Affidavit

Family Law Rules 2021 – RULE **8.15**
General Federal Law Rules 2021 – RULE **4.04**

Filed in:

☒ Federal Circuit and Family Court of Australia
☐ Family Court of Western Australia
☐ Other (specify) _____

Type of proceedings:

☐ Family law proceedings
☒ Migration proceedings
☐ General federal law proceedings
☐ Other (specify) _____

Filed on behalf of:

Full name: NOVAK DJOKOVIC

COURT USE ONLY

Client ID _____

File number _____

Filed at

Filed on

Court location _____

Court date _____

Name of person swearing/affirming this affidavit (SEE PART C)

NATALIE BANNISTER

Date of swearing/affirming 07 / 01 / 2022

Part A About the parties

APPLICANT 1

Family name (as used now)/Title/Organisation

DJOKOVIC

Given names (as required)

NOVAK

RESPONDENT 1

Family name (as used now)/Title/Organisation

MINISTER FOR HOME AFFAIRS

Given names (as required)

APPLICANT 2

Family name (as used now)/Title/Organisation

Given names (as required)

RESPONDENT 2

Family name (as used now)/Title/Organisation

Given names (as required)

What is the contact address (address for service) in Australia for the party filing this affidavit?

You do not have to give your residential address. You may give another address at which you are satisfied that you will receive documents. If you give a lawyer's address, include the name of the law firm. You **must** also give an email address.

Hall & Wilcox

Level 11, Rialto South Tower, 525 Collins Street, Melbourne VIC 3000 Australia

Phone +61 3 9603 3555

Lawyer's code 163

Email penelope.ford@hallandwilcox.com.au

Part B About the independent children's lawyer (if appointed)

Independent children's lawyer family name	Given names
N/A	

Firm name

Part C About you (the deponent)

Family name (as used now)/Title/Organisation	Given names
BANNISTER	NATALIE

Gender

☐ Male ☒ Female ☐ X

Usual occupation (if applicable)

SOLICITOR

What is your address?

You do not have to give your residential address if you are concerned about your safety. You may give another address at which you are satisfied that you will receive documents.

Care of Hall & Wilcox, Level 11, Rialto South Tower, 525 Collins Street
MELBOURNE
State VIC Postcode 3000

Part D Evidence

1. I am a Partner of the firm Hall & Wilcox, the solicitors for the Applicant. I have the carriage of this proceeding on behalf of the Applicant.

2. The following facts and matters set out within this affidavit are within my own personal knowledge except as otherwise stated. Where I indicate in this affidavit that a matter to which I refer is based on information supplied to me by another person or in a document, I believe that matter to be true unless I state otherwise.

3. I swear this further affidavit in support of the Applicant's application filed earlier this afternoon to amend his originating application.

4. Annexed hereto and marked '**NB-4**' is a further proposed amended originating application.

5. The only change from the document that is annexure NB-1 is the insertion of paragraphs 37-43 (with proposed new ground 1D).

6. The applicant will seek that the Court treat the application in a proceeding filed this afternoon as application for leave to amend to rely on this further proposed amended originating application set out in annexure NB-4.

Signature of person making this affidavit (deponent)	Signature of witness
DocuSigned by: Natalie Bannister 08640E9BD5B94FE...	DocuSigned by: Siming Wang FF0EC23A5B6A4CD...

Part E Signature

I swear the contents of this affidavit are true

DocuSigned by:
Natalie Bannister
08040E9BD5B94FE...
Signature of Deponent

Place MELBOURNE Date 07/ 01 / 2022

DocuSigned by:
Sining Wang
FF0EC23A5B6A4CD...
Before me (signature of witness)

Sining Wang
Full name of witness (please print)

☐ Justice of the Peace
☐ Notary Public
☒ Lawyer

*delete whichever is inapplicable

This affidavit was prepared / settled by ☒ deponent/s ☐ lawyer

NATALIE LOUISE BANNISTER

PRINT NAME AND LAWYER'S CODE

This is the document referred to as **NB-4** in the affidavit of Natalie Bannister sworn at Melbourne on 7 January 2022 before me:

DocuSigned by:
Sining Wang
FF0EC23A5B6A4CD...

