

FEDERAL COURT OF AUSTRALIA

EIC20 v Minister for Immigration and Citizenship [2026] FCA 1338

Appeal from: *EIC20 v Minister for Immigration and Citizenship* [2025] FedCFamC2G 2117

File number: VID 45 of 2026

Judgment of: **MOSHINSKY J**

Date of judgment: 11 September 2026

Catchwords: **MIGRATION** – protection visa – appeal from Federal Circuit and Family Court of Australia – whether Tribunal decision affected by jurisdictional error – whether Tribunal failed to lawfully consider representations made by the appellant’s mother and brother – whether Tribunal made illogical or irrational findings about their evidence – appeal dismissed

Legislation: *Migration Act 1958* (Cth), s 501CA

Cases cited: *Djokovic v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 3; 289 FCR 21
LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2024] HCA 12; 280 CLR 321
Minister for Immigration and Citizenship v SZMDS [2010] HCA 16; 240 CLR 611
Minister for Immigration and Ethnic Affairs v Wu Shan Liang [1996] HCA 6; 185 CLR 259
Plaintiff M1/2021 v Minister for Home Affairs [2022] HCA 17; 275 CLR 582

Division: General Division

Registry: Victoria

National Practice Area: Administrative and Constitutional Law and Human Rights

Number of paragraphs: 32

Date of hearing: 3 August 2026

Counsel for the Appellant: Dr J Donnelly

Solicitor for the Appellant: Zarifi Lawyers

Counsel for the First Respondent: Mr JP Lessing

Solicitor for the First Respondent: Clayton Utz

Solicitor for the Second Respondent: The Second Respondent filed a submitting notice, save as to costs

ORDERS

VID 45 of 2026

BETWEEN: **EIC20**
Appellant

AND: **MINISTER FOR IMMIGRATION AND CITIZENSHIP**
First Respondent

ADMINISTRATIVE REVIEW TRIBUNAL
Second Respondent

ORDER MADE BY: MOSHINSKY J

DATE OF ORDER: 11 SEPTEMBER 2026

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The appellant pay the first respondent's costs of the appeal, to be determined on a lump sum basis.
3. By 4.00 pm on 2 October 2026, the parties file any agreed proposed minute of orders fixing the amount of the first respondent's costs.
4. In the absence of agreement:
 - (a) By 4.00 pm on 16 October 2026, the first respondent file and serve a Costs Summary in accordance with paragraphs 4.10 to 4.12 of the Court's *Costs Practice Note (GPN-COSTS)* (**Practice Note**).
 - (b) By 4.00 pm on 30 October 2026, the appellant file and serve a Costs Response in accordance with paragraphs 4.13 and 4.14 of the Practice Note.
 - (c) The amount of the lump sum of the first respondent's costs of the proceeding be determined by a Registrar of the Court.

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

REASONS FOR JUDGMENT

MOSHINSKY J:

Introduction

1 The appellant, who is a citizen of Burkina Faso, appeals from a judgment of the Federal Circuit and Family Court of Australia (the **FCFC**) dismissing an application for judicial review of a decision of the Administrative Appeals Tribunal (the **Tribunal**): *EIC20 v Minister for Immigration and Citizenship* [2025] FedCFamC2G 2117 (the **Reasons**).

2 The matter has a long procedural history, which is summarised at [5]-[8] of the Reasons. In brief summary:

- (a) On 22 August 2019, the appellant (while incarcerated for a serious criminal offence) made an application for a protection visa. (This was his second application for such a visa.)
- (b) On 9 March 2020, a delegate of the Minister for Home Affairs refused the application for a protection visa.
- (c) The appellant applied to the Tribunal for merits review of the delegate’s decision. The Tribunal affirmed the delegate’s decision, but the Tribunal’s decision was subsequently set aside by this Court: *EIC20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 1000.
- (d) On 7 September 2023, the Tribunal (differently constituted) affirmed the delegate’s decision (the **Tribunal Decision**).
- (e) The appellant applied to the FCFC for judicial review of the Tribunal Decision.
- (f) On 19 December 2025, the primary judge dismissed the application for judicial review.

3 In his notice of appeal dated 19 January 2026 the appellant relies on a single ground, which is as follows (omitting particulars):

The learned primary judge erred in finding that the Second Respondent (“**Tribunal**”) did not fall into jurisdictional error by failing to lawfully consider representations made by the appellant’s mother and brother or in making illogical or irrational findings about their evidence.

