



Federal Court of Australia  
District Registry: New South Wales  
Division: General

No: NSD1489/2018

**BHC16**  
Applicant

**MINISTER FOR IMMIGRATION AND BORDER PROTECTION** and another/others  
named in the schedule  
Respondent

### **ORDER**

**JUDGE:** JUSTICE STEWART

**DATE OF ORDER:** 18 February 2020

**WHERE MADE:** Sydney

#### **BY CONSENT, THE COURT ORDERS THAT:**

1. The name of the first respondent be changed to Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs.
2. The appeal be allowed.
3. The orders of the Federal Circuit Court dated 22 June 2018 be set aside and in lieu thereof it be ordered that:
  - a. A writ of certiorari issue directed to the second respondent quashing the decision of the second respondent dated 9 May 2016.
  - b. A writ of mandamus issue directed to the second respondent requiring it to determine the application made to it for review of the decision of a delegate of the first respondent dated 18 September 2014 according to the law.
  - c. There be no order as to costs.
4. The first respondent is to pay the costs of the appellant, as agreed or taxed.

#### **THE COURT NOTES THAT:**

The first respondent accepts that the second respondent fell into jurisdictional error because it failed to give “proper, genuine and realistic consideration” (see *BZD17 v Minister for Immigration and Border Protection* (2018) 263 FCR 292 at [46], [50]) to the four third-party



witness statements (**AB 73, 76, 80 and 152**) provided by the appellant (**AB 291**, [58]). The third-party statements were evidence that went to a matter (the appellant's alleged homosexuality) that founded the second respondent's rejection of the appellant's claims (*Minister for Immigration and Citizenship v SZRKT* [2013] FCA 317 [119]).

**Date that entry is stamped: 18 February 2020**

*Sia Lagos*  
Registrar



**Schedule**

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Second Respondent      ADMINISTRATIVE APPEALS TRIBUNAL