aimed at distancing himself from those killings. It accepted that the appellant was a willing participant in the massacre of civilians. If the AAT was wrong in reaching these conclusions, it nevertheless found that there were serious reasons for considering that the appellant was directly and willingly involved in the massacre. After examining various international instruments, and authorities, the AAT dealt with the question whether, even if not personally involved in killing civilians, the appellant would be criminally responsible for the activities of those members of his group who participated in the atrocities. The AAT did not accept that the appellant withdrew from the massacre to avoid having to take part in it. If he did, the AAT nevertheless thought there was a substantial basis for accepting that the doctrine of command responsibility established at least serious reasons for considering that the appellant committed war crimes or crimes against humanity. Further, the AAT found that there were serious reasons for considering that the appellant committed war crimes or crimes against humanity as an accessory, even if he did not kill any civilians himself.

14 At [49] of its reasons for decision, the AAT said:

> *'As already stated, my conclusion is that on the balance of probabilities the applicant committed war crimes, crimes against humanity and serious non-political crimes by his personal participation in the massacre of civilians at the Sabra/Shatilla camps. Alternatively there are serious reasons for considering that he did so. No defences are reasonably available to the applicant on the basis of his carrying out superior orders or his fear of retribution for failing to do so. Additionally, but unnecessarily in the circumstances I find that the applicant also bears criminal responsibility for the events at the massacre on the basis of his command responsibility. He is also criminally responsible for aiding and abetting the commission of war crimes, crimes against humanity and serious non-political crimes carried out by his Phalangist colleagues and on the basis of his participating with them in the common purpose of engaging in the slaughter of the occupants of the Sabra/Shatilla camps, regardless of whether or not those occupants were PLO combatants or non-combatant men, women and children.'*

15 On this basis, the AAT was satisfied that, by reason of the operation of art 1F of the Convention, the appellant was not a person to whom Australia had protection obligations.

The primary judge's reasons

16 At the outset of his reasons for judgment, the primary judge described the application before him as one 'for an extension of time in which to seek an order for review of the decision of' the AAT. After setting out part of art 1F of the Convention, summarising the AAT's reasons for decision, and quoting the AAT's conclusions at [49] of its reasons, the primary judge said at [10] – [11]:

> *'The Tribunal's reasons are detailed and carefully expressed. I have read them several times and I do not think there is sufficient prospect at their being disturbed on review to justify granting an extension of time. The grounds contained in the draft application for review are not particularised, and although apparently drafted by a lawyer, bear no relationship to the facts of the case or to the decision of the Tribunal.*
>
> *The applicant has also filed a notice of appeal from the Tribunal's decision. Provision is made by section 44 of the Administrative Appeals Tribunal Act 1975 for an appeal to this court on a question of law from a decision of the Tribunal. However, section 485 [*His Honour appears to have

> intended to refer to s 483*] of the* Migration Act *provides that section 44 does not apply to a privative clause decision. The Tribunal's decision is a privative clause decision within section 474 of the* Migration Act*, there being no jurisdictional error identified, and accordingly the appeal is incompetent.'*

The question to be determined

17 The form the proceeding before the primary judge took was clearly that of an application for extension of time to file a notice of appeal from the AAT's decision. Section 44(1) of the *Administrative Appeals Tribunal Act 1975* (Cth) ('the AAT Act') provides for an appeal from a decision of the AAT to this Court on a question of law. Section 44(2A) of the AAT Act provides for a time limit on the filing of such a notice of appeal, of 28 days from the receipt by the person seeking to appeal of written notification of the AAT's reasons. There is also a power for the Court to allow further time. By his application filed on 4 April 2005, the appellant sought the exercise of the power to allow further time.

