

HIGH COURT OF AUSTRALIA

GLEESON J

AJQ24

PLAINTIFF

AND

COMMONWEALTH OF AUSTRALIA & ANOR

DEFENDANTS

[2026] HCASJ 33

Date of Hearing: 28 September 2026

Date of Judgment: 2 October 2026

S84 of 2026

ORDERS

1. *The application for an extension of the time for filing the application for a constitutional or other writ is refused.*
2. *The application for an interlocutory injunction is dismissed.*
3. *The application for a constitutional or other writ is dismissed.*

Representation

B W Walker SC with J D Donnelly, T P O'Connor and R Haidary for the plaintiff (instructed by Zarifi Lawyers)

S B Lloyd SC with D J Rowe for the defendants (instructed by Australian Government Solicitor)

GLEESON J.

Introduction

1 By an application for a constitutional or other writ filed on 10 September 2026 ("the Form 12 application"), the applicant applies for relief in the exercise of this Court's original jurisdiction in relation to a migration decision within the meaning of s 486A(1) of the *Migration Act 1958* (Cth) ("the Act"). The migration decision is the decision of a delegate of the second respondent ("the Minister") on 12 March 2018 to cancel the applicant's Protection (Class XA) Subclass 866 visa ("the protection visa") under s 109 of the Act, after finding that the applicant had provided incorrect information material to the grant of the protection visa ("the cancellation decision"). The applicant has remained in Australia despite the cancellation of his protection visa, including several years in immigration detention. The application was precipitated by the Minister's decision to remove the applicant from Australia to the Republic of Naoero.

2 An application under s 486A(1) of the Act must be made to the Court within 35 days of the date of the migration decision, unless the Court extends that period.¹ The 35 day period stipulated in the Act reveals a legislative intention to restrict this Court's exercise of its original jurisdiction to applications made within that period and to ameliorate injustice that might result from that time limit by allowing its extension only if the Court is satisfied that it is "necessary in the interests of the administration of justice to make the order".²

3 The applicant requires an extremely long extension of time for making the Form 12 application. That is, an extension of more than eight years ("the extension application"). The applicant also seeks an interlocutory injunction to restrain the respondents from removing the applicant from Australia pending the final determination of the Form 12 application or further order of the Court. It would only be necessary to address the application for injunctive relief if the extension of time were granted.

4 In support of the extension application, the applicant relied on the following evidence: (1) his affidavit affirmed on 9 September 2026 and exhibits referred to in that affidavit; (2) two affidavits of his solicitor, Ziaullah Zarifi, both affirmed

1 *Migration Act 1958* (Cth), s 486A. See also *High Court Rules 2004* (Cth), rr 4.02, 25.02.2.

2 *Migration Act*, s 486A(2)(b), cf *Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 276 CLR 579 at 588 [11], citing *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541 at 553, quoting *Sola Optical Australia Pty Ltd v Mills* (1987) 163 CLR 628 at 635.

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on 10 September 2026, each with accompanying exhibits; and (3) a further affidavit of Mr Zarifi affirmed on 22 September 2026, with accompanying exhibit. The applicant also relied on his Form 12 application, submissions filed on 15 September 2026 and submissions in reply filed on 24 September 2026.

5 The respondents opposed the extension application and the injunction application, and relied on the affidavits of Ruby Adler and Shan Strugnell, both affirmed on 21 September 2026, each with accompanying exhibits, and submissions filed on the same date.

6 The cancellation of the applicant's protection visa was precipitated by his travel to Iran in 2017. The visit called into question the accuracy of information that the applicant had provided in 2012 to obtain his protection visa. The applicant does not dispute the finding that he provided incorrect information material to the grant of the protection visa.

7 The Court has power to make an order granting an extension of time for filing the Form 12 application if: (a) an application for that order has been made in writing to the High Court specifying why the applicant considers that it is necessary in the interests of the administration of justice to make the order; and (b) the High Court is satisfied that it is necessary in the interests of the administration of justice to make the order.³

8 The Form 12 application states that the extension of time is sought to permit determination of alleged legal errors affecting the cancellation decision, noting that the decision has not been the subject of merits review in the Administrative Review Tribunal or its predecessor, the Administrative Appeals Tribunal ("the Tribunal"). This statement satisfies the first pre-condition to the Court's power to extend time.

