FEDERAL COURT OF AUSTRALIA

Minister for Immigration and Border Protection v Tran [2015] FCA 546

Citation:	Minister for Immigration and Border Protection v Tran [2015] FCA 546
Appeal from:	Trang Tran and Minister for Immigration and Border Protection [2014] AATA 957
Parties:	**MINISTER FOR IMMIGRATION AND BORDER PROTECTION v TRANG TRAN**
File number:	NSD 58 of 2015
Judge:	**JAGOT J**
Date of judgment:	4 June 2015
Catchwords:	**MIGRATION** – close and continuing association with Australia – decision-maker's discretion under s 22(9) of the *Australian Citizenship Act 2007* (Cth)
Legislation:	*Administrative Appeals Tribunal Act 1975* (Cth) s 44(1) *Australian Citizenship Act 2007* (Cth) ss 21, 22(9), 24 Explanatory Memorandum, Australian Citizenship Bill 2005 (Cth)
Cases cited:	*Bat Advocacy NSW Inc v Minister for Environment Protection, Heritage and the Arts* [2011] FCAFC 59; (2011) 180 LGERA 99 *Kumar v Minister for Immigration and Border Protection* [2015] FCA 446 *Sapronov and Minister for Immigration and Citizenship* [2011] AATA 126
Date of hearing:	14 May 2015
Date of last submissions:	25 May 2015
Place:	Sydney
Division:	GENERAL DIVISION
Category:	Catchwords

Number of paragraphs:	30
Counsel for the Appellant:	Mr B O'Donnell
Solicitor for the Appellant:	Sparke Helmore
Counsel for the Respondent:	Mr G Kennett SC and Mr J Donnelly
Solicitor for the Respondent:	Kyu & Young Lawyers

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
GENERAL DIVISION **NSD 58 of 2015**

ON APPEAL FROM THE ADMINISTRATIVE APPEALS TRIBUNAL

BETWEEN:	**MINISTER FOR IMMIGRATION AND BORDER PROTECTION** **Appellant**
AND:	**TRANG TRAN** **Respondent**

JUDGE:	**JAGOT J**
DATE OF ORDER:	**4 JUNE 2015**
WHERE MADE:	**SYDNEY**

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The appellant pay the respondent's costs as agreed or taxed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
GENERAL DIVISION

NSD 58 of 2015

ON APPEAL FROM THE ADMINISTRATIVE APPEALS TRIBUNAL

BETWEEN:	**MINISTER FOR IMMIGRATION AND BORDER PROTECTION** **Appellant**
AND:	**TRANG TRAN** **Respondent**
JUDGE:	**JAGOT J**
DATE:	**4 JUNE 2015**
PLACE:	**SYDNEY**

REASONS FOR JUDGMENT

The appeal

1 This is an appeal on questions of law under s 44(1) of the *Administrative Appeals Tribunal Act 1975* (Cth). On 22 December 2014 the Tribunal made a decision as follows:

> The Tribunal sets aside the decision under review and decides that Ms Tran, having had a *close and continuing association with Australia* as a permanent resident during the four years prior to her application for citizenship, and continuing, should be considered as having been present in Australia during that period in accordance with the discretion provided for in section 22(9) of the *Australian Citizenship Act 2007*.
>
> The Tribunal remits the matter for reconsideration in accordance with the direction that Ms Tran satisfies sections 21(2)(c) and 21(2)(g), of the *Australian Citizenship Act 2007*.

2 The *Australian Citizenship Act 2007* (Cth) (the **Citizenship Act**) enables a person to make an application to the Minister to become a citizen (s 21(1)). A person is eligible to become an Australian citizen if (amongst other things), in accordance with s 21(2)(c), the person "satisfies the general residence requirement", which is set out in s 22.

3 Section 22(1) provides that:

> (1) Subject to this section, for the purposes of section 21 a person satisfies the general residence requirement if:

(a) the person was present in Australia for the period of 4 years immediately before the day the person made the application; and

(b) the person was not present in Australia as an unlawful non-citizen at any time during that 4 year period; and

(c) the person was present in Australia as a permanent resident for the period of 12 months immediately before the day the person made the application.

