Administrative Appeals Tribunal

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Akashdeep Singh
CASE NUMBER:	2107657
HOME AFFAIRS REFERENCE(S):	BCC2021/775280
MEMBER:	Kira Raif
DATE:	30 September 2021
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision to cancel the applicant's Subclass 189 - Skilled - Independent visa.

Statement made on 30 September 2021 at 5:28pm

STATEMENT OF DECISION AND REASONS

Application for review

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to cancel the applicant's Subclass 189 - Skilled - Independent visa under s 109(1) of the *Migration Act 1958* (the Act).

2. The applicant is a national of India, born in August 1991. He was granted the Skilled (Provisional) visa in October 2016 and a Class SI Skilled Independent visa on 1 June 2018. In April 2021 the applicant was issued with the Notice of Intention to Consider Cancellation (NOICC) as the delegate formed the view that the applicant had not complied with s 101 of the Act. The applicant provided his response and the visa was cancelled on 8 June 2021. The applicant seeks review of the delegate's decision.

3. The applicant appeared before the Tribunal on 28 September 2021 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's former spouse, Ms Kaur. The applicant was represented in relation to the review. For the following reasons, the Tribunal has concluded that the decision to cancel the applicant's visa should be affirmed.

Relevant law

4. Section 109(1) of the Act allows the Minister to cancel a visa if the visa holder has failed to comply with ss 101, 102, 103, 104, 105 or 107(2) of the Act. Broadly speaking, these sections require non-citizens to provide correct information in their visa applications and passenger cards, not to provide bogus documents and to notify the Department of any incorrect information of which they become aware and of any relevant changes in circumstances.

5. The exercise of the cancellation power under s 109 of the Act is conditional on the Minister issuing a valid notice to the visa holder under s 107 of the Act, providing particulars of the alleged non-compliance. Where a notice is issued that does not comply with the requirements in s 107, the power to cancel the visa does not arise.

6. Section 107A of the Act specifies non-compliance in relation to an application for a previously held visa, can constitute grounds for cancellation of the currently held visa.

Did the notice comply with the requirements in s 107?

7. Section 107 is only engaged if the Minister or delegate considers that the visa holder has not complied with one of the provisions mentioned in s 107(1). It is only then that the Minister or delegate is entitled to give notice to the visa holder under s 107. Therefore, if a notice is to be given under s 107, the Minister or delegate must have reached a state of mind where they consider that the visa holder has not complied with one or more of the relevant provisions.

8. The Tribunal has considered the validity of the NOICC. The Tribunal is satisfied that it contains sufficient particulars to enable the applicant to identify and address the issues and also that the delegate had reached the necessary state of mind to engage s 107. The Tribunal is satisfied that the notice issued under s 107 complied with the statutory requirements.

Was there non-compliance as described in the s 107 notice?

9. The issue before the Tribunal is whether there was non-compliance in the way described in the s 107 notice, being the manner particularised in the notice, and if so, whether the visa should be cancelled. The non-compliance identified and particularised in the s 107 notice was non-compliance with s 101 of the Act.

10. The applicant provided to the Tribunal a copy of the primary decision record. It indicates that the applicant made an offshore application for a Student visa, with his partner, on 20 June 2014 and was granted the visa on 20 November 2014. On 26 August 2016 the applicant's partner Ms Kaur applied for the Skilled (Provisional) Subclass 485 visa onshore with the applicant included as a secondary applicant. In that application the applicant gave the following answers:

    a. his name, date and place of birth;

    b. details of his passport;

    c. the applicant stated that he had not lived in any other country (other than his home country and Australia) for more than three months;

    d. the applicant stated 'no' in response to a question whether he had been removed, deported or excluded from any country.

11. The applicant and his partner were granted the Subclass 485 visas on 19 October 2016. On 20 November 2017, while onshore, the applicant made an application for the Skilled Independent (Subclass 189) visa as a secondary applicant and a member of the family unit of Ms Kaur. In that application, the applicant gave the following answers:

    a. his name, date and place of birth;

    b. the applicant stated that he lived in India between August 1991 and November 2014;

    c. the applicant stated 'no' in response to a question whether he had been removed, deported or excluded from any country;

    d. the applicant stated 'no' in response to a question whether he had ever overstayed a visa in any country.

