Administrative Appeals Tribunal

DECISION AND REASONS FOR DECISION

Lee and Minister for Home Affairs (Migration) [2019] AATA 871 (15 May 2019)

Division: GENERAL DIVISION

File Number(s): **2019/1069**

Re: **Sang Foo Lee**

APPLICANT

And **Minister for Home Affairs**

RESPONDENT

DECISION

Tribunal: **Senior Member K Raif**

Date: **15 May 2019**

Place: **Sydney**

The decision of the Respondent dated 21 February 2019, to refuse to revoke the mandatory cancellation of the Applicant's visa made under section 501(3A) of the *Migration Act 1958* (Cth), is affirmed.

.....[sgd].....

Senior Member K Raif

CATCHWORDS

MIGRATION – Class BS Subclass 801 Partner visa – mandatory visa cancellation – non-revocation – failure to pass the character test – Ministerial Direction No. 79 – substantial criminal record – trafficking, possession and importation of a commercial quantity of prohibited drugs – use of prohibited drugs and alcohol – supply of prohibited drugs – gambling – drink driving offences – primary considerations – protection of the Australian community – expectations of the Australian community – best interests of minor children – strength nature and duration of ties – hardship in the event of removal – Singapore – decision affirmed

LEGISLATION

Migration Act 1958 (Cth) ss 501, 501CA

CASES

Afu v Minister for Home Affairs [2018] FCA 1311

DKXY v Minister for Home Affairs [2019] FCA 495

Do and Minister for Immigration and Border Protection [2016] AATA 390

Nguyen and Minister for Immigration and Border Protection (Migration) [2018] AATA 4664

Pochi v Minister for Immigration and Ethnic Affairs (1982) 151 CLR 101

R v Leroy (1984) *13 A Crim R 469*

Suleiman v Minister for Immigration and Border Protection [2018] FCA 594

Waits and Minister for Immigration and Multicultural and Indigenous Affairs [2003] AATA 1336

Wilson v the Queen; DPP v Sassine; DPP v Kalakias; Wilson v the Queen [2012] VSCA 141

YNQY v Minister for Immigration and Border Protection [2017] FCA 1466

ZCNR and Minister for Home Affairs [2018] AATA2511

SECONDARY MATERIALS

Minister for Immigration, Citizenship and Multicultural Affairs, Direction No. 79 – Visa refusal and cancellation under s 501 and revocation of a mandatory cancellation of a visa under s 501CA

REASONS FOR DECISION

Senior Member K Raif

15 May 2019

BACKGROUND

1. This is an application for review of a decision of the delegate of the Minister for Home Affairs not to revoke the cancellation of a Class BS Subclass 801 Partner (Residence) visa held by the applicant.

2. The applicant is a national of Singapore, born in November 1962. He first travelled to Australia in 2003 on a visitor visa and was subsequently granted a Partner visa. His permanent Class BS Subclass 801 visa was granted in 2011.

3. In September 2015 the applicant was convicted of importing a commercial quantity of border controlled drugs. He was sentenced to 12 years imprisonment. On 22 January 2018 the applicant's Class BS Subclass 801 Partner visa was cancelled under s. 501(3A) of the *Migration Act 1958* (Cth) ("the Act") because it was determined that the applicant did not pass the character test. The applicant was invited, and made representations about the revocation of the decision to cancel his visa. On 21 February 2019 a decision was made under s. 501CA(4) not to revoke the cancellation. The applicant seeks review of that decision.

4. The issues before the Tribunal are:

   (a) Does the applicant pass the character test, as defined by s.501 and if not,

   (b) Is there another reason why the original decision should be revoked.

5. For the following reasons, the Tribunal has concluded that the decision not to revoke the cancellation of the applicant's visa should be affirmed.

RELEVANT LAW

6. Section 501(3A) of the Migration Act relevantly states:

> *The Minister must cancel a visa that has been granted to a person if:*
>
> *(a) the Minister is satisfied that the person does not pass the character test because of the operation of:*
>
> *(i) paragraph (6)(a) (substantial criminal record), on the basis of paragraph (7)(a), (b) or (c); or*
>
> *(ii) (paragraph (6)(e) (sexually based offences involving a child); and*
>
> *(b) the person is serving a sentence of imprisonment, on a full time basis in a custodial institution, for an offence against a law of the Commonwealth, a State or a Territory*

7. Section 501CA(3) provides that as soon as practicable after making a decision under s. 501(3A) the Minister must, among other things, notify the person of the decision, provide particulars of relevant information and invite the person to make representations to the Minister, "*within the period and in the manner ascertained in accordance with the regulations, about revocation of the original decision*".

8. Section 501CA(4) allows for a revocation of a decision under s. 501(3A) and relevantly states as follows:

> *The Minister may revoke the original decision if:*
>
> *(a) the person makes representations in accordance with the invitation; and*
>
> *(b) the Minister is satisfied:*
>
> *(i) that the person passes the character test (as defined by section 501); or*
>
> *(ii) that there is another reason why the original decision should be revoked.*

9. Section 501CA(4)(b)(ii) of the Act requires the Tribunal to examine the factors for and against revoking a mandatory cancellation decision. If the Tribunal is satisfied that the cancellation should be revoked following that evaluative exercise, the Tribunal must revoke the visa cancellation.

10. On 20 December 2018 the Minister issued *Direction 79 – Visa refusal and cancellation under s. 501 and revocation of a mandatory cancellation of a visa under s. 501CA* ("Direction 79") under s. 499 of the Act. Direction 79 is binding on the Tribunal performing

functions, or exercising powers under s. 501 of the Act. Direction 79 sets out the principles that provide a framework within which decision-makers should approach their task of deciding whether to exercise the discretion to refuse to grant a visa or revoke mandatory cancellation decisions. These principles include (see cl 6.3 of Direction 79):

> *...Being able to come to or remain in Australia is a privilege Australia confers on non-citizens in the expectation that they are, and have been, law-abiding, will respect important institutions... and will not cause or threaten harm to individuals or the Australian community.*[1]
>
> *A non-citizen who has committed a serious crime, including of a violent or sexual nature, and particularly against women or children or vulnerable members of the community… should generally expect to be denied the privilege of coming to, or to forfeit the privilege of staying in, Australia.*[2]

11. The General Guidance at cl 6.2(1) of Direction 79 states that:

> *The Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens.*

12. The primary considerations which are set out in cl 13(2) of Part C of Direction 79 are:

a) Protection of the Australian community from criminal or other serious conduct;
b) The best interests of minor children in Australia; and
c) Expectations of the Australian community.