4 By s 22(9):

> If the person is the spouse, de facto partner or surviving spouse or de facto partner of an Australian citizen at the time the person made the application, the Minister may treat a period as one in which the person was present in Australia as a permanent resident if:
>
> (a) the person was a spouse or de facto partner of that Australian citizen during that period; and
>
> (b) the person was not present in Australia during that period; and
>
> (c) the person was a permanent resident during that period; and
>
> (d) the Minister is satisfied that the person had a close and continuing association with Australia during that period.

5 Section 24 of the Citizenship Act provides that:

> (1) If a person makes an application under section 21, the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen.
>
> ...
>
> (1A) The Minister must not approve the person becoming an Australian citizen unless the person is eligible to become an Australian citizen under subsection 21(2), (3), (4), (5), (6), (7) or (8).
>
> (2) The Minister may refuse to approve the person becoming an Australian citizen despite the person being eligible to become an Australian citizen under subsection 21(2), (3), (4), (5), (6) or (7).
>
> ...

6 It is common ground that by its decision on 22 December 2014 the Tribunal exhausted the power under s 22(9), leaving the Minister to make a decision in accordance with s 24 on the basis that the appellant (Ms Tran) is eligible to become an Australian citizen.

7 The Minister contends that in so deciding the Tribunal erred and that the following questions of law arise from the Tribunal's decision which should be determined in the Minister's favour:

1. Whether the following matters are irrelevant considerations to the question whether an applicant for citizenship has a "close and continuing connection with Australia" within the meaning of s 22(9)(d) of the Citizenship Act, such that considering either or both of them would be an error of law:
   (a) the citizenship applicant's contact with the extended family of the applicant's Australian citizen spouse; and
   (b) the citizenship applicant and her Australian citizen spouse's joint assets in Australia.

2. Whether, once the relevant decision-maker is satisfied that an applicant for citizenship who is the spouse of an Australian citizen meets the pre-conditions in paras (a)-(d) of s 22(9) of the Citizenship Act, the decision-maker is obliged to consider separately whether the discretion in the chapeaux of s 22(9) should be exercised in the citizenship applicant's favour.

3. Whether the Tribunal is obliged to consider the relevant Minister's submissions regarding whether, even if the Tribunal is satisfied of the preconditions in paras (a)-(d) of s 22(9) of the Citizenship Act, the discretion in the chapeaux of s 22(9) should be exercised in favour of the relevant citizenship applicant.

Section 22(9)

8 In *Kumar v Minister for Immigration and Border Protection* [2015] FCA 446 (***Kumar***) Edmonds J considered the operation of s 22(9) of the Citizenship Act. His Honour said:

> [20] The discretion reposed in the Minister by s 22(9) is "unconfined" in the sense referred to by the Tribunal at [17] of its reasons: "[T]he Act does not set out criteria that govern the exercise of the discretion". As Dixon J (as his Honour then was) said in *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492 relevantly at 505:
>
> > [T]here is no positive indication of the considerations upon which it is intended that the grant or refusal of consent shall depend. The discretion is, therefore, unconfined except in so far as the subject matter and the scope and purpose of the statutory enactments may enable the Court to pronounce given reasons to be definitely extraneous to any object the legislature could have had in view …
>
> …
>
> [22] …the Tribunal's conclusion at [5] of its reasons that "[s]ection 22(9) offers what amounts to an alternative way of satisfying the general residence requirement in s 21", is undoubtedly correct.
>
> [23] Consistently with that view, if the discretion reposed in the Minister by s 22(9) of the Act is enlivened by an applicant because he or she meets the requirements in (a)–(d) inclusive, the word "may" permits the Minister to consider any matters, either in favour of or against "treat[ing] a period as one in which the person was present in Australia as a permanent resident", provided those matters are not "definitely extraneous to any objects the legislature could have had in view", to use the words of Dixon J in *Browning* in the extract reproduced in [20] above.
>
> [24] My view of the width of the discretion finds support in "the subject matter and

> the scope and purpose of the statutory enactments", to use the words of Dixon J again, that are s 22 of the Act. Accepting for the moment that s 22(9) provides the Minister with a discretion to overcome the failure by a person to meet the presence in Australia requirement of four years in s 22(1)(a), as well as the presence in Australia requirement of 12 months as a permanent resident in s 22(1)(c), there is potentially a very wide range of different circumstances that might come before the Minister, both as to the extent of the failure to meet the presence in Australia requirements of s 22(1)(a) and (c), and the reason or reasons for those failures.