12. The applicant also completed a Form 80 in which he:

    a. gave his name and date of birth and stated that he had not been known by any other name;

    b. gave his addresses, including India (from birth to November 2014) and several addresses in Australia from November 2014 to the date of the application;

    c. responded to a question whether he had travelled to any other country in the past 10 years stating that he went to India between January and February 2016;

    d. gave details of his employment, stating that he worked and studied in India until November 2014 and at several places in Australia from November 2014 to the date of the application;

    e. stated 'no' in response to a question whether he had been removed, deported or excluded from any country;

f. stated ‘no’ in response to a question whether he had ever overstayed a visa in any country;

g. stated ‘no’ in response to a question whether he had been excluded, asked to leave, deported or removed from any country.

13. The applicant was granted the Subclass 189 visa on 1 June 2018.

14. The primary decision record indicates that the Department received information that the applicant had previously travelled to the UK, overstayed his visa and was detained for a period of time before being removed to India. In March 2021 the UK authorities confirmed to the Department that the applicant had been removed from the UK to India in 2013. It is stated that the applicant had overstayed his visa in 2012 and his application for an extension was refused due to the submission of false documents.

15. In his response to the NOICC the applicant admitted that he had travelled to the UK in 2009, overstayed his visa in 2012 and was removed to India in 2013. The applicant explains that he and his partner considered whether to disclose that information but decided it might adversely affect the visa eligibility and therefore decided not to disclose the information. In his submission to the Tribunal of 21 September 2021 the applicant confirms that information and concedes that he gave incorrect answers in his application form and concedes that he had not complied with s. 101 of the Act.

16. Having regard to the advice from the UK authorities received by the Department, as set out in the primary decision record, as well as the applicant’s evidence in response to the NOICC and to the Tribunal, the Tribunal finds that the applicant had lived in the UK between 2009 and 2013 and that he had overstayed and was removed from the UK. As such, the Tribunal finds that the applicant gave incorrect answers by:

    a. stating in response to multiple questions that he had never overstayed a visa or been removed from any other country;

    b. giving his residential addresses in India until 2014 and failing to refer to his residence in the UK;

    c. giving his employment details in India until 2014 for the period when he was residing in the UK;

    d. stating that he had not lived in any country other than India and Australia for more than three months.

17. The Tribunal finds that the applicant completed the application forms in a way that incorrect answers were given or provided. The Tribunal finds that the applicant had not complied with s 101(1)(b) of the Act in the way described in the s 107 notice.

Should the visa be cancelled?

18. As the Tribunal has decided that there was non-compliance in the way described in the notice given to the applicant under s 107 of the Act, it is necessary to consider whether the visa should be cancelled pursuant to s 109(1). Cancellation in this context is discretionary, as there are no mandatory cancellation circumstances prescribed under s 109(2).

19. In exercising this power, the Tribunal must consider the applicant’s response (if any) to the s 107 notice about the non-compliance, and have regard to any prescribed circumstances: s

109(1)(b) and (c). The prescribed circumstances are set out in reg 2.41 of the Regulations. They are:

The correct information

20. The correct information is that the applicant had lived in another country where he had overstayed his visa and had been removed from that country. The correct information is that the applicant did not live continuously in India until 2014 and did not work in India until 2014 as stated on the application forms.

The content of the genuine document (if any)

21. This is not relevant in the present case.

Whether the decision to grant a visa or immigration clear the visa holder was based, wholly or partly, on incorrect information or a bogus document

22. An assessment of the applicant's character is an integral part of any assessment for visa eligibility. The applicant would have been required to meet public interest criterion 4001 and s 501 which primarily involve an assessment of his character. The Tribunal is of the view that the applicant's residence in another country and the circumstances in which he had left that country, were relevant to the assessment of his character. If the information about the applicant's residence in the UK was known, the applicant would have been required to provide a penal certificate from that country, which was not done in his case. The Tribunal is of the view that the delegate was denied the opportunity to assess the applicant's character on the basis of the full and correct circumstances because the delegate did not have the full information about the applicant's circumstances. The applicant concedes this in his submission to the Tribunal of 20 September 2021.

