HIGH COURT OF AUSTRALIA

3 September 2025

PLAINTIFF S22/2025 v MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS
[2025] HCA 36

Today, the High Court unanimously dismissed an application for a constitutional or other writ by which the plaintiff sought judicial review of a decision of a delegate of the Minister for Immigration and Multicultural Affairs not to revoke the mandatory cancellation of the plaintiff's Temporary Protection (Class XD) (subclass 785) visa ("TPV") under s 501CA(4) of the *Migration Act 1958* (Cth).

Following conviction and imprisonment for an offence, the plaintiff's TPV was mandatorily cancelled under s 501(3A) of the *Migration Act*. The plaintiff made representations as to why the mandatory cancellation of his TPV should be revoked, but the Minister's delegate decided not to revoke the cancellation. The plaintiff was in immigration detention when he was notified of the non-revocation decision in October 2024. He was handed a 335-page "notification package" and released. He incorrectly believed the cancellation of his TPV had been revoked when, in fact, he had been released from immigration detention under a Bridging R (Class WR) (subclass 070) (Bridging (Removal Pending)) visa ("BVR"). In February 2025, the BVR ceased pursuant to s 76AAA of the *Migration Act* when the Republic of Nauru granted the plaintiff permission to enter and remain in Nauru. The plaintiff was then taken into immigration detention where he realised, for the first time, that the cancellation of his TPV had not been revoked and the period to apply to the High Court for review of the non-revocation decision had expired.

The plaintiff filed an application in the High Court seeking an extension of time under s 486A(2) of the *Migration Act*, a writ of certiorari quashing the non-revocation decision and a writ of mandamus requiring the Minister to make the decision under s 501CA(4) of the *Migration Act* according to law.

The Court was satisfied it was necessary in the interests of the administration of justice to grant the extension of time. It was not reasonable to expect that the plaintiff, who read and spoke almost no English, would understand the basis on which he was being released from immigration detention. It followed that there was a reasonable explanation for the delay of the filing of the application for the constitutional writs. The Minister also pointed to no prejudice resulting from the delay, which was not excessively long.

The plaintiff contended that the non-revocation decision was void for jurisdictional error on three grounds. By ground 1, the plaintiff contended that the delegate did not properly confront the legal consequences of the non-revocation decision as required by para 9.1 of Ministerial Direction 110 ("MD 110"). By ground 2, the plaintiff contended that the delegate misapplied para 8.5 of MD 110, which required the delegate to take into account the expectations of the Australian community. By ground 3, the plaintiff contended that the delegate denied the plaintiff procedural fairness or proceeded in a legally unreasonable manner by using legal advice given to the plaintiff, without notice to the plaintiff. The Court held that none of the grounds were established and accordingly dismissed the application.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.