18 Before the primary judge was an affidavit, in which the appellant sought to explain the delay in filing a notice of appeal (a delay of about three weeks after the expiration of the time limit), by reference to: his lack of legal advice; his ignorance of the time limit; his lack of financial resources; and his residence in a small rural town, some distance from Melbourne. The primary judge did not refer to the contents of this affidavit. This suggests that, if his Honour had found that the appellant's proposed appeal from the decision of the AAT had a prospect of success, his Honour would not have regarded the delay as of any great significance. Before this Court, counsel for the Minister conceded that the appellant's success or failure depended upon his ability to show that he had a prospect of success.

19 Section 483 of the Migration Act provides that s 44 of the AAT Act does not apply to a privative clause decision. The phrase 'privative clause decision' is defined in s 474(2) of the Migration Act. Relevantly, a privative clause decision is 'a decision of an administrative character made...under this Act'. It is now established that jurisdictional error on the part of the decision-maker will cause the resulting decision not to be a decision made under the Migration Act, for the purposes of the definition of 'privative clause decision'. If there were

jurisdictional error, therefore, the AAT's decision would not be a 'privative clause decision', and s 483 of the Migration Act would not operate to exclude the operation of s 44 of the AAT Act. Subject to being granted an extension of the time limit fixed by s 44(2A) of the AAT Act, the appellant would have had the right to appeal from the AAT's decision to the Court on a question of law. Coincidentally, if there had been jurisdictional error on the part of the AAT, the appellant would also have had the right to apply to the Court for relief in respect of the AAT's decision, in the exercise of the jurisdiction conferred on the Court by s 39B of the Judiciary Act (although the existence of a right to appeal on a question of law might be relevant to the exercise of discretion, when the Court came to consider whether to grant relief – compare *Tuite v Administrative Appeals Tribunal* (1993) 40 FCR 483 at 484, quoted by Gray ACJ and North J in *Clements v Independent Indigenous Advisory Committee* [2003] FCAFC 143 (2003) 131 FCR 28 at [3]). In that event, the time limit for such an application, fixed by s 477(1) of the Migration Act (which is also 28 days after notification of the decision) would also be inapplicable, because the time limit is expressed to relate only to an application 'in respect of a privative clause decision'.

20 The question before the primary judge was therefore whether the AAT's decision was the result of jurisdictional error. His Honour plainly determined that question against the appellant. His Honour's conclusion that there was not sufficient prospect of the AAT's reasons being disturbed on review to justify granting an extension of time, and his Honour's further conclusion that the AAT's decision was a privative clause decision for the purposes of s 483 of the Migration Act, make it clear that his Honour was of the view that no jurisdictional error could be detected. His Honour also pointed out that there was no such error identified in the appellant's notice of appeal.

21 The primary judge's order dismissing the application for an extension of time was an interlocutory order. See *Vranic v Commissioner of Taxation* [2002] FCAFC 26 (2002) 67 ALD 798 at [2]. It did not finally determine the rights of the parties, because it would always be open to the appellant to apply again for an extension of time to appeal from the AAT's decision. The characterisation of the order striking out the notice of appeal is more difficult. The order followed a finding that the appeal was incompetent. The better view appears to be that this order was also interlocutory, because his Honour struck out the notice of appeal,

rather than dismissing the appeal. There is little doubt that, subject to questions of time limits, the appellant could have appealed again from the AAT's decision, if he had found some means of demonstrating jurisdictional error on the part of the AAT.

22 On the assumption that the appeal to this Court was from an interlocutory order, the Minister applied by notice of motion, filed on 18 July 2005, to dismiss the appeal to this Court as incompetent, on the basis that leave to appeal was required and had not been sought. Section 24(1A) of the *Federal Court of Australia Act 1976* (Cth) provides that an appeal is not to be brought from an interlocutory judgment of a single judge of the Court unless the Court or a judge gives leave to appeal. By O 52 r 10 of the Federal Court Rules, an application for leave to appeal must be made within seven days of the interlocutory judgment, or within such further time as the Court or a judge may allow. The appellant did not file any application for leave to appeal, either within or without the time limit, notwithstanding that his notice of appeal acknowledged that the judgment of the primary judge was an interlocutory judgment.

