



**IN THE FEDERAL CIRCUIT and
FAMILY COURT OF AUSTRALIA (DIVISION 2)
AT PARRAMATTA**

File No: [REDACTED]

[REDACTED]
Applicant

**MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL
AFFAIRS**

Respondent

IMMIGRATION ASSESSMENT AUTHORITY

Second Respondent

ORDER

BEFORE: JUDGE D HUMPHREYS

DATE: 21 March 2024

MADE AT: PARRAMATTA

APPEARANCES: in Chambers

BY CONSENT THE COURT ORDERS THAT:

1. A writ of certiorari issue directed to the Second Respondent quashing the decision of the second respondent dated [REDACTED]
2. A writ of mandamus issue directed to the second respondent requiring it to determine the decision of a delegate of the First Respondent dated 26 September 2018 according to the law.
3. The parties bear their own costs of and incidental to this proceeding.

BY CONSENT THE COURT NOTES THAT:

The first respondent accepts that the application must be allowed on the basis that the decision of the second respondent (**the Tribunal**) is affected by jurisdictional error. The Authority failed to consider all the claims made by the applicant. To make a decision without having considered all the claims is to fail to complete the exercise of jurisdiction embarked on. The claim or claims and its or their component integers are considerations made mandatorily relevant by the Act for consideration, which is to be distinguished from errant fact finding (*NABE v Minister for Immigration and Multicultural and Indigenous Affairs (No 2)* (2004) 144 FCR 1 at [57]).



Specifically, the Authority made an erroneous finding of fact, namely, that the applicant *"clearly identified as Shia in all his dealings with the Department"* (at [14]), which resulted in its failure to engage with the claim that the applicant may face a risk of harm for not being a Shia Muslim or for not identifying as a Shia Muslim.

The first respondent concedes that the failure to consider the applicant's claim constituted jurisdictional error.

By the Court

JUDGE D HUMPHREYS

DATE ENTERED: 21 March 2024



Registrar