Sining Wang
Australian Legal Practitioner

IN THE FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA
REGISTRY: MELBOURNE

File number

NOVAK DJOKOVIC
Applicant

MINISTER FOR HOME AFFAIRS
First Respondent

Further ~~Application~~P proposed amended application – Migration Act

The applicant applies for a remedy to be granted in exercise of the Court's jurisdiction under section 476 of the *Migration Act 1958* in respect of the migration decision specified on page 2.

First court date

This application is listed for hearing at (court location): 305 William St., Melbourne, Vic., 3000

Court date and time (registry staff to insert): at am/pm.

All parties or their legal representatives should attend this hearing. Default orders may be made if any party fails to attend. The Court may hear and determine all interlocutory or final issues, or may give directions for the future conduct of the proceeding.

Applicant/s address (place of residence or business, if different from the address for service)

(for) Registrar
Date: ...../...../.....

Filed on behalf of Novak Djokovic
Prepared by Hall & Wilcox Lawyer's code
Name of law firm Hall & Wilcox Lawyers
Address for service in Australia Level 11, 525 Collins Street, Melbourne
State VIC Postcode 3000
Email Natalie.Bannister@hallandwilcox.com.au DX
Tel 03 9603 3155 Fax 03 9670 9632 Attention Natalie Bannister

n/a.....

.....

Applicant/s details

Is the applicant or are any of the applicants to this proceeding currently in immigration detention?

☒ Yes ☐ No

Name and address of the detention centre: .....Unknown

.....

Expedited hearing (specify why the applicant believes their hearing should be expedited)

The hearing should be expedited because the Subclass 408 visa that was cancelled was granted in order to allow the applicant to compete in the Australian Open 2022, which starts on 17 January 2022. The applicant contends that a purported decision made by a delegate of the respondent on 6 January 2022 under section 116(1)(e)(i) of the *Migration Act 1958* (Cth) to cancel his visa is invalid. The applicant respectfully requests that the application be heard urgently such that, if the application is successful, the applicant may be able to compete at the Australian Open. .....

.....

.....

Migration decision details (select box and insert details of the migration decision)

☐ Decision made by a tribunal

Name of the tribunal: .....

Date of the decision: ...../...../.....

Have you applied for a protection visa?

☐ Yes ☐ No

☐ Immigration Assessment Authority

Date of the decision: ……../……/……..

☒ Decision made by the Minister or another person under the Migration Act.

Name of decision-maker: Sudhir R .....

Office held: Position number 60063579 .....

Date of the decision: .....06...../.....01...../.....2022.....

☒ A future decision or other action by the Minister or an officer under the Migration Act, being removal of the applicant from Australia under section 198 of the Act.

Application for extension of time

(an extension is required if the application is not made within 35 days of the date of the migration decision)

Does the applicant apply for an order that the time for making the application be extended under section 477 of the *Migration Act 1958*?

☐ Yes ☒ No

Grounds of application for extension of time

(specify why the applicant considers that it is necessary in the interests of the administration of justice to extend time)

1. Not applicable

Other Interlocutory, interim or procedural orders sought by applicant/s

(complete only if other interlocutory, interim or procedural orders are sought)

1. An order restraining the Respondent, herself or by her servants, agents, or officers, from removing the Applicant from Australia pending the hearing and determination of this proceeding, or until further order.

Final orders sought by applicant/s (select boxes and add additional or alternative order/s)

☒ An order that the decision of the tribunal, Immigration Assessment Authority or Minister be quashed.

☐ A writ of mandamus directed to the tribunal, Immigration Assessment Authority or Minister, requiring them to determine the applicant's application according to law.

☒ An injunction or alternatively a writ of prohibition restraining the Minister, by himself or by his Department, officers, delegates or agents, from making the future decision or taking the other action the subject of the proceedings.

~~☐ (state precisely each other order sought by way of final relief)~~☒ An order that the respondent is to take appropriate steps to ensure that the applicant is released immediately and forthwith from immigration detention.

