

Applicant VEAL of 2002 v Minister for Immigration & Multicultural & Indigenous Affairs [2003] FCA 437

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Facts

- The applicant was an asylum seeker from Eritrea who had applied for refugee status.
- In a hearing to appeal rejection of his application, it became apparent that someone had sent in a "dob-in letter" accusing the applicant of not being truthful.
- The Tribunal refused to allow the applicant to see the letter or know who wrote it.
- They stated that they did not rely on the letter in making their decision to reject the applicant's appeal.
- The applicant appealed, citing a breach of procedural fairness and especially the hearing rule (i.e. that someone should be allowed to hear and respond to evidence against them).

Issue

- Was the applicant denied procedural fairness by not getting access to the letter?

Held

- Merkel J referred to a number of authorities for the fact that even if a decision maker says evidence was not relied on, a party has the right to hear it if it is "credible, relevant and significant to the decision."
- They held that it was all of those things.
- They also held that while the Minister may have had concerns about releasing confidential information (the letter writer's name), there were other steps they could have taken - e.g. redacting the name and then handing it over.
- This would have allowed the applicant to have sufficient particulars - but without it, they didn't have this.
- As such the applicant had been denied procedural fairness, and succeeded in the appeal.

Quotes

- "I am satisfied that the information contained in the letter was credible, relevant and significant. Most of the information was clearly prejudicial to the male applicant's claims and the disclosure of the letter to the Tribunal constituted a real risk of prejudice to the applicant in that it *could* have subconsciously influenced the mind of the Tribunal member, or at least, given rise to an appearance of a real risk of prejudice. ... a person who has an entitlement to be accorded procedural fairness is entitled to a decision-maker who is unbiased in fact *and* in appearance." [28]

- "the disavowal of reliance on the letter is not sufficient to justify the failure of the Tribunal to provide any of the information contained in the letter to the applicants. It would follow that, in the usual course, procedural fairness would require that the gravamen of the prejudicial allegations contained in the letter be brought to the applicants' attention." [29]

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