Migration Law

# Question 1

The appellant has made an application to the federal circuit court of Australia for judicial review of a decision by the Tribunal. The tribunal has earlier decided that it is not in its jurisdiction to review a decision regarding cancellation of temporary business entry visa by a delegate of the ministry[[1]](#footnote-2). The application was presented after the expiry of the time limit as mentioned in the migration act. The time limit was of seven days after the applicant was notified of the decision. The tribunal was of view that when the email was transmitted it is deemed to have been received by the applicant under section 494C (5) of the act. The federal court was agreed with the approach of the tribunal. Two issues were raised by amended notice of appeal. The first was whether the email if not received will be treated under “by transmitting the document by email” under regulation 2.55 (3)(d)(ii) . The second was whether the tribunal has power to increase the time limit within which application may be brought to seek review under section 29(7) and 29(8) of the administrative appeals tribunal act.

The appellant was legally represented in the federal circuit court. The appellant gave a detailed account of the tribunal’s decision[[2]](#footnote-3) in the federal circuit court. The primary judge upheld the decision of the tribunal that such an application is time barred and asked the applicant to proof the validity of the application for review. The appellant filed written submission. She also attached screenshots of her email inbox. In consequence to that the tribunal sought clarification from the minister’s department. The department in return provided the tribunal with the screenshots of outbound emails. No delivery failure notification was received by the minister’s department. The tribunal after considering all the facts decided that the appellant’s application was time barred. The tribunal did not give any clarification regarding what is meant by receipt of the email. The tribunal decided the matter based on deeming provisions. The tribunal held that the word transmitting means sending. The primary judge further held that transmitting means both “send and received”. The primary judge has taken reference from the case of “Sainju and Singh” in deciding this particular case[[3]](#footnote-4).

The amended grounds are clear and concise. The tribunal has made jurisdictional error by stating transmission only sending under section 2.55(8) of the regulation and section 494C (5) of the act. When transmission means both “send and received”. The tribunal has made jurisdictional error by failing to recognise its power to extent the time for the appellant to apply for review under section 29(7) and 29(8) if the act. Section 127 of the act and regulation 2.45 of the act states that, the minister must notify a visa holder in writing[[4]](#footnote-5). But in this above mentioned case the delegate of the minister has mailed it to the appellant and no written notification was send to him. regulation 2.55 states that the document regarding cancellation of visa can be given to the visa holder or any person known to him. The document is to be delivered in the last know residential or business address of the visa holder. The document is to be delivered by pre paid post or any other pre paid means. The document can also be transmitted by fax, email or by other electronic means to the last fax number, email address or any other electronic address last known to the minister.

If the minister purports to send the document to the visa holder but due to some error on minister’s part the document or any copy of the document is not received by the visa holder. Then the document is deemed to have been received by the visa holder on the specified date as mentioned in the act or in a later date if the visa holder can proof that the document has reached on that later date. Under the common wealth if a person is required to give information in writing, the person can give information by electronic communication. If the person is not a common wealth entity or anyone acting on behalf of common wealth entity has to give consent in order to receive such information by means of electronic communication. The term electronic communication means a communication in the form of text, data or image[[5]](#footnote-6).

# References

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1. Callie Harvey, *Foundations Of Australian Law* (Tilde Univ Pr, 5th ed, 2017). [↑](#footnote-ref-2)
2. John J Kirton and Jelena Madunic, *Global Law* (Ashgate, 6th ed, 2009). [↑](#footnote-ref-3)
3. Tally Kritzman-Amir, "International Migration Law In The Current Legal And Political Reality: Review Of Research Handbook On International Law And Migration" (2016) 49(01) *Israel Law Review*. [↑](#footnote-ref-4)
4. Juliet Pietsch and Marshall Alexander Clark, *Migration And Integration In Europe, Southeast Asia, And Australia* (Amsterdam University Press, 3rd ed, 2015). [↑](#footnote-ref-5)
5. John Vrachnas, *Migration And Refugee Law* (Cambridge University Press, 4th ed, 2012). [↑](#footnote-ref-6)