4 Although this is a single ground, it is apparent that the appellant puts his contention that the Tribunal fell into jurisdictional error in two alternative ways. The first alternative is that the Tribunal *failed to consider* representations made by the appellant’s mother and brother. The

second alternative is that the Tribunal's findings about the mother's evidence and the brother's evidence were illogical or irrational. In oral submissions, more emphasis was given to the second alternative.

For the reasons that follow, I have concluded that the ground of appeal is not made out. Accordingly, the appeal is to be dismissed.

The Tribunal Decision

The Tribunal's reasons are lengthy, comprising 159 paragraphs over 28 pages (excluding an attachment).

The Tribunal's reasons are summarised at [28]-[33] of the Reasons. I adopt that summary of the Tribunal's reasons.

For present purposes, [86]-[87] of the Tribunal's reasons are particularly important:

86. The Tribunal has carefully considered the oral and documentary evidence of the applicant and his mother and brother and the support letter from [the applicant's friend] which, if accepted, would appear to corroborate the applicant's claims of being a student activist who was targeted, detained and tortured for reason of his political activities by the Burkina Faso authorities in or about 1995 or 1996. While that evidence was scheduled to be given by video link from Burkina Faso in part so that the witnesses could show identity documents to the Tribunal, as noted above the witnesses experienced technical difficulties joining the video call and so their evidence was taken by telephone. The Tribunal records that it accepts the identity of those witnesses, each of whom provided copies of their identity documents to the Tribunal prior to the 2 August 2023 hearing.

87. While the Tribunal accepts that the evidence of the applicant's mother and brother was given out of a genuine and natural desire to assist the applicant who is a close family member, it does not accept that the events described by those witnesses ever occurred. Nor does it accept that the events described in [the applicant's friend's] letter occurred as stated. This is because the Tribunal's concerns about the credibility of the applicant are so significant that the witnesses' evidence does not assuage them.

As discussed below, the appellant submits that the Tribunal's reasoning in the last sentence of the above passage was circular and illogical. In brief summary, the appellant submits that it was illogical for the Tribunal to reject the mother's evidence and the brother's evidence on the basis of the Tribunal's concerns about the appellant's evidence.

I will refer to other aspects of the Tribunal's reasons later in these reasons.

The primary judge's reasons

- 11 In the proceeding in the FCFC, the appellant relied on three grounds of review. Grounds 2 and 3 are not taken further on appeal and can be put to one side. Ground 1 (set out immediately before [56] of the Reasons) corresponds to ground 1 in the notice of appeal, save that ground 1 in the FCFC proceeding referred to the appellant's *friend's* evidence, in addition to the evidence of the appellant's mother and brother. On appeal, the appellant's ground of appeal is confined to the evidence of the appellant's *mother and brother*. Although the appellant's written submissions for the appeal (dated 9 July 2026) refer to the appellant's friend's evidence, counsel for the appellant confirmed during the appeal hearing that the appellant's appeal ground is confined to the evidence of the mother and brother (T3).
- 12 The primary judge dealt with ground 1 at [56]-[67] of the Reasons.
- 13 The primary judge did not agree with the submission that the Tribunal failed to consider representations made by the appellant's mother, brother and friend: see Reasons at [58]. The primary judge referred to many paragraphs in the Tribunal's reasons where their evidence had been referred to and discussed. The primary judge stated at [59]: "Clearly, the ... Tribunal considered the nature, content and quality of the corroborating evidence; this evidence was simply not persuasive".
- 14 At [61], the primary judge said that it was true that the Tribunal had not put to the appellant's mother or brother its belief that the evidence they had provided at the hearing had been fabricated (noting that this much was conceded by the Minister). The primary judge then reasoned at [62]-[65]:
- 62 Despite this, in all the circumstances, the evidence of the corroborating witnesses was limited, weak and did nothing to bolster the Applicant's evidence. Therefore it is difficult to envisage how this evidence could have materially affected the Tribunal's findings. Moreover, as was noted by the Tribunal, this evidence had been supplied by individuals with a "genuine and natural desire to assist the applicant". For these reasons, this Court does not accept the contention that "[t]he underlying reason... [for] its implicit credibility findings about the mother, brother and friend... [were] its concerns about" the Applicant's own credibility. In light of the deficiencies in this evidence enumerated above, it was not illogical or irrational to find that the "Tribunal's concerns about the credibility of the applicant [were] so significant" that the witnesses' evidence could "not assuage them".
- 63 In any case—as the quote from McHugh J [in *Re Minister for Immigration & Multicultural Affairs; Ex parte Durairajasingham* [2000] HCA 1; 168 ALR 407 at [65] and [67]] highlights—there was no obligation on the Tribunal to provide detailed reasons as to why the witness statements were not accorded weight or indeed, (implicitly) discredited. As the *FEL19* [v *Minister for*