9 For the following reasons I am not satisfied that the extension of time is necessary in the interests of the administration of justice. Accordingly, the power to extend time is not enlivened and the application to extend time must be refused. Consequently, the injunction application and the Form 12 application will be dismissed.

Applicant's arrival in Australia and grant of protection visa

10 The applicant arrived in Australia by boat in January 2012. The applicant was born in Iran, identifies his ethnicity as Faili Kurdish and maintains that he is stateless. The respondents state that the applicant's nationality "remains disputed".

11 On 24 May 2012, the applicant applied for a Protection (Class XA) visa. In his application, the applicant stated that he left Iran on a false passport with the

3 *Migration Act*, s 486A(2).

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assistance of a smuggler. The applicant stated that the smuggler retained the passport in Indonesia. More recently, the applicant has added that the passport was a false Iranian passport.

12 On 4 July 2012, the applicant was granted the protection visa, which permitted an indefinite stay in Australia. The grant assessment accepted that the applicant was not an Iranian citizen and was a stateless Faili Kurd. The decision-maker found that the applicant had a well-founded fear of persecution from the Iranian government and the Basiji on the basis of his Faili Kurdish ethnicity, and that the applicant's fear of returning to Iran in the foreseeable future was well-founded. The delegate accepted that the applicant would be caught by the authorities on arrival in Tehran if returned to Iran.

13 On 18 August 2015, the applicant was issued an Australian titre de voyage, bearing an "IRANIAN" nationality entry. On 19 October 2015, the applicant telephoned the Department administering the Act, stated that the nationality entry in his titre de voyage should be "stateless", and was advised to contact the Department of Foreign Affairs and Trade to rectify this. No change was made to the titre de voyage.

Applicant's travel to Iran in 2017

14 On 24 January 2017, the applicant departed Australia. Prior to his departure, the applicant was questioned by immigration officers. A departmental report records that the applicant said he intended to visit family in Iran for two months and 20 days, and that the applicant had made a declaration to the same effect in his outgoing passenger card. The report states that the applicant was cautioned that "he is reavailing himself to protection [sic] if he returns to the country in which he sought protection from" and that the applicant said, "he would not be in danger or in harm if he returned home and that he just wanted to visit his family as they could not visit him".

15 On 24 March 2017, the applicant returned to Australia. The written record for the cancellation decision ("the cancellation decision record") states that the applicant reported travelling to Kurdistan, Iran and Turkey and losing his titre de voyage at a boarding gate in Singapore, that Sydney Airport Security later found the titre de voyage and that it contained no evidence of visas or port stamps.

16 In this Court, the applicant's evidence includes an undated scan of the titre de voyage cover page and one internal page containing entry and exit stamps from Imam Khomeini airport, as well as a photograph of what appears to be an Iranian visa granted on 25 January 2017. Neither the stamped titre de voyage nor the Iranian visa were before the delegate who made the cancellation decision. The titre de voyage contains no stamps for onward travel from Iran. The applicant says that he removed the Iranian visa from the titre de voyage before returning to Australia.

This evidence appears to be inconsistent with the evidence provided to the delegate about the titre de voyage and its contents.

17 More recently, the applicant has said that after he entered Iran using the Australian titre de voyage and the photographed Iranian visa, he obtained and used a second false Iranian passport. This claim corresponds with the delegate's conclusion, discussed below, that the applicant had used a travel document other than the Australian titre de voyage during his overseas travel in 2017. However, it conflicts with the delegate's inference that the applicant probably entered Iran using travel documents from a country other than Australia.

Cancellation of protection visa

18 On 6 December 2017, the applicant was notified of an intention to consider cancellation of his protection visa.

19 On 21 December 2017, the applicant's migration agent requested a three-week extension of time to respond to the notice of intention, on the basis that the agent was "obtaining a document from the Iranian Authorities". On 31 January 2018, a paralegal on behalf of Legal Aid New South Wales sought a further extension of time of 14 days to respond to the notice of intention. By email dated 13 February 2018, the applicant sought an appointment with a case officer in the Department of Home Affairs. On 14 February 2018, the case officer replied that the notice invited the applicant to respond in writing. On 19 February 2018, the applicant sent a short email to the case officer, setting out matters concerning his travel to Iran in 2017 and the situation of his parents in Iran.