13. The other considerations which are set out of cl 14(1) in Direction 79 are:

a) International non-refoulement obligations;
b) Strength, nature and duration of ties;
c) Impact on Australian business interests;
d) Impact on victims; and
e) Extent of impediment if removed.

14. Decision-makers should 'generally' give greater weight to primary considerations than other considerations. Further, one primary consideration may outweigh other primary considerations: cl 8(4) and (5) of Direction 79. However, as observed by Colvin J in *Suleiman v Minister for Immigration and Border Protection* [2018] FCA 594 at [23]:

> *…….Direction 65 makes clear that an evaluation is required in each case as to the weight to be given to the 'other considerations' (including nonrefoulement obligations). It requires both primary and other considerations to be given 'appropriate weight'. Direction 65 does provide that, generally, primary considerations should be given greater weight. They are primary in the sense that*

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[1] Clause 6.3(1) of Direction 79.

[2] Clause 6.3(3) of Direction 79.

absent some factor that takes the case out of that which pertains 'generally' they are to be given greater weight. However, Direction 65 does not require that the other considerations be treated as secondary in all cases. Nor does it provide that primary considerations are 'normally' given greater weight. Rather, Direction 65 concerns the appropriate weight to be given to both 'primary' and 'other considerations'. In effect, it requires an inquiry as to whether one or more of the other considerations should be treated as being a primary consideration or the consideration to be afforded greatest weight in the particular circumstances of the case because it is outside the circumstances that generally apply.

15. As such, the other considerations referred to in Direction 79 'may be afforded equal or greater weight than primary considerations in an appropriate case'.[3]

DOES THE APPLICANT PASS THE CHARACTER TEST?

16. The character test is defined in s. 501(6) of the Act. Relevantly, s. 501(6)(a) states that a person does not pass the character test if the person has a substantial criminal record, as defined in subsection (7). Section 501(7)(c) provides that a person has a substantial criminal record if the person has been sentenced to a term of imprisonment of 12 months or more or, under subsection (7)(d), the person has been sentenced to 2 or more terms of imprisonment, where the total of those terms is 12 months or more.

17. The applicant's National Criminal History Check Report dated 12 November 2018 refers to the following offences.

18/09/15	Import / export commercial quantity of border controlled drugs or plants	Convicted and sentenced to 12 years imprisonment
18/09/15	Possess controlled drugs	Proved – no penalty imposed
18/09/15	Trafficking marketable quantities of controlled drugs	Proved – no penalty imposed
18/09/15	Supply prohibited drug >= large commercial quantity	Taken into account
15/08/08	Drive with high range PCA	Community service order 100 hours; disqualification 2 years
18/10/06	Drive with low range PCA	Fine $400, disqualification 6 months

18. The applicant's evidence to the Tribunal is that he was not convicted for supply, as is evident from the comments of the sentencing judge.

[3] Colvin J at [26].

19. In his evidence to the Tribunal the applicant concedes that he has a substantial criminal record and does not pass the character test. The Tribunal finds that the applicant has been sentenced to a term of imprisonment of 12 months or more. He has a substantial criminal record as defined in s. 501(7)(c) and (d) of the Act. As the applicant has a substantial criminal record, he does not pass the character test.

IS THERE ANOTHER REASON WHY THE ORIGINAL DECISION SHOULD BE REVOKED?

20. The applicant made a request for revocation of the cancellation decision on 25 May 2018. The Tribunal has considered the applicant's comments, in addition to the evidence subsequently provided to the Tribunal by the applicant and the respondent. The Tribunal's considerations are set out below with regard to the Direction 79.

Primary considerations

Protection of the Australian community

21. As noted above, the applicant has been convicted of several offences in Australia. The two earlier driving offences resulted in disqualification, a fine and community service order. The offences that occurred in 2015 were significant, resulting in a lengthy custodial sentence.

22. The nature and circumstances of the applicant's offences are set out in various submissions the applicant made to the delegate and the Tribunal, as well as court documents.

23. In his revocation request dated 25 May 2018 the applicant states that he began to gamble and acquired a significant debt. The pressure of repaying the debt led him to 'inadvertently' become involved in a heroin importation group. The applicant states that he was lent money by a 'gangster', who asked the applicant to assist him with importation of goods in exchange for reducing interest on his debt. The applicant claims he was assured that the work involved was legal. Upon realising that the importation was not legal, the applicant stated that he did not want to take further steps relating to the importation but he was put under duress and threats were made on his life and the lives of his mother and wife.

24. In his Statement of Facts, Issues and Contentions (SFIC) dated 21 March 2019 the applicant states that between April and June 2012 he was involved in the unlawful importation of a commercial quantity of heroin, the total pure weight of which was close to 14,000 grams and with the wholesale value exceeding $5.4 million. The applicant states that between December 2011 and January 2012 he was also involved in trafficking a marketable quantity of heroin. In oral evidence to the Tribunal the applicant also explained that he was introduced by a friend to some men who were members of the triads. He borrowed money from them to support his gambling. The applicant stated that he did not have any difficulties repaying what he borrowed but there was also considerable interest and he needed more time to repay it. Initially he was given more time but later he was told that if he assisted them with the importation from Thailand to Australia that they would forgive the applicant 20% interest for one month. The applicant said that he did not think initially that there was anything illegal and later on when he found out and wanted to withdraw from the venture, he was threatened.

25. The nature of the conduct and the circumstances of the offences are described in the sentencing remarks of Judge Jeffreys in the District Court of NSW. Below is the summary relating to the applicant's conduct. The applicant was one of five people who were prosecuted in relation to the importation of drugs. He had numerous telephone conversations with people in Thailand, Singapore and Malaysia regarding the arrangement of a shipping container and its import into Australia. The applicant was arrested on 7 June 2012 and various drugs were located during the search of his car. The applicant stated in his interview with the AFP that he was a middle man between persons overseas and persons within Australia, that he would receive messages and forward them to persons he did not know. Jeffrey J stated that he could not be satisfied beyond reasonable doubt that the applicant had contact with people in Australia or that his role was any greater than organizing the packaging of the container in Thailand, and collecting the bill of lading.