Immigration and Citizenship [2025] FCA 1402] passage (reproduced at [53]) makes clear, this was particularly the case because the issues in the quality of these statements lessened the extent to which the member was expected to engage with them, and the way in which they contributed to and complicated the matter’s overarching factual matrix.

64 Ultimately, the Applicant had—at the time of the Tribunal decision—so significantly poisoned his own well through his complete lack of any credibility, that the evidence of his witnesses could not save him. The ... Tribunal properly considered the totality of the evidence and performed the requisite assessment of the evidence of the corroborating witnesses. That is clear from a complete reading of the ... Tribunal’s decision.

65 The reasons of the ... Tribunal must be read fairly. When that is done, all the statements and findings made by the ... Tribunal about the poor quality of the evidence of the corroborating witnesses were open to it and logically explain how it treated their evidence. The conclusion of the ... Tribunal that its “concerns about the credibility of the Applicant are so significant that the witnesses’ evidence does not assuage them” was rational. It was certainly not a decision that no other decision maker could make.

(Footnotes omitted.)

15 The primary judge therefore concluded that ground 1 was not made out. The primary judge also rejected grounds 2 and 3. It followed that the application for judicial review was dismissed.

The appeal

16 The appellant appeals from the judgment of the primary judge. The appellant’s ground of appeal has been set out in the Introduction to these reasons.

Consideration

17 The appellant submits that the primary judge erred in concluding that the Tribunal lawfully dealt with the evidence of the appellant’s mother and brother. The appellant notes that the Tribunal accepted that, if accepted, the evidence of the appellant’s mother and brother would appear to corroborate the appellant’s claim that he had been a student activist who was targeted, detained and tortured by the Burkina Faso authorities in or about 1995 or 1996: Tribunal’s reasons at [86]. The appellant submits that the Tribunal then rejected that evidence, not because it made any independent finding that the witnesses were dishonest, mistaken, unreliable or incapable of giving the evidence, but because of its concerns about the appellant’s credibility: Tribunal’s reasons at [87].

18 The appellant submits that that was a jurisdictional error; the Tribunal was entitled to have grave concerns about the appellant’s credibility; it was not entitled to treat those concerns as a

complete answer to evidence which it had already recognised as capable, if accepted, of corroborating the very claims under challenge.

- 19 The appellant submits that a decision-maker may reject corroborative evidence, but it must do so by engaging with the content and probative value of that evidence. The appellant submits that the Tribunal’s reasoning was circular: the appellant is not believed; the witnesses would corroborate him if believed; the witnesses are not believed because the appellant is not believed.
- 20 The appellant’s written submissions contain submissions relating to procedural fairness (in Section E). However, in oral submissions, counsel for the appellant clarified that the appellant was not seeking to rely on a procedural fairness argument (T13).
- 21 In oral submissions, counsel for the appellant accepted that there were serious inconsistencies in the appellant’s evidence before the Tribunal (T2, T3). However, counsel submitted that the ground of appeal raised a narrower question, which is “whether the reasons disclose why the mother and brother’s evidence failed to affect the central credibility conclusion beyond the fact that the appellant himself had been disbelieved” (T3).
- 22 The applicable principles regarding jurisdictional error constituted by a failure to consider representations were considered by the High Court of Australia in *Plaintiff M1/2021 v Minister for Home Affairs* [2022] HCA 17; 275 CLR 582. In that case, Kiefel CJ, Keane, Gordon and Steward JJ stated (in the context of representations made for the purposes of s 501CA(4) of the *Migration Act 1958* (Cth)) at [24] that a decision-maker must “read, identify, understand and evaluate the representations”. Further, the decision-maker must “have regard to what is said in the representations, bring their mind to bear upon the facts stated in them and the arguments or opinions put forward, and appreciate who is making them”. Their Honours also stated that “[t]he weight to be afforded to the representations is a matter for the decision-maker”. Although expressed in the context of representations made for the purposes of s 501CA(4), these principles are capable of application to the evidence of the corroborating witnesses in the present case.
- 23 Turning to the principles applicable to jurisdictional error constituted by illogicality or irrationality, it is established that an exercise of statutory power may be vitiated if the decision-maker exceeds the bounds of reasonableness: *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12; 280 CLR 321 at [3] per

