



HIGH COURT OF AUSTRALIA

5 August 2026

PLAINTIFF M98/2025 v MINISTER FOR IMMIGRATION AND CITIZENSHIP
[2026] HCA 26

Today, the High Court unanimously dismissed an application for an extension of time within which to seek the issue of writs of certiorari and mandamus directed to the Minister for Immigration and Citizenship ("the Minister"), quashing a decision of a delegate of the Minister to refuse the plaintiff's application for the grant of a permanent protection visa and requiring that application to be determined according to law.

The plaintiff is a national of Malaysia who arrived in Australia in May 2017. He applied for a visa on or around August 2017. In the High Court, the plaintiff filed an affidavit stating that he was assigned a female gender at birth but identifies as a male.

The plaintiff attended an interview with the delegate on 15 January 2020 in respect of his protection visa application. In that interview, the plaintiff stated that he wanted to undergo gender-affirming surgery, but that he could not do so "at the moment" because of the numerous procedures involved. The plaintiff stated that he would still like to go ahead with gender-affirming surgery, but could not undergo that surgery in Malaysia, because it is not offered in that country. In response to questions about harm the plaintiff feared if he returned to Malaysia, the plaintiff identified concerns about renewing his Malaysian passport, and said that he was "only" scared of a "loan shark" from whom he borrowed money. He later said he had never had problems with the authorities in Malaysia.

In determining the protection visa application, the delegate accepted that the plaintiff identified as male but stated that the plaintiff had decided not to proceed with gender-affirming surgery due to the numerous procedures involved. The delegate rejected so much of the claim for protection that related to Malaysia not offering gender-affirming surgery on the basis that it was no longer relevant to the plaintiff. The delegate otherwise refused the plaintiff's application for a protection visa.

By the application for a constitutional or other writ, the plaintiff sought to contend that the delegate's decision was affected by jurisdictional error on five grounds. Certain of those grounds were premised on a contention that the delegate erred by wrongly concluding that the plaintiff did not wish to have gender-affirming surgery.

The High Court accepted that, contrary to the delegate's reasons, the plaintiff told the delegate that he wanted to have gender-affirming surgery but could not do so "at the moment" because of all the procedures involved. Nevertheless, the High Court held that the plaintiff had not established that the delegate's decision refusing the grant of a protection visa was affected by jurisdictional error. In light of the failure of each of the proposed grounds of the application, the Court held that it would be futile to extend the time available for the bringing of 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.