☒ Such further or other orders as the Court thinks fit.

☒ Costs.

Grounds of application (see Instructions for completion)

Background

1. On or about 05 January 2022, the Applicant arrived at Melbourne Tullamarine Airport.

2. At that time, the Applicant held a subclass GG408 (Temporary Activity) visa ("**Visa**").

~~3.~~ At or about 4.11am on 06 January 2022 an officer of the Australian Border Force ~~gave~~purported to give to the Applicant~~:~~

~~a.~~ a "Notice of intention to consider cancellation under section 116 of the *Migration Act 1958* (Cth) (For use in immigration clearance)" ("**Notice**~~");~~

~~4.~~3. "), which comprises "Part A" of the document at Annexure H to the affidavit of Natalie Bannister dated 6 January 2022 ("**Annexure H**"), and includes a document entitled, "ATTACHMENT A (Part A)" ("**Attachment**").

~~5.~~4. At or about 07:42 am on 06 January 2022, a delegate of the Respondent ("**Delegate**") purported to cancel the Applicant's Visa, pursuant to section 116(1)(e)(i) of the *Migration Act 1958* (Cth) ("**Act**") ("**Decision**").

Ground 1A: failure to give requisite notice under section 119(1~~:~~)

5. The Delegate had no power to cancel the Applicant's Visa under section 116(1)(e)(i) of the Act unless the Applicant had been provided with a notice under section 119(1) that there appeared to be grounds for cancelling the Applicant's Visa and *inter alia* "giving particulars of those grounds".

6. Further or alternatively, the Delegate had no power give the Applicant a Notice under section 119(1) regarding a possible cancellation under section 116(1)(e)(i), or therefore to cancel the Applicant's Visa under section 116(1)(e)(i), unless the Delegate lawfully considered that there appeared to be grounds for cancelling the Applicant's Visa under section 116(1)(e)(i).

7. The Notice did not give particulars of the ground in section 116(1)(e)(i).

8. Further or alternatively, the Delegate did not form the requisite state of mind.

9. The Notice (including Attachment A) states that the "ground":

> *"… is that, the Minister may cancel a visa if he or she is satisfied that:… if its holder has entered Australia or has so entered but has not entered Australia or has so entered but has not been immigration cleared – it would be liable to be cancelled under Section 116(1)(e)(i) of the Migration Act 1958"*

10. But no such ground existed. The Delegate wrongly conflated and confused the distinct grounds of cancellation in section 116(1)(d) and (e)(i), respectively.

11. Section 116(1)(d) provides that the Minister may cancel a visa if he or she is satisfied that, if its holder has not entered Australia or has so entered but has not been immigration cleared – it would be liable to be cancelled under Subdivision C (incorrect information given by holder) if its holder had so entered and been immigration cleared".

12. Section 116(1)(e)(i) (on which ground the Delegate purported to cancel the Applicant's Visa) is not in Subdivision C.

Ground 1B: error in purported formation of state of satisfaction described in section 116(1)(e)(i) simpliciter

13. The Delegate had no power to cancel the Applicant's Visa under section 116(1)(e)(i) of the Act unless he or she lawfully formed a state of satisfaction that the presence of the Applicant in Australia is or may be, or would or might be, a risk to the health, safety, or good order of the Australian community or a segment of the Australian community.

14. The Delegate purported to cancel the Applicant's Visa under section 116(1)(e)(i), but did not form that state of satisfaction.

15. The Delegate stated, in the part of his or her decision record ("**Decision Record**") that set out the "[d]etails of the evidence and finding about why the delegate is satisfied GROUNDS for cancellation DO EXIST" (Part B of the document within Annexure H):

> "*Based on the above information, I am satisfied that there are grounds to consider cancelling the visa holder's subclass GG-408 visa. The ground is that, the Minister may cancel a visa if he or she is satisfied that: … if its holder has not entered Australia or has so entered but has not been immigration cleared – it would be liable to be cancelled under Section 116(1)(e)(i) of the Migration Act 1958*"

