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MB22-000651

CLIENT BRIEF

Client name: Date of birth: Nationality: Client ID: Location:	Novak DJOKOVIC s. 47F(1) Serbia s. 47F(1) Offshore
Behaviour of concern: Current status: Issues:	Mr DJOKOVIC's resistance to COVID-19 vaccinations have been widely reported in the media and he has previously publicly stated that he would not be forced into vaccination for the purposes of travel. Offshore, following his voluntary departure on 16 January 2022. On 14 January 2022, the former Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs decided to exercise his personal powers to cancel Mr DJOKOVIC's Temporary Activity (subclass 408) visa, which had been granted for the purpose of his participation in the 2021 Australian Open Series tennis event. Mr DJOKOVIC sought revocation of the former Minister's visa cancellation decision on 11 February 2022 and the request remains ongoing. It is noted that the visa cancellation decision can only be revoked by the Minister personally in accordance with section 133F(5) of the <i>Migration Act 1958</i> (the Act) Media reporting indicates that Mr DJOKOVIC hopes to return to Australia to compete in next year's Australian Open, scheduled to commence on 16 January 2023. Mr DJOKOVIC's visa history to date suggests that he is likely to apply for a visa for this purpose sometime between October and December 2022.
Media interest:	Novak Djokovic: Australian Open relax Covid rules but star may still be banned in 2023 Tennis Sport Express.co.uk Djokovic admits Australia travel form 'mistake,' not isolating after positive test (nbcnews.com) Novak Djokovic not being held 'captive' and free to leave whenever he chooses, Australia says Australia news The Guardian

Client background:

Mr DJOKOVIC first arrived in Australia on s. 47F(1) He has travelled to Australia on 19 occasions in connection with his tennis career, most recently arriving on 5 January 2022.

Behaviour of concern

It was reported in the media that Mr DJOKOVIC had made his resistance to COVID-19 vaccinations clear in the past. In April 2020, before COVID-19 vaccines were available, he said he was "opposed to vaccination", later clarifying that he wanted to have "an option to choose what's best for my body". During a Facebook live event, he said "Personally I am opposed to vaccination and I wouldn't want to be forced by someone to take a vaccine in order to be able to travel".

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Visa history

s. 47F(1)

In October 2021, the former Australian Government stated that anyone wishing to visit Australia in order to participate in the 2022 Australian Open would need to be fully vaccinated, in addition to satisfying the criteria for the grant of their visas.

s. 47F(1)

s. 47F(1)

for his proposed travel to Australia to participate in the Australian Open Series tennis event, including the Association of Tennis Professionals (ATP) Cup and the Australian Open.

s. 47F(1)

s. 47F(1)

Mr DJOKOVIC travelled to Australia on 5 January 2022 and was interviewed by Australian Border Force (ABF) upon arrival. He had not obtained a travel exemption prior to arriving.

On 6 January 2022, Mr DJOKOVIC's Temporary Activity (subclass 408) visa was cancelled by an ABF delegate at the border under section 116(e)(i) of the Act on the basis that his presence in Australia may be a risk to the health, safety or good order of the Australian community, after it was determined that he did not meet the entry requirements for an unvaccinated traveller. Mr DJOKOVIC was detained under section 189 of the Act, pending removal from Australia.

On 6 January 2022, Mr DJOKOVIC sought judicial review of the delegate's decision to cancel his visa and on 10 January 2022, the Federal Circuit and Family Court made final orders with the consent of the parties to quash the cancellation decision on the basis there had been a denial of procedural fairness. Mr DJOKOVIC's Temporary Activity (subclass 408) visa was reinstated, and his release from immigration detention was facilitated within 30 minutes of the making of the Court's order.

On 14 January 2022, the former Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs decided to exercise his personal power under section 133C (3) of the Act to cancel Mr DJOKOVIC's Temporary Activity (subclass 408) visa, satisfied that a ground for cancelling the visa under section 116 of the Act existed and that the cancellation was in the public interest. Mr DJOKOVIC was re-detained on 15 January 2022 pursuant to section 189 of the Act.

Mr DJOKOVIC sought judicial review of the former Minister's decision to cancel his visa and on 14 January 2022, the parties agreed that the judicial review application should be transferred from the Federal Circuit and Family Court to the Federal Court. On 15 January 2022, the Federal Court accepted the transfer and listed the matter for final hearing before a Full Court on 16 January 2022.

On 16 January 2022, Mr DJOKOVIC's application was unanimously dismissed by the Full Court of the Federal Court. Mr DJOKOVIC was voluntarily removed from Australia later that day.

Request for revocation

s. 47F(1)

Mr DJOKOVIC made representations to the Minister in which he sought revocation of the cancellation of his Temporary Activity (subclass 408) visa under section 133F(4) of the Act.

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s. 47F(1)

The request for revocation remains ongoing.

s. 47F(1)

s. 47F(1)

Sensitivities

The series of events surrounding Mr DJOKOVIC's arrival and subsequent removal from Australia have been the subject of significant ongoing media attention. Media reporting included comments from the Serbian Government, describing Australia's treatment of Mr DJOKOVIC as 'scandalous'. Recent media coverage relates to Mr DJOKOVIC's desire to return to Australia for next year's Australian Open, scheduled to commence on 16 January 2023.

s. 47C(1)

s. 47C(1)

As a result of the media attention, the Department received and actioned over 1500 pieces of Ministerial correspondence in relation to the case.

Possible return to Australia

The Australian Government announced that from 6 July 2022, travellers entering Australia will no longer need to provide proof that they have had two doses of an approved COVID-19 vaccine. All incoming travellers will need to comply with the relevant state testing and quarantine requirements but no longer need to obtain an individual travel exemption.