9 I agree with these observations of Edmonds J. The consequences for this appeal are explained below. First, however, the relevant parts of the Tribunal's reasons should be noted.

The Tribunal's reasons

10 The Tribunal correctly identified the issue for decision at [3] and [6] in these terms:

> 3. Ms Tran has exercised her rights to apply for review of [the Minister's] decision to this Tribunal. The application concerns whether the discretion in s 22(9) of the Citizenship Act should be exercised so as to treat any of Ms Tran's periods of absence from Australia, in the four years immediately before she applied for Australian citizenship, as periods in which Ms Tran *was present in Australia as a permanent resident* with the consequence that she satisfies the *general residence requirement* in section 22(1) of the Citizenship Act, and is eligible to become an Australian citizen by conferral under section 21(2) of the Citizenship Act.
>
> ...
>
> 6. The issues for decision by the Tribunal are:
> - whether Ms Tran satisfies the residence criteria at section 21(2)(c) of the Citizenship Act;
> - whether for purposes of section 21(2)(g) of the Citizenship Act, the Applicant is likely to reside in, or continue to reside in Australia, or to maintain a close and continuing association with Australia if the application is approved;
> - whether Ms Tran satisfies the criteria in section 22(9)(a) – (d) of the Citizenship Act; in particular whether Ms Tran had a *close and continuing association with Australia* in the periods in which she was absent from Australia in the four years immediately before the Citizenship Application for the purposes of section 22(9)(d) of the Citizenship Act;
> - whether the discretion in section 22(9) of the Citizenship Act should be exercised to treat any or all of Ms Tran's periods of absence from Australia as a period in which Ms Tran was *present in Australia as a permanent resident.*

11 It is to be noted that in referring to s 22(9) in both paragraphs, the Tribunal described the provision as involving a discretion, the ultimate question being whether the discretion should be exercised or not.

12 The fact that the Tribunal understood s 22(9) to involve a discretion is confirmed by the statement at [11] of the Tribunal's reasons that:

> [s]ection 22(9) of the Act provides for a discretion in some circumstances to treat a period as one in which a person was present in Australia as a permanent resident.

13 There being no issue that s 22(9)(a) to (c) were each satisfied, the Tribunal recorded at [12] that:

> ...the issue is whether Ms Tran had a close and continuing association with Australia during the four years before her application for citizenship (section 22(9)(d)), and, if so, whether the discretion in section 22(9) should be exercised in her favour.

14 This too discloses that the Tribunal understood that if s 22(9)(d) was also satisfied, then the question whether the discretion in s 22(9) should be exercised in Ms Tran's favour remained for decision.

15 The Tribunal set out the background facts at [13] to [20]. Ms Tran's husband worked overseas in the construction industry and his family, including his wife Ms Tran, lived with him overseas. The Tribunal also set out the Minister's position in these terms:

> 19. The Respondent noted that Ms Tran was physically present in Australia for only 38 days and absent for 1,423 days in the four years immediately prior to applying for citizenship on 14 June 2014. Further, that Ms Tran was not present in Australia at all as a permanent resident in the period of 12 months immediately before the date of her application for citizenship on 14 June 2014.
>
> 20. The Respondent indicated that Ms Tran has only spent short periods of time in Australia. Her one long stay was from 22 December 2006 to 28 March 2007.

16 The Tribunal returned to the position of the Minister stating that:

> 33. The Respondent provided a supplementary submission in which he argued that because the discretion in section 22(9) of the Citizenship Act operates as an exception to the *general residence requirement*, it does not prohibit consideration of the length of time a person has been present in Australia in determining whether they have a *close and continuing association with Australia*. The Respondent also submitted that a person's presence in Australia is a relevant consideration for the purpose of deciding whether to exercise the discretion in section 22(9) in a person's favour at the point of making a decision under section 24 of the Act.
>
> 34. The Respondent submitted further, that even if the Applicant is found to have a *close and continuing association with Australia* such that she satisfies section 22(9) of the Citizenship Act, then it will remain open for the Tribunal to refuse to approve the Applicant becoming an Australian citizen despite satisfying section 21(2) of the Citizenship Act. In that regard the Respondent relied upon *Minister for Immigration and Citizenship v Makasa* [2012] FCAFC 166; (2012) 207 FCR 488 at [77], noting also that in *Re Ul Haque and Minister for Immigration and Citizenship* (2013) 139 ALD 376, the Senior Member stated at [50], that: *while physical presence is not determinative, it is none the less highly relevant to the nature of a person's association with Australia.*