20 On 12 March 2018, the delegate determined that the applicant had not complied with s 101 of the Act and cancelled the protection visa under s 109 of the Act. The cancellation decision record contains Parts A to E. Part A is entitled "Personal and visa details". Part B is "Consideration of visa cancellation". Part C is "Decision about non-compliance (s 108)". Part D is "Decision whether to cancel (s 109)". Part E is "Decision".

21 In Part B, there is a finding that the applicant provided incorrect answers to questions 22, 24, 31, 43-48 and 53 in his Protection (Class XA) visa application. Relevantly, the delegate found that the evidence supported an inference that the applicant had travelled using a travel document other than the Australian titre de voyage. From this inference, the delegate inferred that the applicant had incorrectly claimed to be stateless and that he was in fact an Iranian citizen, who enjoyed the rights and protection of an Iranian citizen in Iran. In particular, the cancellation decision record includes the following:

"Question 44: Have you experienced harm in that country? ... *"Please see Statutory Declaration attached"*. In the attached Statutory Declaration [the applicant] claimed that he experienced severe discrimination in education

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and employment in Iran. [The applicant] claimed he had no ID, he was not allowed to own property or participate in elections and he feared being beaten without doing anything wrong, as his father was. I consider the answer to this question is incorrect because the information before me indicates [the applicant] is an Iranian citizen and has access to education and employment in Iran.

...

Question 48: Do you think the authorities of that country can and will protect you if you go back?; Why Not? The visa holder stated, "*Please see Statutory Declaration attached*". In the attached Statutory Declaration [the applicant] claimed because he was stateless the Iranian authorities and, Sepah would harm him and he will be hanged because he escaped Iran with a fake passport. [The applicant] claimed the authorities will accuse him of being a spy for western countries. I consider the answer to this question is incorrect because [the applicant] used travel documents from a country other than Australia to travel to Iran, Kurdistan and Turkey, under his identity, without apparent harm, which indicates [the applicant] is not of interest to the Iranian authorities.

...

Question 53: Did you have difficulties obtaining a travel document (such as a passport) in your home country? "*Yes, I have no ID*". I consider the answer to this question is incorrect because [the applicant] used travel documents from a country other than Australia to travel to Iran, and would have been required to produce reliable identity documentation for this alternate travel document to be issued."

22 In Part C, the delegate set out the substance of the applicant's 19 February 2018 email, as follows:

"[The applicant] claims:

-he had to travel to Iran to visit his parent's [sic] as his mother was very sad and missed him. He felt he owed this to his mother and father and to spend some time with them.

-he finds it difficult to live without his parents.

-his parents live in a mountain away from their village. His father is a shepherd and his parents live in a tent. They have no access to a phone so a friend had called him saying that his mother was crying and wanted to see him."

23 The delegate concluded that the grounds for cancellation established in Part B of the cancellation decision record existed. The delegate noted, relevantly:

"I acknowledge [the applicant's] claim he finds it hard to live without his parent's [sic], however, because he travelled to Iran for a two month period, I consider [the applicant] did not and does not hold the claimed profile of interest to the Iranian authorities when he applied for a Protection visa."

24 In Part D, the delegate answered "No" in response to the question "did [the applicant] give reasons why the visa should not be cancelled" and addressed the prescribed circumstances in reg 2.41 of the *Migration Regulations 1994* (Cth), which are required to be considered in deciding whether to cancel a visa following a finding under s 108 of the Act that there was non-compliance by the holder of a visa.⁴ The delegate found that the applicant had intentionally supplied false information to facilitate the grant of the protection visa. In relation to the applicant's present circumstances, the delegate stated that the applicant "ha[d] not provided detail of his present circumstances or reasons why his visa should not be cancelled".

25 In Part E, the delegate concluded that the grounds for cancellation outweighed the reasons against cancellation.

Events following cancellation of protection visa

April 2018 to December 2023

26 On 13 April 2018, the applicant was placed in immigration detention where he remained until about 10 November 2023. The applicant only became aware of his review rights in relation to the cancellation decision after being taken into immigration detention. The applicant says that he did not receive a letter, dispatched on 12 March 2018, notifying him of the cancellation decision because he had moved residential address. On 18 April 2018, one day out of time, the applicant applied to the Tribunal for review of the cancellation decision. The Tribunal found no evidence that the Department administering the Act had been notified of, or knew about, the address change. On 24 May 2018, the Tribunal determined that it had no jurisdiction to review the cancellation decision because the application was lodged out of time ("the Tribunal's decision").