23 The appellant appeared before this Court without legal representation, with the assistance of an interpreter and a McKenzie friend, who also addressed the Court on his behalf. It was clear, both from written submissions filed on behalf of the appellant and from what he and his McKenzie friend said on the hearing of the appeal, that the appellant's concern was with the findings of fact that the AAT made against him. It was submitted that, because of the appellant's inability to afford legal representation, the AAT did not have before it enough evidence to know the appellant's full story. The appellant's McKenzie friend even conceded that, having regard to the material that was before the AAT, the correctness of the AAT's decision could not be challenged.

24 The Court canvassed with counsel for the Minister possible errors in the AAT's reasons. Essentially, two possible errors were identified.

25 The first question was whether the AAT had erred by applying the wrong test in determining whether there were 'serious reasons for considering' that the appellant had committed one of the crimes referred to in art 1F of the Convention. As it was bound to do, the AAT applied the principle expressed by Weinberg J in *Arquita v Minister for Immigration & Multicultural Affairs* [2000] FCA 1889 (2000) 106 FCR 465 at [54], where his Honour made the point that 'serious reasons for considering' was a standard less than beyond reasonable doubt, and less than the balance of probabilities, but said that the expression was properly translated as requiring 'strong' evidence. It might be considered undesirable to interpret the 'serious reasons for considering' test, found in an international instrument, by reference to standards of proof required for different purposes in the legal systems of some, but by no means all, countries which are parties to that instrument. It might also be thought to be undesirable to substitute for the words of art 1F of the Convention other words that do not express the nature of the test with any greater precision, and might mislead a decision-maker into searching for particular items of evidence, rather than examining the evidence as a whole. These issues need not be pursued in the present case, however. At [26] of its reasons for decision, the AAT expressly found that there was 'a high probability that the applicant was engaged directly in the slaughter of civilians during the Sabra/Shatilla massacre.' It thus applied a standard significantly higher than the requirement for serious reasons. Indeed, the AAT expressed its finding that there were serious reasons for considering that the appellant was directly and willingly involved in the massacre as being only necessary if it were wrong in reaching positive conclusions.

26 The other question canvassed was whether the AAT erred in determining whether what it found the appellant had done involved a crime against peace, a war crime or a crime against humanity, by referring to the international instruments coming into effect well after the Sabra/Shatilla massacre in 1982. When it came to examine what were 'international instruments drawn up to make provisions in respect of such crimes', the AAT referred to the Charter of the International Military Tribunal at Nuremberg (which antedated the 1982 massacre), the Rome Statute of the International Criminal Court and the statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda respectively. The last three documents came into operation well after 1982. It might be thought that the use of subsequent instruments to determine whether the appellant's acts involved criminality of the required kind gave retrospective operation to those instruments. Counsel for the Minister

contended that each of those three instruments was intended to be utilised in the investigation and punishment of acts committed before the instrument came into existence, so that each must be regarded as declaratory of customary international law. Again, this issue need not be determined in the present case. The AAT accepted a submission, made on behalf of the Minister, that the mass murder of innocent civilians during a period of armed conflict satisfied the definition of war crime in the Charter of the International Military Tribunal at Nuremberg. Because the AAT found that the appellant was engaged directly in the slaughter of civilians during the massacre, it found that he had committed a war crime, within the meaning of art 1F(a) of the Convention. The AAT also accepted a submission, made on behalf of the Minister, following *Singh v Minister for Immigration & Multicultural Affairs* [2000] FCA 1125 (2000) 102 FCR 51, that the appellant had committed a serious non-political crime, within the meaning of art 1F(b) of the Convention. The AAT considered whether the defences of following orders and of duress were available to the appellant. In doing so, it applied the three subsequent instruments, in effect, in the appellant's favour, by investigating whether they provided him with any defence in respect of his actions. It found that no defence recognised by those instruments was available to the appellant. It is clear that, if the AAT had not mentioned the three subsequent instruments, it would still have found that the appellant was disqualified by art 1F of the Convention from being entitled to a protection visa.