16. But no such ground existed: paragraphs 10 to 12 above are repeated.

Ground 1C: error in purported formation of state of satisfaction described in section 116(1)l(i) – illogicality / irrationality in regard to the ATAGI Principles

17. Paragraphs 13 and 14 above are repeated.

~~6.~~18. The Attachment contained, relevantly, the following (emphasis added):

> "*During an interview with an Australian Border Force (ABF) officer, you have stated you are not vaccinated against COVID-19. You have also provided a copy of a medical exemption issued by Tennis Australia. This medical exemption was issued on the grounds that you have recently recovered from COVID-19. Under the Biosecurity Act 2015, there are requirements for entry into Australian territory. These requirements include that international travellers make a declaration as to their vaccination status (vaccinated, unvaccinated, or medically contraindicated). Travellers may make a declaration that they have a medical contraindication and must provide evidence of that medical contraindication provided by their medical practitioner.* ***Previous infection with COVID-19 is not considered a medical contraindication for COVID-19 vaccination in Australia***."

~~7.~~19. On or about 26 November 2021, the Australian Technical Advisory Group on Immunisation ("**ATAGI**") promulgated a document entitled, "ATAGI expanded guidance on acute major medical conditions that warrant a temporary medical exemption relevant for COVID-19 vaccines" ("**ATAGI Exemption Guidance**").

~~8.~~20. The ATAGI Exemption Guidance addressed when temporary exemptions from vaccination for COVID-19 may be granted on the basis of "acute major medical conditions."

~~9.~~21. The ATAGI Exemption Guidance provided, relevantly, that:

> "*Valid reasons for a temporary exemption include:*
>
> …

- *For all COVID-19 vaccines:*

  …

  - *PCR-confirmed SARS-CoV-2 infection, where vaccination can be deferred until 6 months after the infection."*

~~10.~~22. On or about 14 December 2021, ATAGI promulgated a document entitled, "ATAGI advice on the definition of fully vaccinated" ("**ATAGI Vaccination Advice**").

~~11.~~23. The ATAGI Vaccination Advice distinguished between:

a. past SARS-CoV-2 infection at any time in the past (page 3); and

b. past SARS-CoV-2 infection within the previous six months (page 4) ("**Recent Infection**").

~~12.~~24. In particular, the ATAGI Vaccination Advice provided in relation to Recent Infection:

> "*COVID-19 vaccination in people who have had PCR-confirmed SARS-CoV-2 infection can be deferred for a maximum of six months after the acute illness, as a temporary exemption due to acute major medical illness*."

~~13.~~25. The Applicant provided evidence to the Delegate that he had had SARS-CoV-2 infection within the previous six months (indeed, within the last month).

~~14.~~26. Accordingly, the Applicant:

a. met the criteria for a temporary exemption under the ATAGI Exemption Guidance;

b. fell within the ATAGI Vaccination Advice in relation to Recent Infection.

(hereafter, the ATAGI Exemption Guidance and the ATAGI Vaccination Advice, "**ATAGI Principles**")

~~15.~~27. The Decision was made purportedly in application of the ATAGI Principles.

Particulars

a. Statements made by or on behalf of the Respondent prior to the Decision indicate that decisions concerning entry into Australia are made based on application of "rules," where inferentially such "rules" are to be understood as a reference to ~~guidelines from~~the ATAGI Principles — see affidavit of Natalie Bannister dated 06 January 2022.

b. The webpage, "https://covid19.homeaffairs.gov.au/vaccinated-travellers" implies, in relation to unvaccinated persons arriving in Australia, that having a medical contraindication recorded in the Australian Immunisation Register (AIR) constitutes, "Proof that you cannot be vaccinated for medical reasons when coming to Australia."

c. The form "Australian Immunisation Register immunisation medical exemption (IM011)", which is relevant to exemption from vaccination due to medical contraindication, states on page 3 that, "The Australian Technical Advisory Group on Immunisation has

released expanded guidance on acute major medical conditions that warrant a temporary medical contraindication relevant for COVID-19 vaccines. This information is available on the Department of Health website www.health.gov.au/resources/collections/covid-19-vaccination-provider-resources," and the ATAGI Exemption Guidance and the ATAGI Vaccination Advice are available at that link.

