



**IN THE FEDERAL CIRCUIT and
FAMILY COURT OF AUSTRALIA (DIVISION 2)
AT MELBOURNE**

File No: MLG35/2022

NOVAK DJOKOVIC
Applicant

MINISTER FOR HOME AFFAIRS
Respondent

ORDER

BEFORE: JUDGE A KELLY
DATE: 10 January 2022
MADE AT: MELBOURNE

APPEARANCES:

Mr P Holdenson QC, Mr N Wood QC, Mr J Hartley and Mr N Dragojlovic of counsel for the Applicant,

Mr C. Tran and Ms N Wootton of counsel for the Respondent,

THE COURT ORDERS THAT:

1. The decision of the delegate to cancel the applicant's Temporary Activity (subclass 408) visa made on 6 January 2022 be quashed.
2. The Respondent pay the Applicant's costs (including any reserved costs), as agreed or assessed.
3. The Respondent forthwith take all necessary steps to cause:
 - 3.1. the Applicant to be released immediately and forthwith from immigration detention and, without limitation thereto, such release must occur by no later than 30 minutes after the making of this Order; and



- 3.2. the Applicant's passport and all other personal effects to be returned to him as soon as reasonably practicable after the making of this Order.


NOTATION:

- A. The respondent concedes that the delegate's decision to proceed with the interview and make a decision to cancel the applicant's visa pursuant to s 116 of the *Migration Act 1958* (Cth) was unreasonable in circumstances where:
- (1) at 5:20am on 6 January 2022 the applicant was told that he could have until 8.30am to provide comments in response to a notice of intention to consider cancellation under s 116 of the *Migration Act 1958* (Cth);
 - (2) instead, the applicant's comments were then sought at about 6:14am.
 - (3) the delegate's decision to cancel the applicant's visa was made at 7.42am;
 - (4) the applicant was thus denied until 8.30am to make comments;
 - (5) had the applicant been allowed until 8:30am, he could have consulted others and made further submissions to the delegate about why his visa should not be cancelled.
- B. This Order was pronounced orally in open court at 5:16 p.m. on Monday, 10 January 2022.
- C. The Court was informed by the respondent, through her counsel of his instructions, that the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs may consider whether to exercise a personal power of cancellation pursuant to sub-section 133C(3) of the *Migration Act 1958* (Cth).

By the Court



DATE ENTERED: 10 January 2022.



Registrar