26. The applicant's evidence to the court, which was accepted, was that threats were made against his family and that he acted under duress. In his revocation request, the applicant states that if not for the duress he was put under, the applicant would not have been involved in the offence of importation. The applicant repeated the same evidence to the Tribunal. The sentencing judge took that into account when sentencing but noted that a custodial sentence was necessary to reflect the seriousness of the conduct and to ensure

adequate punishment and the need for general deterrence. The Tribunal also accepts the applicant's evidence that he acted under duress but the Tribunal does not consider that the threats excuse the applicant's conduct, nor do they make it less serious.

27. While the applicant concedes that his offences are serious, he states that they do not involve violence or crimes against vulnerable members of the community. The applicant claims that his criminal history cannot be said to be extensive or otherwise substantial. However, the Tribunal does not agree with the applicant's assessment, which appears to suggest that a determination of whether a criminal record is substantial is limited to the number of offences or their frequency. In the Tribunal's view, a criminal record may be substantial by reference to the nature of the offences and even a single significant offence can constitute a substantial criminal record. In this case, the offences are multiple. While some of the drug offences were subsumed during the sentencing, the convictions indicate that the applicant had been convicted of multiple offences which include trafficking, possession and import / export of prohibited drugs. Each of these offences is significant. There are also driving offences which occurred over a period of time. The Tribunal has formed the view that the applicant's offending is both substantial and of significant nature. This is reflected in the lengthy term of imprisonment that resulted from the most recent offending.

28. The Tribunal accepts the applicant's submission that this is not the case where offending occurred over a lengthy period of time and was of increasing severity. Nevertheless, the Tribunal considers that importation of drugs is a very serious offence. As the Court of Appeal in *Wilson v the Queen; DPP v Sassine; DPP v Kalakias; Wilson v the Queen* [2012] VSCA 141 at [26] observed:

> *Trafficking in a large commercial quantity is an offence of the utmost seriousness, as the maximum of life imprisonment unequivocally demonstrates.*

29. The seriousness of similar offences was recently considered by Senior Member Cameron of this Tribunal in the matter of *Nguyen and Minister for Immigration and Border Protection* (Migration) [2018] AATA 4664 at [62]:

> *Notwithstanding the fact that only two of the factors in paragraph 13.1.1 of the Ministerial Direction applied to the Applicant, the Tribunal must take into account the pernicious nature of trafficking in commercial quantities of heroin. It is a trade that has many detrimental effects on the Australian community. There are the obvious effects on heroin users, many of whom suffer overdoses, have their lives destroyed, and in some instances die. Treating drug addicts causes a diversion of*

> *resources in the healthcare and law enforcement sectors from other deserving demands. Other users by reason of the effects of their addiction descend into lives of prostitution, commission of various offences to fund their habit, and often wind up living a hand to mouth existence on the streets. Drug addiction frequently destroys or divides families. It is indiscriminate in the way it does so. There are also the risks that drug affected persons commit motoring offences or otherwise put innocent members of the community going about their business at risk. At the opposite end of the spectrum heroin trafficking is a staple diet of organised crime and various figures in its chain of operation. Frequently, trafficking in heroin becomes the enabler of corruption. Also, the proceeds of such trafficking are never taxed, thus depriving the citizens of a stream of taxation revenue that can be applied towards the business of good government.*

30. As noted above, the sentencing judge accepted that the applicant was threatened and at least initially not aware that there were drugs involved, yet His Honour saw fit to impose a significant custodial sentence, having regard to the applicant's circumstances. The Tribunal finds that a sentence of 12 years of imprisonment is significant and reflects the seriousness of the applicant's conduct. Paragraph 13.1.1(1)(d) directs the Tribunal to consider the sentence imposed by the courts for a crime or crimes when considering the nature and seriousness of the criminal offending.

31. The Tribunal finds that the nature and seriousness of the Applicant's offending, having regard to the factors set out in paragraph 13.1.1, was serious and weighs very heavily against revocation.

32. The Tribunal has considered the risk to the Australian community, should the applicant commit further offences or engage in other criminal conduct. The applicant's conduct involves the importation and possession of serious drugs. Should the applicant engage in further criminal conduct of that nature, such conduct may cause physical and financial harm to members of the community arising from the use of, and addiction to, prohibited drugs. Dependence on drugs may also lead to other offences such as assault and theft, resulting in physical harm and financial loss to members of the community. The nature of harm to individuals or the Australian community, should the applicant engage in further criminal conduct, would be significant.

33. The Tribunal also considers that drink driving may cause substantial harm to other road users. The applicant's evidence is that prior to his detention, he was a regular user of drugs and alcohol.

34. In considering the likelihood of the applicant engaging in further criminal conduct, the Tribunal acknowledges the comments of Jeffreys J that the applicant 'has made good use of his time in prison and I am of the view that he has good prospects of rehabilitation and is unlikely to reoffend'. The Tribunal is mindful that putting aside the driving offences, all other convictions relate to one, relatively brief, period. There is no evidence that the applicant's offending has been escalating over the years and of increasing seriousness. However, the Tribunal is also mindful of the comments made by the New South Wales Court of Criminal Appeal *R v Leroy* (1984) 13 A Crim R 469:

> *This court and other criminal courts have said on many occasions that, in the drug trafficking in particular, the circumstances that the accused person has a clear earlier record will have less significance than in other fields of crime. Very frequently, those selected to play some part in the chain of drug trafficking, as the appellant plainly enough was, are selected because their records, their past and their lifestyles are not such as to attract suspicion. It is this in particular which has led the courts to take in the case of drug trafficking a view which does not involve the same degree of leniency being extended to first offenders.*

35. In his revocation request, the applicant expressed remorse for his past conduct and outlined the effect his conduct had on his family. In oral evidence, the applicant repeatedly told the Tribunal that he has 'learned his lesson' and that he would not repeat the conduct because of the significant implications it may have on him and his family and, importantly, the effect on his wife and daughter. The Tribunal also acknowledges a number of character references which the applicant presented to the Tribunal and accepts that those who provided references believe the applicant to be a person of good character. However, the Tribunal is also mindful of the notes recorded in the Case Note Report for 23 November 2015. The Case Note Report recorded the applicant stating that he pleaded guilty on legal advice but denying his offending behaviour. In oral evidence the applicant explained that he had not yet been found guilty and wanted to fight the charges. He also said that the majority of things described in the fact sheets were not done by him and he pleaded guilty on legal advice.

36. In subsequent evidence to the Tribunal, the applicant stated that an interpreter was not always present when he was interviewed during detention and his English was not that good, suggesting that the Case Notes may not be accurate. However, there is no indication in any of the notes that the applicant was assessed as being unable to engage with the interviewer or had any difficulties understanding what was put to him. The Tribunal also notes that applicant adduced the Case Notes Report as evidence in support

of his own submission and sought to rely on these notes. Again, if the applicant believed these to be inaccurate, the Tribunal does not consider that the applicant would wish to rely on these notes.