17 Having considered the material available to it, the Tribunal expressed its conclusions in these terms:

74. In coming to a conclusion regarding whether Ms Tran meets the test for a *close and continuing association with Australia*, I have taken into account the evidence of Ms Tran, her husband and her friends and relatives, and the submissions of both parties. I am satisfied that:

- Ms Tran worked for the Australian Embassy in Hanoi from 27 December 1995 to 12 March 1999, and gained her initial knowledge and the love of Australia, and Australians, there. She told me she has learnt about Australian culture, and she values the democracy and lifestyle in Australia. She remains in touch with friends from the Australian Embassy.
- She met Mr Dooley there, and married him in 1999 which is some 15 years ago. I respectfully agree with Senior Member Handley that the mere fact of being married to an Australian for a significant time can be considered *an association or connection to Australia* (*Re Kilpi and Minister for Immigration and Citizenship* (2012) 135 ALD 649; [2012] AATA 605). I accept that the only reason why Ms Tran has not resided in Australia is that she has followed her husband all over the world to support and assist him with his life and their children. That weighs strongly in her favour.
- I sense from Ms Tran's evidence that she has great love for Mr Dooley, referring to him as *the love of my life*, and raising three children (two biological children of the couple who are Australian citizens) with him. The adopted child has permanent residence in Australia.
- I am satisfied that Ms Tran has undertaken courses in anticipation of the couple's return to Australia so that she can be employed in real estate. She told me she holds a real estate licence for NSW. She also told me that when they lived in Singapore where her husband was working, she was promoting Australian property.
- I am also satisfied from the evidence that Ms Tran and family will return to Australia by 2016, and move into the house they have purchased as their future residence.
- They jointly own eight properties in Australia, which Ms Tran manages with the assistance of real estate agents she has selected. She arranges for the payment of the outgoings, including rates and taxes. I am mindful of the Respondent's submissions that the holdings are not exclusive to Ms Tran, and that that could mitigate against her in the consideration of whether she has a *close and continuing association with Australia*. However, I do not accept that argument, noting that all the couple's investments are in Australia, that she and the children are economically dependent on Mr Dooley, and that they have no investments elsewhere.
- I accept Ms Tran's argument that the majority of her friends are Australian, that she is close to Mr Dooley's relatives, and accept that she has entered into the spirit of the Australian family, in particular in facilitating the reconciliation between her husband and his father, and the closeness to her mother-in-law and family. It seems to me from the evidence that she is closer to the Australian family than her original family, keeping in touch with them through the available electronic means. In giving weight to this factor, I am mindful of the distinction sought to be made between a *close and continuing association with Australia*, and Australians. I find Ms Tran has both.
- The referees referred to above were unanimous in supporting Ms Tran's application for citizenship on the basis of her close and continuing connection with Australia, the way she brought up her children to be Australians, the contribution she would make to life in Australia.

75. In coming to a decision I have noted the Respondent's view that Ms Tran has not worked or lived in Australia, and that the property and investments she owns are jointly owned with Mr Dooley. As she is currently not in the paid workforce, and is

> at home bringing up the couple's children, she is financially dependent on Mr Dooley. The evidence which I accept is that she manages their financial affairs with Australia. That does not preclude me from considering the eight properties and considerable investments the couple have, as one of the factors going to Ms Tran's *close and continuing association with Australia.*
>
> 76. Having considered all the evidence regarding Ms Tran's connection with Australia, and the application of the factors listed in the Citizenship Instructions, and taking a holistic view of the situation, I am satisfied that Ms Tran had a *close and continuing association with Australia* in the four years immediately before the citizenship application for the purposes of s 22(9)(d) of the Citizenship Act. I am satisfied it is continuing, and that she is looking forward to a return to Australia to live (section 21(2)(g)).
>
> 77. Accordingly I am satisfied that the discretion in section 22(9)(d) of the Citizenship Act should be exercised in Ms Tran's favour to treat all of the periods in which Ms Tran was absent from Australia in the four years before the citizenship application as periods in which she was present in Australia as a permanent resident.