d. The Delegate was purporting to consider (*inter alia*) the Applicant's representations, one of which relied on ATAGI Principles (see below at 31–33)

~~16.~~28. Despite that the Decisions was made purportedly in application of the ATAGI Principles, in fact the Delegate, in purporting to form a state of satisfaction of the matter described in section 116(1)(e)(i), misconstrued the ATAGI Principles in that:

a. the Delegate erroneously construed that the ATAGI Principles as failing to provide for a valid temporary exemption from vaccination based on recent SARS-CoV-2 infection;

b. in fact, in the premises set out above, the ATAGI Principles did provide for such a temporary exemption from vaccination.

~~17.~~29. In the premises, the ~~Decision~~ purported formation of the state of satisfaction of the matter in section 116(1)(e)(i) was seriously illogical or irrational, or legally unreasonable, and was not lawfully formed.

30. ~~Ground 2:~~Further or alternatively to 28, the Delegate, in purporting to form a state of satisfaction of the matter described in section 116(1)(e)(i), failed to consider a representation by the Applicant as to why Delegate should not form that state of satisfaction.

31. Among the reasons given by the Applicant as to why grounds for cancellation do not exist, or why the Visa should not be cancelled, was that he had been granted a medical exemption via a process involving two independent medical panels, being: (i) a first independent expert medical review panel; and (ii) a further independent Medical Exemptions Review Panel of the Victorian State Government, in which process the Applicant's identity was anonymised (**Medical Exemption Process**).

32. The exemption document resulting from the Medical Exemption Process (Bannister Affidavit, Annexure F) recorded that the conditions of exemption were consistent with recommendations of ATAGI, i.e., the ATAGI Principles.

33. In the premises, the Applicant represented that his compliance with ATAGI Principles was a reason why grounds for cancellation did not exist, or why his Visa should not be cancelled.

34. If, alternatively to the primary way in which this ground is put, the Delegate did not have regard to ATAGI Principles, then:

a. the Delegate failed to consider the Applicant's representation as described above; or

b. the Delegate unreasonably failed to obtain and/or consider the ATAGI recommendations.

35. In the premises, the Delegate failed to comply with the obligation to consider representations made by the Applicant in response to the Notice issued under section 119(1)(b)(i).

36. In the premises, the Delegate had no power under section 116(1)(e)(i) to cancel the Applicant's Visa.

Ground 1D: error in purported formation of state of satisfaction described in section 116(1)l(i) – "must" provide evidence of medical contraindication

37. Paragraphs 13 and 14 above are repeated.

38. The Delegate relevantly stated, in the part of his or her Decision Record that set out the "[d]etails of the evidence and finding about why the delegate is satisfied GROUNDS for cancellation DO EXIST" (emphasis added):

> "Under the Biosecurity Act 2015, there are requirements for entry into Australian territory. These requirements include that international travellers make a declaration as to their vaccination status (vaccinated, unvaccinated, or medically contraindicated). Travellers may make a declaration that they have a medical contraindication and **must provide evidence of that medical contraindication provided by their medical practitioner** …
>
> …
>
> ***All visa holders, whether permanent or temporary are expected to abide by all public health directives issued by both Commonwealth and state and territory jurisdictions. A breach of these directions is considered a potential risk to the health, safety or good order of the Australian community.***
>
> *Based on the above information, I am satisfied that there are grounds to consider cancelling the visa holder's subclass GG-408 visa. The ground is that, the Minister may cancel a visa if he or she is satisfied that: … if its holder has not entered Australia or has so entered but has not been immigration cleared – it would be liable to be cancelled under Section 116(1)(e)(i) of the Migration Act 1958*"

39. However, the Delegate erred at law in considering that, under the *Biosecurity Act 2015* ("**Biosecurity Act**"), a person who declares that they have a medical contradiction to COVID-19 vaccines "must provide evidence of that medical contraindication provided by their medical practitioner".