37. The Tribunal also notes the applicant's evidence that he communicated with his fellow inmates partly in English and partly in Cantonese. He stated that his statement to the Tribunal of 11 March 2019 was prepared in English without the assistance of an interpreter, confirming that his legal representatives believed the applicant's English is sufficient for the purpose of presenting evidence. As such, the Tribunal does not accept that the applicant's English was insufficient to communicate effectively with the prison personnel during the interviews. The Tribunal does not accept that the Case Notes Report does not accurately reflect the applicant's evidence.

38. The Tribunal is concerned that the applicant's denial of the conduct of which he was convicted during his prison interview in November 2015 and also oral evidence to the present Tribunal despite his repeated statements that he had 'done wrong' indicates his lack of appreciation of, and insight into, his conduct and the breaches of the law and brings into question the genuineness of his remorse.

39. In his written statement the applicant refers to his wife experiencing significant distress and the negative implications this had on his wife and daughter. The applicant states that he would not repeat the mistakes of his past. In oral evidence, the applicant stated that he had significant time to reflect on his conduct while in detention and he lost time raising his daughter and being away from his wife and these factors would act as a significant deterrent for him not to reoffend. The applicant also states that he considers Australia his home and would not wish to risk being removed from this country. The applicant expressed his willingness to attend a treating program in relation to his gambling. The applicant refers to the programs he completed during his detention, including a 'Getting Smart' program (cognitive behavioural therapy) and a 'Seasons for Growth' course, relating to behavioural awareness, as well as a number of trade and vocational courses. The Tribunal acknowledges that throughout his detention, the applicant received positive reports in relation to his work and his interactions with prison staff and other inmates, as well as during his employment at an external site. His security classifications have been favourable and the applicant's evidence is that the various tests showed that he had not

used drugs during his detention. There is nothing to suggest that the applicant's conduct has been other than exemplary throughout the period of his detention.

40. The applicant presented a report from Ms North a forensic psychologist with Avid Psychology, dated 2 August 2018. Ms North sets out the applicant's background, family and relationship history. She refers to the applicant's alcohol and drug use in the past, as well as his gambling. Ms North describes the impact of the applicant's incarceration on his partner. Ms North indicates that the applicant scored within the minimal range for anxiety and depression, however, Ms X (for the purpose of this decision the Tribunal will refer to the applicant's wife as Ms X) was experiencing severe anxiety and depression at the time of assessment. Ms North has undertaken an assessment of risk of the applicant reoffending. Noting that the risk has been assessed as being in the low / moderate range, Ms North expressed an opinion that the future risk could be reasonably considered to be in the low range. Ms North has also expressed a view on the impact of the applicant's incarceration on Ms X's well-being. The Tribunal accepts that evidence.

41. The Tribunal has also had regard to the report of Ms Bostock of Duffy Robbilliard Psychologists, dated 31 October 2014. Ms Bostock formed the view that the applicant's alcohol abuse and gambling were key factors that predisposed him to offend. She refers to the applicant's indication that he abstained from alcohol and other drugs since his arrest and expressed his remorse for the behaviour.

42. The Tribunal has also considered the Case Note Report prepared by the NSW Department of Corrective Services, on 22 October 2014. The Report indicates that the applicant has had limited employment in Australia and that his primary sources of income were from a business in China and profits from gambling. The applicant is recorded to have stated that he was gambling approximately 20–30 thousand dollars per day and did not see the gambling habit as too much of an issue because of his winnings. The applicant also stated that he used to drink on average 2 bottles of brandy a day and he stated that he could stop but did not want to as he did not believe alcohol use to be an issue. The applicant stated that he used prohibited drugs recreationally at parties and about once a month since his arrival in Australia. The applicant saw the drug use as harmless and said that he has not used drugs since being admitted into custody. The Tribunal is mindful that the applicant has not presented evidence of having successfully completed any specialised drug, alcohol or gambling rehabilitation programs, although the

Tribunal accepts that the applicant had completed other behavioural programs, as well as trade courses. The applicant's view that the regular use of alcohol and recreational use of drugs were not problematic and would not cause any harm, is of concern to the Tribunal, particularly given the nature of the applicant's drug-importation and drink-driving offences.

43. The applicant told the Tribunal he no longer had a gambling problem because he has been in jail and also because gambling had separated him from his family and he explained how the two courses 'Getting Smart' and 'Seasons of Growth' helped him overcome his addictions. The Tribunal is mindful that the 'Seasons for Growth' program is a program that deals with grief and loss. The applicant confirmed in oral evidence that the program did not address his gambling. The Tribunal does not accept that this program would have assisted the applicant in dealing with gambling, drug or alcohol use. The applicant said that the 'Getting Smart' program did relate to drinking, gambling and drugs. The applicant noted that he participated in other programs, including one provided by Eclipse Foundation which he initiated but did not complete. The Tribunal accepts that the applicant did not use drugs or alcohol during his incarceration but in the Tribunal's view, he may have had quite limited opportunities for such activities while in prison and immigration detention. Neither would gambling be readily available to the applicant in detention or when he participated in the work release program.

44. The Tribunal accepts that there is no evidence of the applicant using drugs or alcohol or engaging in gambling during his incarcerations. The Tribunal also acknowledges that the applicant was released during his incarceration to undertake work in the community for a period of approximately one year. There is no evidence of the applicant using drugs, alcohol or gambling during this period. Despite that, the Tribunal is also mindful that the applicant would have been subject to regular checks for illicit substances during his detention and detection of drugs or alcohol may have affected the applicant's status. As such, the fact that the applicant did not engage in these activities during his community work may not necessarily be reflective of his future conduct when he is released into the community. That is, the applicant's conduct in detention does not necessarily reflect what his conduct might be, when the applicant is released into the community and has full access to goods and activities that were limited during his incarceration.

45. The applicant informed the Tribunal that he does not believe he would engage in gambling if released into the community and if again threatened by the triads, he would call the

police. The Tribunal has found the applicant's evidence unconvincing. There is no evidence that the applicant had in the past engaged with the law enforcement authorities and his explanation for being involved with the drug importation activities, which he claims are abhorrent to him, was because of threats. The applicant explained to the Tribunal that he did not approach the police because his English was not good and because he had no evidence to prove anything. There can be no certainty that such circumstances would be different in the future. That is, it is not implausible that the applicant may again be subjected to threats or that he will feel that his English is poor (as he claims in his evidence to the Tribunal) or that the applicant will have no proof of criminal activities. The applicant's explanation that in the future, he would simply call the police if in trouble is, in the Tribunal's view, overly simplistic and may not reflect the reality.