27 The applicant experienced significant psychological distress during this extended period of detention. I accept that both the fact of detention and the psychological distress that accompanied the detention had an adverse impact on the applicant's practical ability to commence this proceeding. Even so, these

4 *Migration Act*, s 109(1)(c).

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factors did not prevent the applicant from obtaining legal advice and representation as explained below.

28 A record dated 25 June 2018 of a communication between the applicant and his case manager in immigration detention shows that the applicant had a lawyer at that time. The case manager told the applicant "to continue to keep open communication with his Lawyer". From approximately 19 August 2019 until 7 November 2023, the applicant was represented by Human Rights for All ("HR4A"), an Australian pro bono human rights law firm. On 13 December 2022, HR4A requested that a new identity assessment be conducted for the applicant and that he be referred for ministerial intervention under ss 195A or 197AB of the Act.

29 On 27 February 2023, HR4A lodged a request on the applicant's behalf for ministerial intervention under s 48B of the Act. That request was withdrawn on 4 May 2023. The s 48B request included the claim that the applicant obtained a fraudulent Iranian passport upon his arrival in Iran in 2017 and that he used it for travel within Iran and to Istanbul and Bangkok. A case officer who assessed the request for ministerial intervention found that the new evidence "does conflict with some of the reasons for cancelling" the applicant's protection visa. However, the case officer considered that there remained inconsistencies between the applicant's claims and country information which indicated that the conclusion the applicant was not stateless was still "highly likely to be accurate".

30 On 5 July 2023, the applicant was given a notice of intention to consider making a decision under s 197D(2) of the Act. By letter dated 20 July 2023, HR4A replied to the notice on the applicant's behalf. HR4A again requested that the Department administering the Act conduct a new identity assessment of the applicant "in order to resolve any outstanding identity issues, restore his refugee status, and enable him to be released back into the community".

31 The applicant was released from immigration detention on about 10 November 2023 and granted a Class WR (Bridging R (Removal Pending)) (subclass 070) visa ("BVR") which included conditions that imposed a curfew and electronic monitoring. He was subsequently granted several BVRs until his most recent detention on 19 August 2026.

January 2024 to September 2026

32 On 16 January 2024, the applicant filed a writ of summons in this Court concerning the conditions of the first BVR. On 7 February 2024, that proceeding was discontinued after the curfew and electronic monitoring conditions were removed.

33 On 31 January 2024, the applicant filed an originating application in the Federal Court of Australia in which he sought a declaration that he had been unlawfully detained between the cancellation of his protection visa and his release

following this Court's decision in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs*⁵ ("the false imprisonment proceeding"). On 3 August 2025, the applicant obtained judgment against the first respondent in respect of his claim for false imprisonment for the period from 25 May 2021 to 8 November 2023, with damages to be assessed. The claim did not involve any challenge to the validity of the cancellation decision.

34 On 19 August 2026, the applicant was detained for removal to the Republic of Naoero. On 21 August 2026, the applicant filed an application in the false imprisonment proceeding seeking an interlocutory injunction restraining the first respondent from removing him from Australia.⁶ During a case management hearing in that proceeding, McDonald J made an interim injunction restraining removal of the applicant from Australia until 1 September 2026 or until further order.⁷ That interim injunction was further extended on one occasion. On 4 September 2026, McDonald J dismissed the applicant's application for an injunction. His Honour ordered that the interim injunction be discharged with effect from 5.00 pm on 11 September 2026.

35 On 10 September 2026, the legal representatives for the respondents informed the Court that the applicant was not presently scheduled to be removed from Australia, the applicant would not be removed within the next two weeks and that the second respondent would provide the applicant with reasonable notice of any scheduled removal.

Other facts

36 Following the Tribunal's decision, the applicant believed that there was no further avenue available to him in relation to the cancellation of his protection visa. The applicant does not recall ever asking HR4A, or any other lawyer who represented him before his present lawyers, to commence court proceedings challenging the legality of the cancellation decision. The applicant also does not recall being advised that he could seek judicial review of the cancellation decision.

37 There is no evidence that the applicant was aware that he may be able to bring this proceeding until shortly before the Form 12 application was filed. There is also no evidence that he deliberately withheld a challenge to the cancellation decision.

5 (2023) 280 CLR 137.