Gageler CJ, Gordon, Edelman, Steward, Gleeson and Jagot JJ. In *Minister for Immigration and Citizenship v SZMDS* [2010] HCA 16; 240 CLR 611, Crennan and Bell JJ stated:

- 130 In the context of the Tribunal’s decision here, “illogicality” or “irrationality” sufficient to give rise to jurisdictional error must mean the decision to which the Tribunal came, in relation to the state of satisfaction required under s 65, is one at which no rational or logical decision maker could arrive on the same evidence. In other words, accepting, for the sake of argument, that an allegation of illogicality or irrationality provides some distinct basis for seeking judicial review of a decision as to a jurisdictional fact, it is nevertheless an allegation of the same order as a complaint that a decision is “clearly unjust” or “arbitrary” or “capricious” or “unreasonable” in the sense that the state of satisfaction mandated by the statute imports a requirement that the opinion as to the state of satisfaction must be one that could be formed by a reasonable person. The same applies in the case of an opinion that a mandated state of satisfaction has not been reached. Not every lapse in logic will give rise to jurisdictional error. A court should be slow, although not unwilling, to interfere in an appropriate case.
- 131 What was involved here was an issue of jurisdictional fact upon which different minds might reach different conclusions. The complaint of illogicality or irrationality was said to lie in the process of reasoning. But, the test for illogicality or irrationality must be to ask whether logical or rational or reasonable minds might adopt different reasoning or might differ in any decision or finding to be made on evidence upon which the decision is based. If probative evidence can give rise to different processes of reasoning and if logical or rational or reasonable minds might differ in respect of the conclusions to be drawn from that evidence, a decision cannot be said by a reviewing court to be illogical or irrational or unreasonable, simply because one conclusion has been preferred to another possible conclusion.
- ...
- 135 On the probative evidence before the Tribunal, a logical or rational decision maker could have come to the same conclusion as the Tribunal. Whilst there may be varieties of illogicality and irrationality, a decision will not be illogical or irrational if there is room for a logical or rational person to reach the same decision on the material before the decision maker. A decision might be said to be illogical or irrational if only one conclusion is open on the evidence, and the decision maker does not come to that conclusion, or if the decision to which the decision maker came was simply not open on the evidence or if there is no logical connection between the evidence and the inferences or conclusions drawn. None of these applied here. It could not be said that the reasons under consideration were unintelligible or that there was an absence of logical connection between the evidence as a whole and the reasons for the decision. Nor could it be said that there was no probative material which contradicted the first respondent’s claims. There was. The Tribunal did not believe the first respondent’s claim that he had engaged in the “practice of homosexuality” in the UAE and accordingly it was not satisfied that he feared persecution if he returned to Pakistan.

24 See also *Djokovic v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 3; 289 FCR 21 at [33]-[35] per Allsop CJ, Besanko and O’Callaghan JJ. In that case, the Full Court stated at [35]:

Ultimately, the question is whether the satisfaction of the relevant state of affairs or matter was irrational, illogical or not based on findings or inferences of fact supported by logical grounds: *Minister for Immigration and Multicultural and Indigenous Affairs v SGLB* [2004] HCA 32; 207 ALR 12 at 20–21 [38]; *Re Minister for Immigration and Multicultural Affairs; Ex Parte Applicant S20/2002* [2003] HCA 30; 198 ALR 59 at 71 [52] and 98 [173], such that it cannot be said to be possible for the conclusion to be made or the satisfaction reached logically or rationally on the available material. It will then satisfy the characterisation of unjust, arbitrary or capricious.

25 In my view, the appellant has not established that the Tribunal fell into jurisdictional error, or that the primary judge erred in concluding that the Tribunal had not fallen into jurisdictional error.

