



HIGH COURT OF AUSTRALIA

5 August 2026

PLAINTIFF S32/2026 v MINISTER FOR IMMIGRATION AND CITIZENSHIP
[2026] HCA 27

Today, the High Court unanimously dismissed an application by the plaintiff for an extension of time within which to seek a constitutional or other writ prohibiting the defendant, the Minister for Immigration and Citizenship ("the Minister"), from giving effect to, or acting upon, the decision of a delegate of the Minister to refuse the plaintiff's application for a Protection (Class XA) (Subclass 866) visa ("the Visa Decision"), and requiring the Minister to determine that application according to law.

The plaintiff, who was born in Nepal, was convicted in Australia of offences of dishonestly obtaining financial advantage by deception through conduct targeting other members of the Nepali community in Australia. Members of the Nepali community impacted by the plaintiff's conduct circulated online material identifying him, in both Australia and Nepal. The plaintiff applied for a protection visa, claiming that he would be harmed if he returned to Nepal. In making the Visa Decision, the delegate considered certain country information prepared by the Department of Foreign Affairs and Trade ("DFAT"), concluding that the plaintiff could obtain protection from an authority in Nepal for the purposes of s 36(2B)(b) of the *Migration Act 1958* (Cth) and there would therefore not be a real risk that the plaintiff would suffer significant harm ("the Nepal Protection Finding").

The plaintiff sought merits review of the Visa Decision in the Administrative Review Tribunal ("the Tribunal"). On the day of the hearing, the plaintiff failed to appear, claiming that he had a medical appointment, although he failed to provide a medical certificate. The Tribunal dismissed the plaintiff's application. The Tribunal confirmed this decision upon review, finding that the plaintiff had misled the Tribunal and was seeking to delay his hearing without a valid reason ("the Confirmation Decision").

By application for constitutional or other writ, the plaintiff sought to contend that the Visa Decision was affected by jurisdictional error on two grounds: that the delegate had failed to comply with a mandatory obligation to consider certain aspects of the country information prepared by DFAT in making the Nepal Protection Finding; and, further or in the alternative, that in making the Nepal Protection Finding, the delegate reasoned illogically, irrationally or unreasonably.

The High Court held that the plaintiff's application was an abuse of process. The plaintiff could have sought (and, subject to an extension of time being granted, could still seek) judicial review of the Confirmation Decision in the Federal Circuit and Family Court of Australia (Division 2) and should not be permitted to circumvent the hierarchy of review provided for by the *Migration Act*. In any event, the High Court held that the application failed to disclose any jurisdictional error in the Visa Decision.

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.