46. Overall, the Tribunal accepts that the applicant has been assessed as having good prospects of rehabilitation and acknowledges the applicant's own evidence that he will not engage in the same conduct in the future, given the significant repercussions of re-offending. The applicant argues that a low risk of reoffending is not an unacceptable risk and the risk of him reoffending is no more than a negligible risk. The Tribunal places weight on the fact that the applicant appears to recognise the significance of his conduct, he pleaded guilty and expressed remorse for it. He had been an exemplary detainee while in prison and has completed a number of training programs. He has the support of his partner and wishes to maintain a relationship with his daughter. All of these factors would suggest low risk of reoffending. However, the Tribunal also places weight on the fact that the applicant has not completed any rehabilitation programs that deal specifically with conduct that led to the offending, namely, his gambling, despite expressing his willingness to complete the program. He admitted to regular drug use and the use of alcohol and it does not appear he has completed targeted programs to assist with that conduct. The applicant's evidence is that gambling was his principal source of income and should the applicant choose to rely on gambling as a source of income in the future, there is at least a risk that he will again become involved in the same activities. The Tribunal has formed the view that the risk of reoffending exists and it is greater than negligible. If the reoffending occurs, the potential harm to and impact on individuals and the community is considerable, given the nature and the seriousness of the conduct and the effect of drug dependence in the community. The Tribunal finds that the risk to the Australian community, should the Applicant commit further offences or engage in other serious conduct, weighs against the revocation.

47. The Tribunal has formed the view that the protection of the Australian community weighs strongly against the revocation.

Best interests of minor children in Australia affected by the decision

48. The applicant's revocation request dated 25 May 2018 states that the applicant has no children in Australia and raises no circumstances in respect of this consideration. However, in his evidence to the Tribunal the applicant refers to having a minor child in Australia.

49. In his SFIC, the applicant states that he has a ten year old daughter with whom he has a positive, loving and ongoing relationship. The applicant states that the child resides with her mother and another friend (the applicant's 'sworn sister') but he intends to seek custody upon release from detention. In his sentencing remarks, Jeffrey J refers to the applicant having daily telephone contact with the child.

50. In his written submission to the Tribunal the applicant states that it is 'likely' that he will play a positive parental role in the future concerning his daughter and will provide the child with financial assistance and emotional support. The applicant submits that there is no evidence that his past criminality had a direct negative impact on the child. He states that if he is removed to Singapore, this would have a significant impact on his ongoing relationship with the child as he will not have face to face contact with the child and electronic contact would not be the same.

51. There is before the Tribunal the written statement from the child who refers to having a loving relationship with her father. She states she would be very upset if her father was removed from Australia and she expresses hope that her father can take care of her in Australia. The Tribunal also acknowledges the oral evidence of Ms N (for the purpose of this decision the Tribunal will refer to this witness as Ms N), who is also the applicant's 'sworn sister', who referred to a close relationship between the applicant and his daughter. The Tribunal accepts that evidence.

52. The Tribunal accepts that the applicant has maintained a close relationship with his daughter. However, the evidence before the Tribunal indicates that such a relationship has been largely through electronic means. There is little evidence of more meaningful contact between the father and his daughter and although the Tribunal acknowledges that

the child visits him regularly in detention, the Tribunal is mindful that he has been detained since the child was very young, in that period the child was brought up by her mother, or others and her personal interactions with the applicant were limited.

53. The applicant submits that he intends to seek custody upon release from detention but there is no evidence that this has been done or that the applicant had taken the opportunity to seek custody of his child prior to his detention. The applicant told the Tribunal that he had not sought legal advice and had not initiated the process.

54. If the applicant claims to have provided emotional support to the child, he appears to have done that through his telephone contact with the child, which can be maintained irrespective of the applicant's place of residence. As for financial support, there is little evidence before the Tribunal of the applicant providing financial support to his daughter in the past and inadequate information as to how he plans to do it in the future. There is little evidence to indicate that such support is needed or that, should the applicant be unable to remain in Australia, that the financial support cannot be provided if he were to reside in another country.

55. The applicant submits that if he is released, he will have the custody of the child and will take care of the child. The applicant's evidence is that the child will live with him and his wife, if he is released from detention. However, the Tribunal is mindful that at present, the child lives with another person, who is the applicant's 'sworn sister' and is not biologically related to the applicant or his wife. There is nothing before the Tribunal to indicate that the applicant's partner, cares for the child or has taken steps to relocate the child to her household, and she told the Tribunal that she cared for the child for a brief period when the applicant was detained. When asked how she feels about taking care of the child, she told the Tribunal that it is her husband's decision. It is not apparent whether that the applicant's wife has any desire to care for the child.

56. It is problematic, in the Tribunal's view, that there is little evidence about the wishes of the child's mother. The applicant's 'sworn sister', Ms N gave oral evidence to the Tribunal stating that she is a close friend of the applicant and of the child's mother and presently takes care of the child while the mother is overseas. Ms N informed the Tribunal that the child's mother, has regular contact with the child, speaks to her daily or every two days and monitors her well-being. There is no suggestion that the mother has abandoned the

child and the Tribunal does not accept any suggestion made by the applicant that the mother has no interest in raising the child. Ms N's evidence is that the mother of the child was required to travel to China to care for her ill parents and not because of her disinterest in the child.

57. Importantly, there is no evidence from the child's mother, to indicate that she is agreeable to the arrangements proposed by the applicant. Ms N's evidence to the Tribunal is that when in Australia, the biological mother is the primary caregiver for the child. The Tribunal acknowledges that the applicant may not have had the opportunity to be the primary caregiver for his daughter due to his detention, but the Tribunal is also mindful that neither the applicant nor his spouse have taken any steps to ensure that the arrangements would be in place in the future. In the absence of probative evidence from the mother about her future intention in relation to the child, the Tribunal cannot be satisfied that it will be the applicant who will become the primary caregiver for the child upon his release. The Tribunal accepts that this may be the applicant's intention, but such arrangements would need to be made on agreement of both parents.