6 *AJQ24 v Commonwealth (No 2)* [2026] FCA 1323 at [7].

7 *AJQ24* [2026] FCA 1323 at [7].

38 There is no evidence from any lawyer who represented the applicant in the period after the cancellation decision explaining why this application was not made earlier.

Necessity in the interests of the administration of justice

39 Section 486A(2)(b) of the Act requires a level of satisfaction that is "not low: the Court must be satisfied not just that an extension of time is desirable, but that it is needed in the interests of the administration of justice".⁸ The discretion is intended "to eliminate the injustice a prospective [applicant] might suffer by reason of the imposition of a rigid time limit within which an action was to be commenced".⁹ The focus is on the broader interests of the administration of justice, as distinct from the interests of the applicant.¹⁰

40 The applicant acknowledged that given the passage of time since the expiration of the period for making the Form 12 application, he was required to demonstrate an "exceptional" case to satisfy the requirement of necessity.¹¹ The applicant submitted that exceptionality could be found in the "real and realistic possibility" of success on the Form 12 application and his "checkered" health and social history which "deflect[ed]" the applicant from obtaining the necessary legal advice eventually obtained to make the extension application.

41 The respondents did not point to any relevant prejudice arising from an extension of time.

Merits of the proposed substantive application

42 The relevant legal principles are not in issue. The respondents do not dispute that, if there was jurisdictional error of the kind alleged, that error was material.

43 The applicant does not challenge the "non-compliance" finding against him under s 108 of the Act but notes that non-compliance with the Act does not compel

8 cf *Katoa* (2022) 276 CLR 579 at 589 [12]. The required extension of time in that case was approximately 3 weeks, see *Katoa* (2022) 276 CLR 579 at 587 [6].

9 *Katoa* (2022) 276 CLR 579 at 588 [11], citing *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541 at 533, quoting *Sola Optical Australia Pty Ltd v Mills* (1987) 163 628 at 635.

10 *Katoa* (2022) 276 CLR 579 at 589 [12].

11 *Vella v Minister for Immigration and Border Protection* (2015) 90 ALJR 89 at 90 [3]; 326 ALR 391 at 392, citing *Re Commonwealth; Ex parte Marks* (2000) 75 ALJR 470 at 474 [13]; 177 ALR 491 at 495 citing *Gallo v Dawson* (1990) 64 ALJR 458 at 459; 93 ALR 479 at 481.

visa cancellation. Rather, the applicant contends that the delegate made two errors in exercising the discretion to cancel the applicant's protection visa under s 109 of the Act.

Proposed ground one (alleged failure to consider present circumstances)

44 The first proposed review ground is that the delegate failed to consider a "prescribed circumstance", being the applicant's "disclosed present family circumstances" at the time of the cancellation decision.¹² Regulation 2.41(e) of the *Migration Regulations* required consideration of "the present circumstances of the visa holder". The alleged circumstances are the distress of the applicant's mother in Iran at their separation, the applicant's difficulty living apart from his parents, his felt obligation to visit his parents in Iran, and their circumstances living in a tent in the mountains without access to a phone, where his father worked as a shepherd. As noted earlier, these alleged circumstances are recorded in the cancellation decision record. The applicant submits that the delegate erred by failing to evaluate the significance of the alleged circumstances for the purposes of the cancellation discretion, "supported by an affirmative statement that no present circumstances had been supplied".

45 A statutory duty to consider material requires the decision-maker to understand and evaluate its substance, while leaving its weight to the decision-maker. The extent of engagement required depends on the material's clarity, content and relevance.¹³

46 The applicant contends that, on a fair reading of the cancellation decision record, the delegate failed to evaluate the "compassionate significance" of the alleged circumstances in deciding whether to cancel the applicant's protection visa. Those circumstances are said to remain capable of bearing on that discretion even if they did not establish that the applicant had complied with his obligation to give correct answers to questions in his protection visa application.

47 In oral submissions, senior counsel for the applicant submitted that the alleged circumstances are directed to a continuing state of affairs, namely "the feeling of separation from family, which was [the applicant's] motive for making the return" to Iran in 2017. Senior counsel argued that the decision-maker should have taken this matter into account as an explanation for the applicant's travel to Iran in 2017 despite his earlier claims that led to the applicant being granted a protection visa.

12 *Migration Act*, s 109(1)(c); *Migration Regulations 1994* (Cth), reg 2.41(e).