40. Rather, the effect of section 5(2) and (3) of the *Biosecurity (Entry Requirements – Human Coronavirus with Pandemic Potential) Determination 2021* ("**Biosecurity Determination**"), made under the Biosecurity Act, is that certain individuals must be able to produce, to a relevant official, evidence that, before the individual boarded the aircraft, the individual made a written

statement that included a declaration of which one of the three paragraphs of subsection 5(3) applied to them.

41. Relevantly, paragraph (3)(b) of the Biosecurity Determination was that the individual: (i) has a medical contraindication to COVID-19 vaccines; and (ii) can produce evidence provided by a medical practitioner of the matter mentioned in subparagraph (i).

42. Further, the Delegate:

    a. erred at law in finding (at least implicitly) that the Applicant had breached this requirement, assuming that it is capable of being characterised as a "public health directive"; and

    b. did not identify any other "public health directives" issued by the Commonwealth or any State or Territory, and could not lawfully form a conclusion that the Applicant had breached any such directives on the evidence before him.

43. In the premises, the purported formation of the state of satisfaction of the matter in section 116(1)(e)(i) was seriously illogical or irrational, or legally unreasonable, and was not lawfully formed.

Ground 2A: error in purported exercise of discretion under section 116(1)(e)(i) – failure to consider representations made by the Applicant in response to Notice

44. If, contrary to the grounds outlined above, the Delegate:

    a. had lawfully given the requisite notice under section 119(1); and

    b. had lawfully formed a state of satisfaction of the matter described in section 116(1)(e)(i),

    the Delegate had a discretion (not a duty) to cancel the Applicant's Visa under section 116(1)(e)(i), and erred in the purported exercise of that discretion.

45. In response to the Notice:

    a. the Applicant made representations as to why his Visa "should not be cancelled" in the exercise of discretion under section 116(1)(e)(i), even if the Delegate was satisfied that the ground described in that section existed; and

    b. in particular, made the representations summarised by the Delegate at point 8 of his Decision Record (Part B of Annexure H).

46. The Delegate had no power to cancel the Applicant's Visa under section 116(1)(e)(i) of the Act unless he or she lawfully considered those representations.

47. The Delegate did not consider those representations and, in particular, those representations are not dealt with in point 9 of the Decision Record where the Delegate sets out his or her "assessment of the reasons the Visa should not be cancelled".

Ground 2B: error in purported exercise of discretion under section 116(1)(e)(i) – illogicality / irrationality as to extenuating circumstances

48. Paragraph 44 above is repeated.

~~18.~~49. One of the matters ~~considered by the Delegate was~~ that the Delegate purported to consider in deciding whether or not to exercise the discretion in section 116(1)(e)(i) to cancel the Applicant's Visa was (as set out in the relevant part of point 9 of the Decision Record) was "whether there were extenuating circumstances beyond the ~~visa~~Visa holder's control that led to purported grounds for cancellation existing~~.~~".

~~19.~~50. The Delegates reasoning in that connection was as follows (emphasis added):

> "*The visa holder stated that Tennis Australia facilitated his medical exemption from COVID-19 vaccination requirement and completed the Australian Travel Declaration on his behalf.*
>
> *I consider that Tennis Australia would have facilitated his medical exemption and Australian Travel Declaration based on information the visa holder provided to them. As such, I don't consider these constitute extenuating circumstances beyond the visa holder's control.*
>
> ***Based on the above, I apply significant weight in favour of visa cancellation for this factor***."

~~20.~~51. The absence of extenuating circumstances could not, logically or rationally, constitute a factor in favour of cancellation. It could only, logically or rationally, constitute a neutral or irrelevant factor.

~~21.~~52. Accordingly, in taking the absence of extenuating circumstances into account as a factor significantly in favour of cancellation, the Delegate reasoned in a manner that was seriously illogical or irrational.