58. Neither does the Tribunal accept the applicant's claim that unless he can look after his daughter, she will become an 'orphan'. The evidence before the Tribunal is that the child's mother does play an active role in the child's upbringing, even when she is overseas, and is the primary caregiver for the child when she is in Australia. There is no probative evidence before the Tribunal that she will not continue with these arrangements in the future. The Tribunal finds that the child will have parental support, whether or not the applicant remains in Australia.

59. Nevertheless, the Tribunal accepts the applicant's evidence that he has a close relationship with his daughter, that they speak on the phone daily and that the daughter has regularly visited the applicant while he was in detention. The Tribunal accepts that the applicant wishes to play a meaningful role in the child's upbringing and acknowledges his evidence that he intended to seek custody for the daughter and make arrangements for the child to live with him. The Tribunal also accepts that the applicant's criminal conduct does not appear to have had direct adverse effect on the child. Overall, the Tribunal has formed the view that the best interests of the minor child in Australia would be to maintain the relationship with her father and such relationship would be jeopardised if the visa

remains cancelled and if the applicant is required to leave Australia. The Tribunal finds that the best interests of the child favour the revocation of the cancellation.

Expectations of the Australian community

60. Paragraph 13.3 of Direction 79 states that:

> *The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has breached, or where there is an unacceptable risk that they will breach this trust or where the non-citizen has been convicted of offences in Australia or elsewhere, it may be appropriate to not revoke the mandatory visa cancellation of such a person. Non-revocation may be appropriate simply because the nature of the character concerns or offences are such that the Australian community would expect that the person should not hold a visa. Decision-makers should have due regard to the Government's views in this respect.*

61. Consideration of the expectations of the Australian community must be made by reference to the community that is 'fair minded and mature' (*Do and Minister for Immigration and Border Protection* [2016] AATA 390 at [23]) and an 'informed, reasonable member of the Australian community rather than a member of the Australian community who is only prepared to consider the punitive aspects of the power' (*Waits and MIMIA* [2003] AATA 1336 at [36]).

62. The Tribunal has considered the decision of Justice Mortimer in *YNQY v Minister for Immigration and Border Protection* [2017] FCA 1466 at [76]:

> *In particular, the last two sentences of para 13.3 of the Direction.. [are] not a consideration dealing with any objective or ascertainable expectations of the Australian community. It is a kind of deeming provision by the Minister about how he or she, and the Executive Government of which he or she is a member, wish to articulate community expectations, whether or not there is any objective basis for that belief. That is the structure of this part of the Direction.*

63. This judgment was recently addressed in *DKXY v Minister for Home Affairs* [2019] FCA 495 at para 31:

> *Undoubtedly, decision-makers who are bound to give effect to the Direction are required to have due regard to the Government's view regarding community values, standards and expectations… but noting in the Direction indicates that the community expectations will always favour non-revocation. Indeed, the totality of the relevant circumstances which bear upon the assessment and weighing of all three primary considerations and other considerations need to be considered.*

64. And further at para 33:

> *What amounts to "due regard" will necessarily require attention to be given to all relevant circumstances in the particular case which bear upon a general assessment of Australian community expectations.*

65. In *Afu v Minister for Home Affairs* [2018] FCA 1311 at [85] Justice Bromwich said:

> *The concept of community expectations is not a matter to be measured as though it is a provable fact. It is an assessment of community values made on behalf of that community.*

66. The Tribunal accepts that Direction 79 allows for consideration of the broad range of the non-citizen's circumstances when assessing the expectations of the community. The Tribunal has considered the totality of the applicant's circumstances.

67. In his revocation request the applicant submits that the broader Australian community, having been informed of all the facts, would not expect him to be forced to depart Australia but would show the values of compassion and give him a second chance to contribute to the community.

68. The applicant refers to his relationship with Ms X since 2004 and the couple's marriage in 2011. The applicant states that his wife had 'stepped away' from the operation of her business due to the stress of handling the operations on her own and without his help. The applicant states that his absence would cause high stress levels and affect his partner's confidence psychologically to sustain herself. The applicant states that his wife suffers from hyperlipidaemia, anxiety and sciatica and has been taking medication. She also suffers from mental illness such as depression, which would be exacerbated by his departure from Australia. The applicant submits that with these medical difficulties, the community would not want his partner to be left alone without her husband to care for her. The applicant relies on a medical report by Dr Chu dated 13 March 2018 which refers to his wife's medical condition and which states that it would be best for the applicant to be with her. The applicant states that his wife, sister in law and "sworn-sister" would all be affected if he was to leave Australia. The applicant states that he has relatives in Singapore with whom he is close but does not communicate with often.

69. In oral evidence, Ms X provided information about her poor health which has affected her ability to work. She states that her financial situation is poor because she has no income and cannot work on medical advice, and is reliant on her sister for financial support and

her brother in law for accommodation. She has expressed hope that the applicant could be released from detention and be allowed to remain in Australia to find employment and help her financially. There is very little documentary evidence before the Tribunal concerning Ms X's financial situation, her income and expenses. There is little evidence as to any income that may be available through the operation of the overseas business, even if the Australian business is no longer operational. Importantly, Ms X told the Tribunal that she visited a Centrelink office on multiple occasions to apply for benefits but found it too difficult and has not made the application. The Tribunal is mindful that Centrelink offers multilingual support and in the Tribunal's view, if Ms X was genuinely in need of funds, greater effort could have been made to seek support from Centrelink. On the limited evidence before it, and in the absence of probative documentary evidence about her finances, the Tribunal does not accept that Ms X is reliant on the applicant for financial support or that she will be unable to meet her financial needs in the future if the applicant is unable to remain and work in Australia.

70. The Tribunal has the same concerns in relation to the child. The applicant and his 'sworn sister' Ms N spoke about the applicant's desire to provide financial support to the child if he is able to work in Australia. The applicant told the Tribunal that he has some money in his account and, if released, he will use these funds to support his family. Ms N told the Tribunal that she provides financial support to the child while the child lives with her. However, there is no documentary evidence concerning the child's financial arrangements or the need for financial support from the applicant. Again, on the limited evidence before it, the Tribunal is not satisfied that the child will be, or needs to be financially dependent on the applicant or that the child's financial needs cannot be met unless the applicant is able to remain and work in Australia.