13 See *Plaintiff M1/2021 v Minister for Home Affairs* (2022) 275 CLR 582 at 598-600 [23]-[26].

48 This proposed review ground is very weak. As the applicant acknowledges, it would be wrong to assume that separate headings in the cancellation decision record imply compartmentalised consideration.¹⁴ It is strongly arguable that it was open to the delegate to understand the alleged circumstances as matters that were presented by the applicant as an explanation for his travel to Iran in 2017, and not as part of "the present circumstances of the visa holder" relevant to the cancellation discretion. Accordingly, it is also strongly arguable that there was no error in the delegate's finding that the applicant had "not provided detail of his present circumstances or reasons why his visa should not be cancelled".

49 Even if the applicant's submission, that he finds it difficult to live without his parents, was found to be a "present circumstance[]" of the applicant that could bear on the decision whether to cancel the applicant's protection visa, the applicant did not identify a persuasive reason why that difficulty would be a reason or part of a reason for deciding not to cancel the protection visa so that the failure to take that matter into account involved jurisdictional error. It is far from obvious that, despite the anterior findings that the applicant lied about his status as an Iranian citizen, acceptance that the applicant had a poignant reason for his visit to Iran could be a reason for deciding not to cancel the applicant's protection visa.

Proposed ground two (alleged irrationality)

50 In substance, the second proposed review ground is that the delegate's finding that the applicant had provided incorrect information material to the grant of the protection visa and the subsequent cancellation of his protection visa were affected by material illogicality or irrationality in the reasoning connecting "the reported absence of visas or port stamps in the Australian titre de voyage to use of another travel document; then to Iranian citizenship and travel under the [applicant's] true identity; and then to the conclusion that his earlier claims about documentation and discrimination were false".

51 The particulars to this proposed review ground expressly note that the complaint "does not depend on later travel being incapable of bearing on earlier truthfulness, or on nationality requiring direct documentary proof". The applicant accepts "the adverse significance of voluntarily returning [to Iran] for approximately two months and saying he would not be harmed". The applicant makes a "narrower complaint" concerning the "additional conclusions about the document used, reliable identification, and past deprivation" reached by the delegate. The applicant submits that those conclusions lack a rational foundation even when the 2017 return journey to Iran and his statement on leaving Australia,

14 *EGH19 v Minister for Immigration and Citizenship* [2026] HCA 33 at [68], citing *Ismail v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 280 CLR 265 at 286 [50]. See also *Minister for Immigration and Multicultural Affairs v SSVJ* (2026) 315 FCR 435 at 443 [27].

that he would not be in danger or in harm if he returned home, are taken into account. The applicant submits that those conclusions were "operative in the cancellation discretion".

52 Irrationality requires more than demonstration of a preferable competing inference.¹⁵ Reasonable disagreement with the impugned reasoning is insufficient.¹⁶ A cancellation discretion must be exercised within the bounds of legal reasonableness.¹⁷

53 The second proposed review ground is weak, at best. The ground concerns the limits of the delegate's capacity to draw rational inferences adverse to the applicant because of his admitted travel to Iran (the country from which he sought refuge) and the evidence, and lack of evidence, of the applicant's use of the Australian titre de voyage.

54 The first particular of this proposed review ground concerns the inferred use of other travel documents, without evidence of an actual alternative passport, its identity particulars or its issuing requirements. On the evidence available to the delegate, there was no record of the applicant entering Iran on the Australian titre de voyage and no record that the applicant had obtained an Iranian visa. Thus, the documentary evidence did not identify the travel documents used by the applicant to enter and depart Iran and Turkey (and later, Thailand). There was only a limited set of possibilities. The inference that the applicant is an Iranian citizen was open on the facts of his travel to Iran and the absence of any Iranian visa. Without any record on the Australian titre de voyage of the applicant's entry into Iran, the inference that the applicant had entered Iran on a travel document from another country was strong, and it was open to the delegate to find that the other country was Iran, being the only country other than Australia in which the applicant had lived. It was also open to infer that the travel document had been obtained with reliable identification, that inference being at least as plausible as the inference that the travel document had been obtained with unreliable identification.

55 In those circumstances, the contention that the delegate's inference was unavailable without an actual alternative passport, identity particulars or issuing requirements, and the contention that the delegate was irrational to infer that the

15 *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 611 at 648 [131].