23. In his response to the NOICC, a copy of which the applicant provided to the Tribunal, the applicant states that he is likely to have been granted the visa, if the correct information was known. The applicant told the Tribunal that if the consultant gave him the full information, and told him that he could still get the visa if additional documents were provided, he would have done that. The Tribunal finds that submission unpersuasive. The applicant's evidence is that he was told he could not get the visa unless he withheld information about his UK visa history. The applicant knew that the answers he gave on the forms were incorrect, whatever the agent told him. The applicant had deliberately made up information about his employment history and residential arrangements in India until 2014 so as to avoid the disclosure about his residence in the UK. The Tribunal finds that whatever information the applicant received from his agent, the applicant was well aware that he was providing incorrect answers on the forms and his actions cannot be blamed on the poor advice from the agent.

24. It is not for this Tribunal to determine if the applicant would have been granted the visa, if the correct information was known. The Tribunal finds that the decision to grant the visa was based, in part, on incorrect information.

The circumstances in which the non-compliance occurred

25. The applicant states in his response to the NOICC that he decided not to disclose the information in order to maximise his prospects of being granted the visa. The applicant states that he used the services of a migration agent and discussed with his partner whether the information should be disclosed. They made the decision not to disclose, his partner completed the forms which he then signed.

26. In oral evidence the applicant explained to the Tribunal that after returning from the UK to India, he struggled to find a job and to provide financial support to his parents. He got married and his partner wanted to study in Australia. They approached an agent who advised him that he would not get the visa if the information was disclosed and so he decided not to disclose the information in the initial application. The applicant stated that by the time he applied for the permanent visa, he had been living in Australia for a long time and had formed friendships and his family had been dependent on him, and he did not want to lose it all. The applicant claims that he wanted to live his life in Australia and had planned what he wanted to do and everything would have been 'gone' if he had disclosed the information.

27. The applicant's evidence indicates that the breach was intentional. That is, the applicant believed he would not get the visas if he had disclosed the correct information. He chose to withhold the information, and provide incorrect answers, in order to get the visas and to retain his right to live in Australia.

The present circumstances of the visa holder

28. In his response to the NOICC and evidence to the Tribunal the applicant refers to his employment and he submits that he is a valued member of staff in two of his workplaces. The applicant provided to the delegate evidence of his employment. The Tribunal accepts that evidence. The applicant states that if his visa is cancelled, it could cause him financial hardship. The Tribunal accepts that if the visa is cancelled and if the applicant is required to leave Australia as a result, he would be unable to maintain his employment in Australia.

29. The applicant refers to the length of time he has spent in Australia and the significant social ties he has formed in this country. The applicant describes the relationships and friendships he has formed in the community and he presented a number of supporting statements and character references. The applicant presented additional statements to the Tribunal. The Tribunal acknowledges that evidence and accepts that the applicant has been residing in Australia for several years and that he has formed social, employment and other ties in Australia. The Tribunal is prepared to accept that the cancellation of the visa may affect such ties and that this may cause hardship to the applicant and others.

30. The applicant told the Tribunal that if he has no visa, he would be unable to work and he would be unable to support his parents. The applicant refers to high unemployment in India and states that he would be unable to get a job, particularly as he has no formal education. The applicant states that there is no social support or Medicare in India and he would be unable to support himself. These issues are addressed more fully below but generally, the Tribunal accepts that hardship would be caused to the applicant and others by the cancellation of the visa.

31. The applicant states that he has spent little time in India since 2009, has not worked there and has no experience there. He claims he has no friends in India. The applicant states that he would be unable to fulfil his dreams in India. He claims he wants to stay with his friends in Australia and buy a house and work hard, marry and raise children, and he would be unable to do all that in India. The Tribunal is prepared to accept that the applicant would be unable to fulfil some of his stated dreams if he is required to leave Australia and while the Tribunal does not accept the applicant's evidence that he would be unable to find a job in India, the Tribunal accepts that the applicant has stronger ties in Australia than he does in India.

32. The applicant told the Tribunal that his dream is to work hard and get married and have children. He intends to work to provide for his children and give them a good education. The Tribunal acknowledges these aspirations, although the Tribunal is not convinced that getting

married and raising children can only occur in Australia and that the applicant would be unable to fulfil these dreams in India.