71. The applicant submits that the Australian community will not expect that his family would be broken up and that he would be separated from his wife and child as a result of the visa being cancelled. Ms X's evidence to the Tribunal is that she would remain in Australia, if her husband is removed and there would be very limited opportunities for the child to travel to Singapore to see her father due to the cost of travel. The Tribunal accepts that the applicant is likely to be permanently excluded from Australia if his visa remains cancelled and that the non-revocation may lead to the family break up and the separation of the applicant from his partner and child. The Tribunal accepts that the non-revocation of the cancellation will not only affect the applicant but also his Australian

citizen wife and child. The Tribunal accepts that the Australian community may favour maintaining the family connections rather than the family break up.

72. In his written submission to the Tribunal the applicant notes that the Australian community would be cognisant of the fact that he committed the drug offence in the context of non-exculpatory duress and was not to receive any financial reward for committing the offence. In the Tribunal's view, that is not entirely correct, as the applicant's evidence is that he expected that his interest would be waived, or its payment delayed, if he arranged the importation. That is, at least initially, the applicant agreed to engage in the conduct for financial gain. The applicant also states that he did not know the weight of the drugs in the container but in the Tribunal's view, that cannot be a determinative, or even a significant factor in the applicant's favour. His evidence is at some point in time, he knew that he was involved in the importation of drugs. He would have known the activity was contrary to the Australian laws. The Tribunal does not consider that the fact that the applicant was unaware of precisely how much of illegal substance he was arranging to import exculpates his conduct. As for the applicant acting under duress, the Tribunal is mindful, firstly, that the applicant had not sought to engage with any law-enforcement agencies until he was 'caught' and, secondly, that in sentencing, Jeffreys J did not consider that the threats made against the applicant exonerated his behaviour.

73. The applicant submits that the Australian community would form the view that his moral culpability is reduced because his conduct occurred under duress. The Tribunal does not necessarily accept that this is so. It may be that the circumstances in which the offending conduct took place are relevant. However, the Tribunal is of the view that it would also be highly relevant to consider the nature and the seriousness of the offence, the steps the applicant took (or failed to take) in avoiding such involvement or engaging with the law enforcement agencies.

74. The applicant also argues in his written submission, by reference to *Pochi v Minister for Immigration and Ethnic Affairs* (1982) 151 CLR 101, that the community would not generally hold an expectation that a non-citizen would be removed from Australia where doing so would result in the breaking up of a family and in this case, his removal to Singapore would result in his separation from his wife and daughter. The Tribunal does not accept that argument. Direction 79 makes it clear that there are several considerations that must be weighed in deciding whether to revoke the cancellation of the visa. One of

the primary considerations relates to the best interests of any children in Australia, recognising that the cancellation of the visa may result in the visa holder being removed from Australia and separated from a child or children in Australia. However that is not the only consideration, nor does the policy provide for it to be given greater weight than other primary considerations. There are many other factors that are relevant to the present assessment and nothing in the legislation or policy suggests that the breakup of the family unit, which may result from the visa being cancelled or from the decision not to revoke the cancellation, creates a presumption in favour of revocation.

75. The Tribunal accepts the medical evidence that the applicant's partner, Ms X, suffers from several medical conditions. The Tribunal acknowledges the evidence that she prefers to live in Australia and that she would benefit from the applicant's support. The Tribunal accepts that the community may, in some circumstances, expect the ongoing provision of such support and maintaining the family unit. However, in the circumstances of this case, the Tribunal is also mindful that the applicant has been in detention since 2012 and in that time he has very limited opportunity, if any, to provide support to his partner. There is little probative evidence before the Tribunal to indicate that his wife's health has been adversely affected as a result of the withdrawal of the applicant's support from 2012. Ms X's evidence to the Tribunal is that she has received treatment and there is no reason to believe that she would not receive adequate treatment irrespective of the applicant's presence in Australia.

76. The applicant refers to his employment in Australia, stating that had worked at a smash repairs between March 2017 and February 2018, his past involvement in a metal scrap trading business and his assistance in his wife's business. The applicant states that his employment in Australia shows some positive contribution to the Australian community. (The respondent submits that such contribution is, at best, minimal.) The Tribunal accepts that the applicant has made some contribution through his employment, although the Tribunal is also mindful of the notes in Department of Corrective Services Case Note Report for 22 October 2014 where the applicant stated that he had never held a job since he migrated to Australia and that he assisted his wife only 'occasionally'. Thus, the Tribunal is of the view that the applicant's contribution to the community through employment is limited.

77. The applicant relies on this Tribunal's decision in the matter *of ZCNR and Minister for Home Affairs* [2018] AATA 2511, where the seriousness of the offence, and the length of the sentence, was not dissimilar to the offence and the sentence in the present case. In that case, the Tribunal found that the third primary consideration weighs marginally in favour of revocation. The applicant submits that this case shows that it is possible that in the circumstances similar to the present case, this consideration would be favourable to the applicant. The Tribunal accepts that it is possible, however, considers that argument of little help. As the applicant himself submits, consideration must be given to the applicant's particular circumstances. The fact that the Tribunal in different circumstances, which may have involved a similar offence and sentence but may have involved entirely different personal circumstances of the visa holder, found in favour of the applicant does not necessarily mean that this must be the view of the present Tribunal. Thus, while the Tribunal accepts that it is possible that this consideration may be in favour of revocation, the fact that such a finding was made in another Tribunal decision has no bearing on the Tribunal's assessment in the present case.

78. The Minister contends that the serious nature of the offending, the applicant's engagement in large scale drug related crimes and the need to protect the Australian community from future harm from organised crime are relevant in assessing the community expectations. The Respondent refers to Jeffreys J's sentencing remarks that:

> *The offender must be punished… and it should be recognised in the community that even those who involve themselves in lesser roles in relation to the importation of a quantity of border controlled drugs should expect a period of full-time imprisonment for some years.*

79. The Minister notes that the applicant's tendency for committing serious offences has not been tested in the community and given the seriousness of past offences, the Minister contends that the Australian community would expect that such a person would not continue to hold a visa or to be given 'another chance', noting, in particular, the serious harm he has caused and the ongoing risk of harm he presents.

80. Generally, the Tribunal accepts that in this consideration, there are factors that weigh in favour of the applicant. In particular, the Tribunal gives due regard to the length of time the applicant has spent in Australia and his settlement in this country, the presence of the applicant's partner and child in Australia and his social connections. The Tribunal accepts that the applicant had carried out some employment in this country, has been a model

prisoner and may have otherwise contributed to the community. However, the Tribunal is of the view that the nature and seriousness of the applicant's offending and the potential harm to the community that the importation of drugs, as well as drink driving offences could entail, outweigh such considerations, even when the particular circumstances of the offence are taken into account. The Tribunal has formed the view that nature and the seriousness of the offence, and the potential harm to the community arising from the offences, are such that the Australian community would expect that the applicant should not hold a visa. The Tribunal finds that the community expectations would be against revocation.