Ground 3A: procedural fairness

~~22.~~53. The process leading to the purported Decision included the following:

a. the Notice was given to the Applicant at or around 4:11 am on 06 ~~December~~January 2022;

b. the Notice stipulated, in accordance with section 121(1)(b), that the Applicant was invited to provide comments at an interview at 4:35 am on 06 ~~December~~January 2022;

c. at a time subsequently to 6.07 am on 06 ~~December~~January 2022:

   i. the Applicant asked for further time in which to provide comments, having received advice from his lawyers;

   ii. ~~an ABF officer~~the Delegate said that the Applicant could have until 08:30 am on 06 ~~December~~January 2022 to provide comments;

d. the statement at paragraph (c)(ii) above involved the exercise of power under section 121(5) to change the time of the interview to 08:30 on 06 January 2022 to respond.

~~d.~~e. at or about 07:30 am (and at other times), an ABF officer said to the Applicant words to the effect that the Applicant's lawyers would not be able to do anything to help him until a decision was made either way so it would be best if he answered their questions about his medical condition then and there.

~~e.~~f. After further exchanges, the ABF officer left the room.

~~f.~~g. As outlined above, the Decision was purportedly made at or about 07:42 am.

~~23.~~54. The process outlined above involved ~~practical injustice~~procedural unfairness to the Applicant in that:

~~a. had the process represented to him involving his making further comments at 08:30 am been followed, he would have had an opportunity of making representations regarding the content of the ATAGI Principles;~~

~~b. in the event, the Applicant was denied that opportunity.~~

a. ~~In the circumstances, the Decision was made in circumstances that~~by reference to section 124(1), the Delegate did not have power to make the Decision when he or she did, including because the Applicant had not yet given his (complete) response to the Notice at 07:42 am, and because the time for responding to the Notice had not yet passed; or

~~c.~~b.alternatively, it involved ~~a denial of procedural fairness~~practical injustice to the Applicant.

Ground 3B: unreasonableness as to timing of Decision

55. Paragraph 53 is repeated.

56. Further or alternatively to ground 3A, the Decision was made when it was (rather than later) including for the reason given to the Applicant as set out in paragraph 53.e above.

57. That was a legally unreasonable basis to make the Decision then (rather than later).

58. Plainly, there were matters that his lawyers could have assisted the Applicant with before a decision is made, including to address various reasons why the Visa should not be cancelled.

Other Court Proceedings

(This section must be completed if the applicant has made a previous application or applications to a court to review the decision – see section 486D of the Migration Act 1958.)

Person or persons who made each previous application: Not applicable .....

Court or courts to which each application was made: .....

Commencement date of each previous application: .....

File number of each application: .....

Outcome of each application: .....

Related Court Proceedings*

(This section must be completed if a separate application has been made arising out of the same circumstances, for example, by the applicant's employer or by a family member of the applicant)

Person who has made the related application: Not applicable .....

Court to which the application has been made: .....

Commencement date of the related application: .....

File number of the related application: .....

~~** Repeat as necessary for additional proceedings*~~

Language spoken

Does the applicant require an interpreter?

☐ Yes ☒ No

If Yes, what language:

Service of Application

The application must be served on each respondent within 7 days by delivering it to the Department of Home Affairs at the address below.

[The address will be inserted by the Registry]

Signature of applicant/s or lawyer

Signed by (print name/s)

.....

☐ the applicant/s or ☐ ..lawyer for the applicant/s

Date: ...../...../.....

Lawyer's Certification (see section 486I of the Migration Act 1958)

I, Natalie Louise Bannister, the lawyer filing this document commencing migration litigation, certify that there are reasonable grounds for believing that this migration litigation has a reasonable prospect of success.

.....

Signature of the lawyer filing application

Date: ...../...../.....

IMPORTANT NOTICE TO RESPONDENT/S

To the respondent(s): Department of Home Affairs

of (the address will be inserted by the Registry):

.....

A respondent who intends to contest the application must file a response within eight weeks of service of the application: see rule 29.06(2) of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021*. A response must specify each ground of opposition with particulars, including grounds of objection to competency, previous court proceedings, delay, etc. Any evidence relied upon must be detailed in or attached to an affidavit.

A respondent who does not intend to contest the application may file a notice of appearance which submits to the orders of the Court save as to costs.

Form approved by the Chief Judge pursuant to subrule 2.04(1) for the purpose of rule 29.05(1)

MIG_Application_0921V1