



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD571/2022

**SINING PENG**

Applicant

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

Respondent

### **ORDER**

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 8 March 2023

**WHERE MADE:** Sydney

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

1. The name of the first respondent be amended to 'Minister for Immigration, Citizenship and Multicultural Affairs'.
2. A writ in the nature of certiorari issue directed to the second respondent quashing its decision dated 21 June 2022 (2022/2946).
3. A writ in the nature of mandamus issue directed to the second respondent requiring it to determine according to law the review of the decision of the delegate of the first respondent, dated 1 April 2022.
4. The first respondent pays the applicant's costs as agreed or assessed.



**BY CONSENT, THE COURT NOTES THAT:**

5. The first respondent concedes that the decision of the second respondent (**Tribunal**) is affected by jurisdictional error. The Tribunal denied the applicant procedural fairness in breach of s 39 of the *Administrative Appeals Tribunal Act 1975* (Cth). Specifically, as follows:
- (a) The applicant sought to call his stepdaughter to give oral evidence at the hearing.
  - (b) The Tribunal informed the applicant that he was not able to call his stepdaughter to give oral evidence at the hearing because she had not supplied a written statement: transcript annexed to the affidavit of Ziaulah Zarifi dated 15 February 2023, page 16 of the affidavit.
  - (c) That statement by the Tribunal was incorrect; there are letters from the stepdaughter which are in evidence at AB 526–530. They were submitted by the applicant to the first respondent's Department in support of the applicant's request for revocation of the cancellation of his visa.
  - (d) The Tribunal's error denied the applicant the opportunity to call his stepdaughter to give oral evidence at the hearing.
  - (e) The Tribunal's error was material and therefore jurisdictional.

Date that entry is stamped: 8 March 2023

  
Registrar



**Schedule**

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Second Respondent      ADMINISTRATIVE APPEALS TRIBUNAL