27 The manner in which the AAT set out its conclusions, at [49] of its reasons, makes plain that the AAT's primary finding was that, on the balance of probabilities, the appellant committed war crimes, crimes against humanity and serious non-political crimes by his personal participation in the massacre of civilians at the Sabra and Shatilla camps. The remaining conclusions are expressed to be alternative or additional to this primary conclusion. The primary conclusion itself was sufficient for the appellant to be disqualified by art 1F of the Convention. Even if the AAT were in error in either of the ways suggested above, any such error did not affect the exercise of its statutory function. Any such error was not, therefore, a jurisdictional error. The AAT's decision remains a 'privative clause decision', within the meaning of s 474(2) of the Migration Act. Section 474(1) therefore has the effect of preventing any challenge by the appellant to the decision, invoking the exercise of the jurisdiction conferred on this Court by s 39B of the Judiciary Act. Section 483 of the

Migration Act also deprives the appellant of any right to appeal under s 44(1) of the AAT Act. The primary judge was correct to reach both of these conclusions.

Conclusion

28 Counsel for the Minister contended that, if the Court were of the view that there was no jurisdictional error associated with the decision of the AAT, it would be appropriate for the Court to refuse the appellant an extension of time within which to apply for leave to appeal from the judgment of the primary judge. Alternatively, the Court could grant the extension of time and refuse the appellant leave to appeal, on the basis that an appeal had no prospect of success. In the circumstances, the second option appears preferable. The appellant is obviously unaware of the technical distinction between an interlocutory judgment and a final judgment. It is not an easy distinction, even for lawyers. Through lack of financial resources, he is unable to be represented by a lawyer. Not only was the Minister not prejudiced by any delay in applying for leave to appeal, her counsel was content to argue the central issue of jurisdictional error. The Court should therefore order that the time within which the appellant could apply for leave to appeal should be extended, so as to enable him to apply on the day of hearing.

29 The appellant's application for leave to appeal, and his purported appeal, must be dismissed. There is plainly no prospect of an appeal succeeding, in the light of the conclusions expressed above.

30 No reason was advanced, and none appears, why the usual rule, that costs follow the event, should not be applied. The appellant will therefore be ordered to pay the Minister's costs.

I certify that the preceding thirty (30) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Gray.

Associate:

Dated: 16 March 2006

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VICTORIA DISTRICT REGISTRY **VID 361 OF 2005**

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BETWEEN:	**VWYJ** **APPELLANT**
AND:	**MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS** **RESPONDENT**
JUDGE:	**GRAY, KIEFEL AND LANDER JJ**
DATE:	**16 MARCH 2006**
PLACE:	**MELBOURNE**

REASONS FOR JUDGMENT

KIEFEL J:

31 I agree with the reasons of Gray J and with the orders his Honour proposes.

I certify that the preceding one (1) numbered paragraph is a true copy of the Reasons for Judgment herein of the Honourable Justice Kiefel.

Associate: 

Dated: 16 March 2006

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JUDGE:	**GRAY, KIEFEL and LANDER JJ**
DATE:	**16 MARCH 2006**
PLACE:	**MELBOURNE**

REASONS FOR JUDGMENT

LANDER J:

32 I agree with Gray J's reasons and the orders which he proposes.

33 I agree that this Court does not need to address the test proposed by Weinberg J in *Arquita v Minister for Immigration and Multicultural Affairs* (2000) 106 FCR 465 at [54] because of the finding made by the AAT at [26] of the AAT reasons.

I certify that the preceding two (2) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Lander.

Associate:

Dated: 16 March 2006

Counsel for the appellant:	The appellant appeared in person
Counsel for the respondent:	S Donaghue
Solicitor for the respondent:	Australian Government Solicitor
Date of Hearing:	16 November 2005
Date of Judgment:	16 March 2006