



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD 908 of 2022

GJRR

Applicant

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

Respondent

ORDER

JUDGE: JUSTICE BROMWICH

DATE OF ORDER: 21 March 2024

WHERE MADE: Sydney

BY CONSENT, THE COURT ORDERS THAT:

1. A writ in the nature of certiorari be issued directing the second respondent to quash its decision dated 15 September 2022.
2. A writ in the nature of mandamus be issued directing the second respondent to determine according to law the application made to it for review of a decision of a delegate of the first respondent dated 22 June 2022.
3. The first respondent pay the applicant's costs fixed in the amount of \$10,000.

BY CONSENT, THE COURT NOTES THAT:

1. The first respondent concedes that the decision of the second respondent is affected by jurisdictional error on the basis that it took into account an irrelevant consideration: *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Thornton* [2023] HCA 17; 97 ALJR 488 at [36], [73]-[74]; *Lesianawai v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 6 (*Lesianawai*) at [1]-[4], [35], [44]-[46].
2. At [83] of its reasons, the second respondent found that "*GJRR began her criminal offending in 2003, aged 13, two years after arriving in Australia. Six of her offences*



were committed as a minor between 2003 and 2005 and included robbery, larceny and assault occasioning actual bodily harm” (footnotes omitted). At [90] of its reasons, the second respondent found that “*there is a trend of increasing seriousness in GJRR’s offending, exhibited by her convictions as a child for robbery, larceny and assault occasioning actual bodily harm*”. The second respondent was precluded from taking those convictions into account, or the fact that the applicant had been charged with the offences resulting in those convictions, by the operation of ss 85ZR(2) and 85ZS(1)(d)(ii) of the *Crimes Act 1914* (Cth): *Lesianawai* at [44]-[46]. In so doing, the second respondent took into account an irrelevant consideration.

3. The first respondent concedes that the second respondent’s error was material to its decision in that there is a realistic possibility that the decision that was made could realistically have been different had the error not been made: *MZAPC v Minister for Immigration and Border Protection* [2021] HCA 17; 273 CLR 506 at [2].

Date that entry is stamped: 21 March 2024


Registrar



Schedule

No: NSD908/2022

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Second Respondent ADMINISTRATIVE APPEALS TRIBUNAL