26 Insofar as the appellant contends that the Tribunal fell into jurisdictional error by “failing to lawfully consider representations made by the appellant’s mother and brother” (being the first alternative way the argument is put in ground 1), I do not consider this contention to have any merit. The Tribunal’s reasons contain a detailed description of the evidence of the appellant’s mother (at [74]-[78]) and the evidence of the appellant’s brother (at [79]-[81]). The Tribunal also stated, at [86], that it had carefully considered the oral and documentary evidence of the appellant’s mother and brother. It is evident from these paragraphs that the Tribunal brought its mind to bear on the evidence of the appellant’s mother and brother. I therefore reject the first alternative way in which the argument is put in ground 1.

27 Insofar as the appellant contends that the Tribunal fell into jurisdictional error by “making illogical or irrational findings” about the evidence of the appellant’s mother and brother (being the second alternative in ground 1), I accept that, viewed in isolation, the last sentence of [87] appears to suffer from a lack of logic: it appears to use the lack of credibility of the *appellant’s* evidence to discount the credibility of, or weight to be attached to, the evidence of the corroborating witnesses. However, it is well-established that the reasons of an administrative decision-maker should not be construed “minutely and finely with an eye keenly attuned to the perception of error”: *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* [1996] HCA 6; 185 CLR 259 at 272. Reading the Tribunal’s reasons as a whole, I am not satisfied that the Tribunal’s fact-finding process or the steps in its reasoning were illogical or irrational. The Tribunal considered the evidence of the appellant’s mother in considerable detail at [74]-[78] of its reasons. These paragraphs contain several references to matters which cast doubt

upon the reliability of that evidence or, at least, matters which provided cogent reasons to discount the weight to be given to that evidence. In particular, at [74]-[75], the Tribunal referred to the mother's two written statements and noted that her evidence "change[d] considerably" between the two statements. These concerns were specifically raised with the appellant, as recorded in [76] of the Tribunal's reasons. It was in response to those concerns that the appellant sought to call the appellant's mother (and brother) and a further hearing was scheduled. The Tribunal described, at [78], the further evidence of the mother. It is evident from that description of the mother's evidence that the Tribunal considered there to be weaknesses in her evidence. The mother's answers to the Tribunal's questions (as recorded in [78]) were self-evidently weak.

28 Similarly, it is apparent from the Tribunal's description of the appellant's brother's evidence (at [79]-[81]) that the Tribunal considered that evidence to be weak. For example, as recorded at [80], the brother emphasised that he was only a young child of 9 or 10 when the relevant events took place. Further, the Tribunal sets out at [81] the answers the brother gave to questions asked by the Tribunal. The answers have self-evident weaknesses.

29 In light of that detailed treatment of the mother's evidence and the brother's evidence, the Tribunal should be understood as saying in the last sentence of [87] that the corroborating evidence did not have sufficient weight to overcome the Tribunal's concerns about the credibility of the appellant. Read fairly and in context, the Tribunal was not using its concerns about the credibility of the appellant to discount or reject the evidence of the corroborating witnesses (despite the fact that, viewed in isolation, the last sentence of [87] may give that impression).

30 The above analysis is supported by the subsequent analysis contained in the Tribunal's reasons. The Tribunal set out its conclusion at [88] (that it did not accept that the appellant was a student activist, nor that he was arrested, detained, tortured or harmed by the Burkina Faso authorities) and then set out six substantive reasons for reaching that conclusion (at [89]-[112]). In the course of that section of the reasons, the Tribunal referred to the evidence of the appellant's mother and brother at [107], in the context of discussing inconsistencies in the appellant's claims about his father's political activities and his father's death. At [107], the Tribunal stated that it considered the evidence of the appellant's mother and brother to be "vague and lacking in detail" as to the political beliefs and activities of the appellant's father. That statement tends

to confirm that the Tribunal did not reject the whole of the evidence of the mother and brother on the basis of the Tribunal's credibility concerns about the appellant.

- 31 For these reasons, I am not satisfied that the Tribunal engaged in illogical or irrational fact-finding or reasoning in relation to the evidence of the appellant's mother and brother. I therefore conclude that ground 1 is not made out.

Conclusion

- 32 It follows that the appeal is to be dismissed. There is no apparent reason why costs should not follow the event. I will also provide for the costs to be determined on a lump sum basis by a Registrar.

I certify that the preceding thirty-two (32) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Moshinsky.

Associate:



Dated: 11 September 2026