The questions of law

18 It will be apparent that the first question relies on the notion that, in determining whether a person has a close and continuing connection with Australia for the purpose of s 22(9)(d) of the Citizenship Act, the Minister (and the Tribunal) is precluded from considering contact with extended family and joint assets in Australia. As the Minister put it, these two matters are "natural concomitants" of being married to an Australian citizen so that something more than a mere relationship with extended family and joint assets in Australia is required. This was said by the Minister to be a necessary result of any construction of s 22(9) under which the discretion was approached as one to be exercised, if available, unless "strong reasons" existed to do otherwise. This is a reference to a decision of the Tribunal in *Sapronov and Minister for Immigration and Citizenship* [2011] AATA 126 (***Sapronov***) at [64] in which it was said that if the prerequisites to the discretion had been satisfied "then, unless there is some other reason why the discretion ought not be exercised, it should be". The Minister also relied on the Explanatory Memorandum that accompanied the *Australian Citizenship Bill 2005* which became the Citizenship Act, in particular a reference to the expectation that adult citizens should qualify in their own right for citizenship rather than rely on a spousal relationship.

19 I do not find any of the Minister's arguments on this issue persuasive. As Edmonds J found, limits on the discretion in s 22(9) are to be found in the subject matter, the scope and purpose of the Citizenship Act. Nothing in the statutory scheme provides any support for the spurious distinction the Minister sought to draw between the so-called "natural concomitants" of

marriage to an Australian citizen and matters over and above those concomitants. Moreover, it is not apparent why a relationship with extended family and joint assets in Australia would be characterised as "natural concomitants" of marriage to an Australian citizen. The Explanatory Memorandum does not assist because s 22(9) is the exception to the ordinary principle – a person is within the scope of s 22(9) because he or she is the spouse of an Australian citizen.

20 *Sapronov* is neither here nor there. The present Tribunal did not approach the matter on the basis that the approach in *Sapronov* should be applied. It did not refer to *Sapronov*.

21 In any event, the Tribunal's findings about Ms Tran's connection with Australia at [74] can hardly be said to be nothing more than the mere "natural concomitant" of her marriage. Even if the Minister's submissions on this issue held any substance, the Tribunal would not have erred by taking into account the nature and extent of Ms Tran's connections to Australia through her relationship to her extended family and her joint ownership of eight properties in Australia.

22 Accordingly, question 1 should be answered "does not arise", but might also be answered "no".

23 One answer to question 2 is "yes". So much is clear from the terms of s 22(9), the decision in *Kumar*, and the submissions for Ms Tran which accept this to be so. The real issue is whether the question arises on the Tribunal's reasons. The Minister contends that it should be inferred from the Tribunal's reasons that when it came to the exercise of the discretion, the Tribunal failed to have regard to the Minister's principal, indeed only, contention as to why the discretion should not be exercised – the length of time which Ms Tran had been outside Australia (as stated at [19] – "Ms Tran was physically present in Australia for only 38 days and absent for 1,423 days in the four years immediately prior to applying for citizenship on 14 June 2014"). In particular, given that this was the Minister's sole contention, the Minister submitted that it would be expected that if the Tribunal had turned its mind to the exercise of the discretion the Tribunal would refer to this contention. Instead, the Tribunal moved immediately from a finding of close and continuing connection in [76] to a state of satisfaction that the discretion should be exercised in [77], the only linking word being "Accordingly" at the beginning of [77]. This, said the Minister, showed a failure to consider exercising the discretion at all.