When a visa is cancelled under section 133C of the Act, if a person applies for another visa for which PIC 4013 is a criterion that must be satisfied before a grant can occur, the grant of a further visa will be prevented for three years unless the Minister or their delegate is satisfied that compelling circumstances affecting the interests of Australia justify the granting of the visa within three years of the cancellation.

Similarly, when a person is removed from Australia under section 198 of the Act

s. 47F(1)

s. 47F(1)

, if a person applies for another visa for which Special Return Criterion (SRC) 5002 is a criterion that must be satisfied before a grant can occur, the grant of a further visa will be prevented for a period of 12 months unless the Minister or their delegate is satisfied that compelling circumstances, affecting the interests of Australia, justify the granting of the visa within 12 months of the removal.

As such, if the Minister decides not to revoke the cancellation of Mr DJOKOVIC's visa, he will not be able to satisfy PIC 4013 or SRC 5002, unless the Minister or their delegate is satisfied that either there are compelling circumstances that affect the interests of Australia, or compassionate and compelling circumstances that affect the interests of an Australian citizen or permanent resident that justify the visa grant. If the Minister or their delegate is not satisfied that either of these circumstances exist, Mr DJOKOVIC cannot be granted a Temporary Activity (subclass 408) visa as both PIC 4013 and SRC 5002 must be satisfied.

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If the Minister decides to revoke the cancellation of Mr DJOKOVIC's visa, PIC 4013 will no longer be applicable and will therefore not prevent the grant of a further visa. However, SRC 5002 will continue to apply preventing the grant of a further Temporary Activity (subclass 408) visa within 12 months of his removal from Australia, unless the Minister or their delegate is satisfied that either of the compelling and compassionate circumstances outlined above exist.

An assessment of whether to 'exempt' Mr DJOKOVIC from PIC 4013 or SRC 5002 cannot be made until a further visa application has been made.

Potential option:

Personal consideration of revocation application

The Minister has a non-delegable power under section 133F of the Act to revoke a visa cancellation decision if the request is made in the prescribed timeframe and if satisfied that the ground for cancelling the visa under section 133C does not exist.

While a decision made by the Minister personally is not subject to merits review, it will be open to Mr DJOKOVIC to seek judicial review.

A submission is being prepared for the Minister's consideration.

Clearance & contact officer:

Luke Morrish
Assistant Secretary
Character and Cancellation Branch

Phone: s. 22(1)(a)(ii)

Date: 14 July 2022

Date first prepared: 6/07/2022

Date last updated: 12/07/2022

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Australian Government
Department of Home Affairs

Background Brief

For information

PDMS Number: MB22-001267

To: Minister for Immigration, Citizenship and Multicultural Affairs

Subject: Australian Open 2023 - Novak Djokovic visa application process

Your office requested a background brief on a Temporary Activity (subclass 408) visa - Invited Participant application, made on 8 November 2022 by Mr Novak Djokovic.

Background

1. On 14 January 2022, Mr Djokovic's Temporary Activity (subclass 408) Invited Participant visa was cancelled by the then Minister.
2. On 28 September 2022, you revoked the decision to cancel Mr Djokovic's subclass 408 visa.
3. On Wednesday 26 October 2022 Tennis Australia commenced inviting participants for the Australian Open 2023, including Mr Djokovic.
4. On 8 November 2022, Mr Djokovic lodged an application for a Temporary Activity (sc408) Invited Participant visa.

Key Issues

5. There are no legislative restrictions preventing Mr Djokovic from applying for a visa.
6. In order to be granted a visa however, Mr Djokovic must meet all criteria for grant under the Migration Regulations, including Special Return Criterion (SRC) 5002.
7. SRC 5002 applies where a visa applicant was removed from Australia under s.198 of the *Migration Act 1958*. SRC 5002 requires that the Minister or their delegate be satisfied that compelling circumstances, affecting the interests of Australia, or compassionate or compelling circumstances affecting the interests of an Australian, justify the granting of the visa within 12 months after the removal.
8. Although the cancellation of Mr Djokovic's visa was revoked, he was also removed under s.198 of the *Migration Act 1958*. As Mr Djokovic made his subclass 408 visa application within 12 months of his removal, SRC 5002 must be satisfied before a visa can be granted.
9. The Department generally requests visa applicants affected by SRC 5002 provide information to support claims of compelling circumstances.
10. Mr Djokovic's application is supported by a submission prepared by s. 47F(1)
s. 47F(1)
11. The submission addresses a number of issues including Mr Djokovic's removal and deportation and compelling circumstances to return to Australia, and whether or not an outstanding debt to the Commonwealth relating to the court costs exists.
12. The Department is currently reviewing the submission and will work with Legal Division to ensure that all aspects have been appropriately considered.
13. Mr Djokovic's visa application will be assessed by a senior officer.

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14. Your office has asked to be informed of key milestones, and we will provide you with early notification of the decision.

s. 47C(1)

s. 47F(1)

Consultation

19. Skilled visa Branch; Complex and Controversial Cases Section in Status Resolution and Visa Cancellation Division; Legal Division, Legal Opinions

s. 47E(d)

Sensitivities

s. 47F(1)

s. 47F(1)

22.

Authorising Officer	Contact Officer
Michael Willard First Assistant Secretary Immigration Programs Division 10/11/2022 Ph: s. 22(1)(a)(ii) M:	Alison Garrod Assistant Secretary Temporary Visas Branch Ph: s. 22(1)(a)(ii) M:

Cc: Minister for Home Affairs and Minister for Cyber Security
Secretary
Associate Secretary
First Assistant Secretary, Status Resolution and Visa Cancellation Division

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