



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD409/2022

JFPT

Applicant

**MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL
AFFAIRS** and another named in the schedule

Respondent

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 21 May 2024

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. A writ of certiorari issue directed to the second respondent quashing its decision made on 28 April 2022.
2. A writ of mandamus issue directed to the second respondent requiring it to determine according to law the application made to it for review of the decision of a delegate of the first respondent made on 15 February 2022.
3. The first respondent pay the applicant's costs as agreed or assessed.
4. The hearing listed at 10:15am on 22 May 2024 be vacated.

AND THE COURT NOTES THAT:

5. The first respondent accepts that the decision of the second respondent dated 28 April 2022 is affected by jurisdictional error as:
 - (a) the second respondent had regard to three offences for which the applicant was sentenced on 11 March 1976 and one offence for which the applicant was sentenced on 11 February 1982 (**Offences**) when the Children's Court did not proceed to a finding of guilt in respect of the Offences pursuant to s 83(3) of the *Child Welfare Act 1939* (NSW) (**State Act**);



- (b) s 83(3) of the State Act engaged s 85ZR(2) of the *Crimes Act 1914* (Cth) (**Crimes Act**) (*Lesianawai v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 6; (2024) ALJR 475);
- (c) accordingly, the facts that the applicant had been charged with, found guilty of, and sentenced in respect of, the Offences were irrelevant considerations by reason of ss 85ZR(2) and 85ZS(1)(d) of the Crimes Act, and the Tribunal erred by taking those facts into account; and
- (d) that error was material as, absent the error, the decision that was made by the second respondent could realistically have been different (*LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12 (at [14]–[16])).

Date that entry is stamped: 21 May 2024

Sia Lagos
Registrar



Schedule

No: NSD409/2022

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Respondent ADMINISTRATIVE APPEALS TRIBUNAL