

HIGH COURT OF AUSTRALIA

EDELMAN J

CZQL

PLAINTIFF

AND

MINISTER FOR IMMIGRATION, CITIZENSHIP
AND MULTICULTURAL AFFAIRS & ORS

DEFENDANTS

[2026] HCASJ 36

Date of Judgment: 30 October 2026

S63 of 2024

ORDERS

- 1. The name of the first defendant be amended to "Minister for Immigration and Citizenship".*
- 2. The name of the third defendant be amended to "Administrative Review Tribunal".*
- 3. Pursuant to r 28.01.1(a) of the High Court Rules 2004 (Cth), the plaintiff's application for a constitutional or other writ filed on 23 May 2024 is dismissed for want of prosecution.*
- 4. The plaintiff pay the first defendant's costs.*

Representation

The plaintiff is represented by Parker Simmonds, Solicitors and Lawyers

The first defendant is represented by Australian Government Solicitor

No appearance for the second and third defendants

1 EDELMAN J. This is an application by the first defendant, "the Minister", for an order under r 28.01.1(a) of the *High Court Rules 2004* (Cth) for summary dismissal of the application for a constitutional or other writ which was brought by the plaintiff, CZQL, on 23 May 2024.

2 CZQL is a Fijian citizen. The constitutional or other writ sought by CZQL was for relief including a writ of certiorari to quash a decision of Thomas J in the Federal Court of Australia on 15 December 2023, in which his Honour refused to extend time for CZQL to seek judicial review of a decision of the Administrative Appeals Tribunal not to revoke the cancellation of CZQL's visa. It appears that the constitutional or other writ was served on the Minister, as first defendant, but was not served on the second or third defendants. Although a long period of failure of service might provide further reason for dismissal for want of prosecution in some cases,¹ since the Minister was served and also takes no objection to this lack of service in his present application or in his submissions in support of this application, the lack of service on these two parties can be put to one side.

3 On 27 June 2024, the Minister filed a response to CZQL's application.

4 On 31 July 2024, CZQL's solicitors wrote to the Registry of this Court saying that CZQL had been deported from Australia and was now residing in Fiji. CZQL's solicitors said that their office had experienced difficulties in obtaining instructions from CZQL because he had no way of accessing emails and did not have a telephone. But they explained that they had contacted CZQL's de facto partner and other family members with a request that CZQL contact their office urgently and anticipated receiving instructions shortly with respect to the filing of a reply.

5 On 10 September 2024 and then again on 11 March 2025, a Deputy Registrar of this Court wrote to CZQL's solicitors, respectively enquiring: (i) whether they had obtained instructions as to whether a reply was to be filed or, more generally, in relation to the application; and (ii) whether CZQL intended to proceed with his application and drawing the solicitors' attention to r 4.03 of the *High Court Rules* concerning delay.

6 On 18 March 2025, CZQL's solicitors replied explaining that they had had "extreme difficulties making contact" with CZQL since his deportation and that they were awaiting confirmation of instructions, which they anticipated would be to file a notice of discontinuance.

1 See *Cooper v Hopgood & Ganim* [1999] 2 Qd R 113 at 120, 124; *Pentridge Village Pty Ltd (in liq) v Capital Finance Australia Ltd* (2025) 79 VR 572 at 612 [140]-[142], 614 [153], 615 [158].

2.

7 On 7 May 2025, another request for an update was made by a Deputy Registrar of this Court. On 30 May 2025, the solicitors for the Minister, the Australian Government Solicitor, wrote to the solicitors for CZQL, saying that they had not received CZQL's solicitors' response to the Deputy Registrar's request and seeking a reply.

8 On 18 June 2025, CZQL's solicitors replied to the correspondence dated 7 May 2025 and 30 May 2025, saying that they continued to have "extreme difficulties with making contact" with CZQL and were still awaiting instructions. CZQL's solicitors said that they would "continue to attempt all avenues to establish contact" to obtain instructions.

9 On 19 March 2026, the Australian Government Solicitor wrote to CZQL's solicitors noting that 12 months had passed since the Registry initially enquired whether CZQL wished to proceed with his application and that no further action had been taken by CZQL. The Australian Government Solicitor stated that if CZQL did not take any further steps to prosecute the matter by 20 April 2026, the Minister "may take steps to have the matter dismissed pursuant to r 28.01 of the *High Court Rules*".

10 On 5 May 2026, a Deputy Registrar of this Court wrote to CZQL's solicitors again asking whether any instructions had been received from CZQL and seeking a reply by 11 May 2026.

11 On 23 June 2026, the Minister filed this application seeking orders including under r 28.01.1(a) of the *High Court Rules* for summary dismissal of the plaintiff's application for a constitutional or other writ.

12 This Court has power under r 28.01.1 of the *High Court Rules* to make orders, including that a proceeding be dismissed for want of prosecution, if "a plaintiff or applicant has not done any act required to be done by or under these Rules, or otherwise has not prosecuted a proceeding with due diligence". An order for dismissal of a proceeding for want of prosecution is an extreme measure which is usually taken only when no other order under r 28.01.1 is sufficient to do justice between the parties. When assessing whether dismissal of the proceeding is an appropriate order for the failure to prosecute a proceeding with due diligence, the open-textured discretion in r 28.01.1 requires all circumstances to be considered.

13 A central consideration when assessing the circumstances under r 28.01.1 is the willingness or ability of the plaintiff to prosecute their proceeding within a reasonable period. A lack of such willingness or ability will usually be decisive in favour of making such an order. But that central consideration is not independent of the potential merits of the proceeding. For instance, if a proceeding appears to have strong merits, at the impressionistic level appropriate for an application of this nature, it might be more difficult to draw the inference that the proceeding will not be prosecuted within a reasonable period.

14 In this case, the evidence supports the inference that CZQL has not even attempted to contact his lawyers for over two years. The only reasonable conclusion from the delays and communications set out in the background described above is that CZQL will not prosecute this proceeding within a reasonable period. At an impressionistic level, there is nothing about the merits of the proceeding which would preclude this inference. The decision of the Federal Court which CZQL sought to quash was a refusal to extend time by three and a half years for CZQL to seek judicial review of a decision of the Administrative Appeals Tribunal not to revoke the cancellation of CZQL's visa. That decision appears to have been plainly correct. Even the assertions of error are not assertions of jurisdictional error.² The only appropriate order under r 28.01.1 is for CZQL's application to be dismissed for want of prosecution.

15 The following orders, adapted from those sought by the Minister, should be made:

1. The name of the first defendant be amended to "Minister for Immigration and Citizenship".
2. The name of the third defendant be amended to "Administrative Review Tribunal".
3. Pursuant to r 28.01.1(a) of the *High Court Rules*, the plaintiff's application for a constitutional or other writ filed on 23 May 2024 is dismissed for want of prosecution.
4. The plaintiff pay the first defendant's costs.

2 See *Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 276 CLR 579 at 608-609 [62].