

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

File No: SYG1821/2022

DWQ22

First Applicant

DWR22

Second Applicant

DWS22

Third Applicant

DWT22

Fourth Applicant

DXH22

Fifth Applicant

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

First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL

Second Respondent

ORDER

BEFORE: REGISTRAR CARNEY
DATE: 27 April 2023
MADE AT: MELBOURNE (In Chambers)

BY CONSENT, THE COURT ORDERS THAT:

1. A writ in the nature of certiorari issue directed to the second respondent (**Tribunal**) quashing the decision dated [REDACTED] (Tribunal case number [REDACTED]).
2. A writ of mandamus issue directed to the second respondent, differently constituted, requiring it to determine the matter according to law.
3. The first respondent pay the applicants' costs fixed in the sum of \$4,189.38 in accordance with Division 1 of Part 2 of Schedule 2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021*.

BY CONSENT, THE COURT NOTES THAT:


The first respondent concedes that the Tribunal erred as follows:

- a. **In respect of the first, second, third and fourth applicants,** the Tribunal erred in the manner identified in Ground 1 of the application, in that the applicants made a clearly articulated claim that the first applicant was a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. The failure to make a finding on this claim was a jurisdictional error: *Dranichnikov v Minister for Immigration* (2003) 197 ALR 389; [2003] HCA 26, [24] and could realistically have led to a different assessment of the applicants' claims being made.

- b. **In respect of the lack of decision regarding the fifth applicant,** the Tribunal erred in the manner identified in Ground 2 of the application. The Tribunal did not have jurisdiction to determine the review application in respect of the fifth applicant and should have expressly made a decision that it had no jurisdiction in respect of her. This is so because the fifth applicant had not been born at the time that the delegate of the first respondent (delegate) made the decision which was the subject of the review application and so there had been no decision by the delegate about the fifth named applicant.

By the Court

DATE ENTERED: 27 April 2023



Registrar