24 I disagree. I do not accept that it can or should be inferred that the Tribunal failed to consider exercising the discretion, in fact failed to exercise the discretion, or that the Tribunal, in so doing, overlooked the Minister's sole contention against the exercise of the discretion. First, reasons are to be read as a whole. Second, reasons are to be read fairly. Third, reasons are not to be read as if each paragraph is self-contained and necessarily sequential. With these matters in mind, the following further observations can be made:

- That the Tribunal understood that it had a discretion to exercise (if satisfied as to each of the matters in s 22(9)(a) to (d)) is obvious from the many references to the existence of that discretion (see [3], [6], [11], [12], [33], [39], [77]). Moreover, when it came to make its decision at [77] the Tribunal said it was satisfied the discretion in s 22(9) should be exercised in Ms Tran's favour.
- That the Tribunal understood the Minister's position to be that Ms Tran had spent too long outside Australia compared to the time she had spent in Australia over the four year period before she made her application is also obvious. The Tribunal referred to that contention at [19] and [20]. More importantly, it referred to it again at [75] when the Tribunal said "[i]n coming to a decision I have noted the Respondent's view that Ms Tran has not worked or lived in Australia, and that the property and investments she owns are jointly owned with Mr Dooley".

25 The Minister's case seems to be that [74] to [77] of the Tribunal's reasons must be read as strictly self-contained sequential pods of reasoning. The consequence of this (erroneous) approach to the Tribunal's reasons is that [74] to [76] are to be read as dealing solely with the s 22(9)(d) issue of close and continuing connection and [77] is to be read as dealing solely with the exercise of the discretion. Further, so the argument goes, because [77] begins with "Accordingly" it must be inferred that the Tribunal decided it had to exercise the discretion in Ms Tran's favour merely because s 22(9)(a) to (d) were satisfied, with the necessary consequence being that the Tribunal failed to consider the point the Minister had been making about the length of time also being relevant to the discretion. For the reasons given above, this is not a legitimate approach to the reasons of the Tribunal. Further, given the nature of the discretion in this case, which leaves it to the Tribunal to identify for itself relevant matters (provided it does not stray into matters prohibited from consideration by necessary implication from the statutory provisions), it cannot be said that the Tribunal failed to give "active intellectual consideration" to the discretion. This is not a case where, as in

Bat Advocacy NSW Inc v Minister for Environment Protection, Heritage and the Arts [2011] FCAFC 59; (2011) 180 LGERA 99 at [44]-[45], the statute prescribes matters that must be considered in the exercise of the discretion. Even if the relative length of time outside Australia was a mandatory consideration, the Tribunal actively engaged with that issue at [75] of its reasons.

26 In summary, I disagree with every step in the Minister's analysis. The Tribunal's reasons should not be read as contended for by the Minister. The factors relevant to s 22(9)(a) to (d), particularly s 22(9)(d), are potentially relevant also to the discretion which remains to be exercised. The Tribunal recognised this when it expressly referred to the Minister's submission about the length of time Ms Tran had been outside Australia at [75]. It is not to be inferred that, having expressly dealt with that issue at [75] in the context of the issue of close and continuing connection with Australia, the Tribunal immediately forgot about the same issue at [77] when it came to the exercise of the discretion. By "Accordingly", the Tribunal must be understood as saying nothing more than having regard to everything considered up to that point, which expressly included the Minister's contention about the relative length of time Ms Tran had spent within and outside Australia, the discretion was to be exercised in favour of Ms Tran. I also note that any ambiguity in [33] of the Tribunal's reasons is a result of the Minister's submissions. The Tribunal cannot be read as saying in [33] that the Minister's submission was irrelevant to or should not be considered in respect of the discretion in s 22(9).

27 Question 2 should therefore be answered "Yes, but the question does not arise in this case".

28 Question 3 also does not arise. It assumes that the Tribunal failed to consider the Minister's submission. As set out above, the Tribunal did not so fail as its reasons disclose at [19], [20], [33] and [75].

29 For these reasons it is unnecessary to resolve the debate between the parties about whether the relative length of time a person has been within and outside Australia over the relevant four year period before the application was made is a mandatory or merely permissible consideration. It is necessary to say that, insofar as it was submitted for Ms Tran in the alternative that this was an irrelevant or prohibited consideration, I disagree. Again, nothing in the statutory scheme would support that conclusion. What is decisive in the present case is that the Tribunal acted on the proper basis that it had a discretion to exercise if satisfied that the requirements of s 22(9)(a) to (d) had been met, considered the only contention the

Minister had put against a favourable exercise of the discretion in Ms Tran's favour, and then exercised the discretion as a result. In so doing, no question of law arises as alleged by the Minister.

30 It follows that the appeal must be dismissed.

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

Associate: 

Dated: 4 June 2015