16 *SZMDS* (2010) 240 CLR 611 at 648 [131].

17 *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 at 366 [72], 366-367 [75]-[76].

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applicant had provided "reliable identity documentation" to obtain whatever travel documents he used, appear doomed to fail.

56 The second particular is that the delegate used the Iranian nationality entry on the applicant's Australian titre de voyage against the applicant, despite the evidence that the applicant had contested that entry and when rationality required the delegate to address the significance of that contestation. To the contrary, it would be open to conclude that the delegate could logically reason as they did, in a manner adverse to the applicant, when the applicant had taken no steps to pursue an alteration to the entry on the titre de voyage between October 2015 and the cancellation decision.

57 The third particular is that the inferences that the applicant used travel documents from a country other than Australia to travel to Iran and that these were Iranian travel documents did not rationally establish the falsity of the applicant's answer to question 53 (that the applicant had had difficulty obtaining a travel document in his home country and that he had "no ID"). Further, inferences as to the applicant's Iranian citizenship and associated rights and protection flowing from such citizenship in 2017 did not rationally resolve whether the past deprivation of education, employment and other rights described in answer to question 44 had occurred.

58 The delegate's finding about the applicant's answer to question 53, set out in full above at [21], is based on an evaluation made in the context of a limited set of possible scenarios, being that the applicant either did or did not have reliable identity documentation. A court is unlikely to find that the delegate was irrational, contrary to the applicant's claims, in concluding that the inference that the applicant used a travel document from another country led to the further inference that such a document was obtained by the production of reliable identity documentation.

59 As to the delegate's finding about the answer to question 44, while it is true that the finding that the applicant is an Iranian citizen is not necessarily inconsistent with prior experience of harm in Iran, the applicant's claim of having experienced harm in Iran was founded on his asserted status as a stateless Faili Kurd. The claim was that, as a Faili Kurd, the applicant was not afforded the same basic rights as Iranian citizens in terms of access to employment, healthcare and education, among other things. It is difficult to argue that the delegate, having found that the applicant is an Iranian citizen, was irrational in finding that the applicant had not experienced harm due to his status as a stateless Faili Kurd as he had claimed.

Delay

60 The length of the delay in this case presents a further obstacle to concluding that it is necessary in the interests of the administration of justice to grant an extension of time to make the Form 12 application. In April 2018, following the

cancellation of the applicant's protection visa on 12 March 2018, the applicant unsuccessfully attempted to seek merits review of the cancellation decision. As described previously, the Tribunal declined to assume jurisdiction due to the late filing of the application (one day out of time).¹⁸ If this was the only delay, then the position would be very different.

61 However, the applicant must also explain the period from April 2018 to September 2026. The extension application does not adequately address whether he was advised about the legality of the cancellation decision or about seeking judicial review of the cancellation decision prior to the advice that he sought most recently. Instead, the evidence is only that the applicant does not recall being advised about those matters. Evidence from the applicant's former lawyers that there was no deliberate decision to withhold a challenge to the cancellation decision could have addressed this gap in the evidence.

62 Even then, the absence of such a deliberate decision is insufficient to support a conclusion that it is necessary in the interests of the administration of justice to permit an extension of time of the order of magnitude sought in this case. The statutory time limit of 35 days indicates that the administration of justice is served by a requirement that applicants for judicial review act promptly in making their application. It is for this reason that there is a requirement of exceptionality in the present case, as was conceded by the applicant.¹⁹

Conclusion

63 The interests of the administration of justice would not be served by granting an extension of time for making the Form 12 application in this case. The circumstances of the application are not exceptional in any relevant respect so as to make an extension of time appropriate, let alone necessary. To the contrary, the prospects of success on the Form 12 application are poor and the applicant's health and social history do not differ from many people who seek judicial review of a protection visa cancellation decision, in any way that might justify the lengthy extension of time that is sought.

64 It is unnecessary to decide whether by the Form 12 application, the applicant is seeking to advance concurrent proceedings on inconsistent premises about his visa status, and whether that is an additional reason that it is not necessary in the interests of the administration of justice to grant the extension of time sought.

65 Accordingly, the extension application is dismissed. In circumstances where the time for filing the Form 12 application has not been extended, it is

18 See above at [26].

19 See above at [40].

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unnecessary to consider the application for interlocutory relief, which is dismissed. The Form 12 application is also dismissed.