Other considerations

International non-refoulement obligation

81. There is no evidence, and the applicant does not claim, that international non-refoulement obligations arise in this case.

Strength, nature and duration of ties

82. The applicant has been living in Australia since 2003, initially holding temporary visas and subsequently as a holder of a permanent visa. He claims to have been in a relationship with an Australian partner since 2004. The applicant states that despite his frequent overseas travel, he considers Australia to be his home and has not considered relocating overseas. The applicant states that he no longer has connections to Singapore, other than his family, and he would be distressed if he was forced to leave Australia as he holds deep ties to the Australian community and has a strong support system which would be beneficial to his future support. The applicant states that he is married to Australian citizen and has an Australian citizen daughter. The applicant refers to his employment in Australia but, as noted above, the Tribunal is of the view that such employment was quite limited.

83. The Tribunal accepts the applicant's evidence that he has assisted his wife in her business, although the extent of such assistance may also be insignificant, having regard to the information the applicant gave during his incarceration, as recorded in the Case Notes Report. The Tribunal accepts that the applicant has been living in Australia for a period of approximately fifteen years and that he considers Australia his home. The

Tribunal accepts that the applicant is in a long term relationship with an Australian citizen and also that his daughter is an Australian citizen. There are several statements from third parties before the Tribunal and the Tribunal accepts that the applicant has formed significant social relationships in this country and that such relationships may be affected by the cancellation of the applicant's visa. The Tribunal accepts that if the visa remains cancelled, and if the applicant is removed from Australia, it may have significant adverse effect on Australian citizens, including his wife, child, 'sworn sister' and others with whom the applicant has formed relationships in Australia. The Tribunal accepts that the applicant has significant ties in Australia which are of lengthy duration.

Impact on Australian business interests

84. There is no evidence before the Tribunal concerning any impact on Australian business interests.

Impact on victims

85. There is no information before the Tribunal about the impact of a decision not to revoke the cancellation on members of the Australian community including the victim of the applicant's criminal behaviour and family members of the victims.

Extent of impediment if removed

86. The applicant has several siblings in Singapore and a business interest in China. Ms X's statement to the Tribunal is that both she and the applicant had income from the beauty business in China. Although the applicant states that he only has close contact with one of his sister in Singapore, the applicant admits to having a close relationship with all of his siblings. The applicant's written evidence to the Tribunal is that there is no substantial language or cultural barriers, as he was an adult when he migrated to Australia and he had travelled between Australia and Singapore many times.

87. Ms X's evidence to the Tribunal is that she planned to open a business with the help of the applicant but due to her poor health, she cannot run the business on her own. The Tribunal accepts that Ms X's future business opportunities may be adversely affected if the visa remains cancelled.

88. The applicant claims that his removal to Singapore would cause him hardship because he would be emotionally devastated being 'banished' from Australia and he would be unable to physically see his wife and daughter in Australia and his removal from Australia is likely to breakup his immediate family. Evidence before the Tribunal is that his wife and child would remain in Australia if he is removed from this country. The applicant states that he would have to start again in Singapore, despite being of a 'reasonably advanced age' and would not have the close support of friends and associates living in Australia. The applicant states that there is no guarantee that his siblings would provide him with financial support due to their own family commitments.

89. The Tribunal is mindful that in his own evidence, the applicant stated that he travelled overseas for business purposes on many occasions, so it may not be entirely accurate to say that the applicant would have to 'start again' in Singapore. The applicant has presented little evidence to the Tribunal concerning his business interests which necessitated his frequent overseas travel and the possibility of renewing such business interests in the future. The applicant told the Tribunal in oral evidence that his siblings have their own families to take care of and could not support him but the applicant did not present any evidence concerning any capacity and willingness of his siblings to provide him with support, either financial or emotional or of any other nature that he may require, if he were to live in Singapore. The Tribunal accepts the applicant's claim that there can be no guarantee that his siblings would support him, but he presented no evidence of having sought or even discussed such support with his family, of the availability (or lack of availability) of support from siblings and of any other financial interests that the applicant may have outside of Australia.

90. Overall, the Tribunal accepts that given the length of time the applicant has spent in Australia, his settlement in Australia and the family and social ties he has formed in this country and the potential effect of his removal on the applicant's partner and child, there will be considerable impediment to the applicant if he is removed from Australia. In particular, the Tribunal accepts that removal from Australia is likely to significantly limit the applicant's ability to interact in person with his partner, his daughter, 'sworn sister' and friends in Australia.

CONCLUSION

91. The Tribunal has found that the applicant has a substantial criminal record and that he does not pass the character test. The Tribunal has considered if there is another reason why the original decision should be revoked.

92. The Tribunal has found that the offence was serious and that could cause significant harm to the community, if the applicant were to reoffend. The Tribunal has formed the view that the risk of reoffending was greater than negligible and was not insignificant. The Tribunal found that the protection of the community weighs strongly against the revocation. The Tribunal further found that the community expectations would be against revocation. While the Tribunal has formed the view that the community would recognise many factors in favour of the applicant, including, most significantly, his family links in Australia and his settlement in this country, the Tribunal has found that the nature and the seriousness of the offence would outweigh such considerations, so the community would expect that the visa remains cancelled. The Tribunal has accepted the applicant's evidence about his close relationship with his daughter and has found that the best interests of the child would be strongly in favour of the revocation. The Tribunal has accepted that the applicant has extensive and strong ties in Australia and that there may be a significant impediment if the applicant is removed. These are factors in favour of revocation. Other considerations are neutral.

93. Overall, the Tribunal acknowledges that there are strong reasons in favour of the revocations. However, the Tribunal has formed the view that the protection of the community, and the expectations of the community, outweigh such considerations and these favour non-revocation. Considering the circumstances as a whole, the Tribunal has formed the view that there are no other reasons why the original decision should be revoked.

DECISION

94. For the reasons set out above, the Tribunal affirms the decision of the delegate of the Minister not to revoke the cancellation of the applicant's visa.

I certify that the preceding 94 (ninety- four) paragraphs are a true copy of the reasons for the decision herein of Senior Member K Raif

.....[sgd].....

Associate

Dated: 15 May 2019

Date(s) of hearing:	**02 May 2019**
Counsel for the Applicant:	**J Donnelly**
Solicitors for the Respondent:	**Z He- Clayton Utz**