33. In his response to the NOICC the applicant refers to a relationship with an Australian resident but he told the Tribunal that the relationship started after his divorce in 2019 and has now ended. The applicant claims that he and his former partner Ms Kaur are good friends and Ms Kaur's evidence to the Tribunal is that she considers the applicant to be a good person, relies on him emotionally and has spoken to her brother about the possibility of remarrying the applicant. The Tribunal generally accepts that these plans may be affected by the cancellation of the applicant's visa, although the Tribunal is also mindful that if the applicant and Ms Kaur re-establish their relationship, Ms Kaur may be able to sponsor the applicant for a Partner visa in the future.

The subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of Part 2 of the Act

34. Nothing adverse is known about the applicant's behaviour concerning his obligations under the Act.

Any other instances of non-compliance by the visa holder known to the Minister

35. The delegate refers to the applicant providing incorrect answers in various visa applications (which the applicant concedes) and in his citizenship application. The Tribunal notes that the citizenship application is made under the Citizenship Act and not the Migration Act and in the Tribunal's view, it cannot be considered as another instance of non-compliance.

36. There are no other known instances of non-compliance.

The time that has elapsed since the non-compliance

37. The applicant made the application for the temporary visa in August 2015 and for the permanent visa in 2017. Over six years have passed since the initial non-compliance. The Tribunal acknowledges that the applicant has settled in Australia in that period.

Any breaches of the law since the non-compliance and the seriousness of those breaches

38. In his response to the NOICC the applicant refers to a driving offence. The applicant explained to the Tribunal that in 2015 he committed an offence of holding a mobile phone (which he was allowed to do overseas) and that was the only offence he had committed in Australia. He had paid the fine and there were no other breaches of the law. The applicant relies on the police certificates showing he has no criminal record. The Tribunal accepts the applicant's evidence.

Any contribution made by the holder to the community

39. The applicant refers to his contribution through employment and the fact that he is highly regarded by his work colleagues. The applicant also refers to his participation in the cultural activities of a Sikh temple and his voluntary work at the temple. The applicant states that he fulfils the religious requirement of donating a proportion of his income, which he had previously done through voluntary work and he now also contributes financially. The applicant presented a letter of support from the Australian Sikh Association and evidence of his involvement at the Sikh Centre, including through various voluntary activities and other contributions. The Tribunal accepts that the applicant has made a contribution to the community. The Tribunal also acknowledges the many statements of support prepared by

friends and colleagues which refer to the applicant's contribution to the community. The Tribunal accepts that evidence.

40. While these factors must be considered, they do not represent an exhaustive statement of the circumstances that might properly be considered to be relevant in any given case: *MIAC v Khadgi* (2010) 190 FCR 248. The Tribunal may also have regard to lawful government policy. The relevant policy is set out in the Department's Procedural Advice Manual (PAM3) 'General visa cancellation powers', which refers to matters such as the consequences of cancelling the visa, international obligations and any other relevant matters.

Whether there would be consequential cancellations under s.140

41. There are no persons who would be affected by consequential cancellation.

If there are children whose interests would be affected by cancellation, or consequential cancellation, decision-makers should consider the best interests of those children as a primary consideration when deciding whether to cancel the visa

42. There are no children whose interests would be affected by the cancellation of the visa.

Whether the cancellation would lead to the person's removal in breach of Australia's non-refoulement or family unity obligations

43. The applicant refers to the discrimination against Sikhs in India and he provided to the Tribunal country reports concerning the situation in India. The applicant confirmed in oral evidence to the Tribunal that he does not believe non-refoulement obligations arise in his case. On the limited evidence before it, the Tribunal is not satisfied there is a real chance or a real risk that the applicant would experience harm or persecution in India as a Sikh or for any other reason. The Tribunal is also mindful that the applicant has the option of seeking a protection visa in Australia if he believes that such harm could arise in the future. In these circumstances, the Tribunal finds that Australia's non-refoulement obligations do not arise in this case.

44. With respect to the principles of family unity, the applicant's parents and two siblings reside overseas. His former spouse is in Australia and the applicant has no other family in Australia, although he has strong social connections.

Whether there are mandatory legal consequences, such as whether the person would become unlawful and liable to detention and removal, whether detention is a likely consequence of the cancellation decision and if so, for how long, and whether there are provisions in the Act which prevent the person from making a valid application for any visa without the Minister personally intervening

45. If the applicant's visa is cancelled and if he does not hold any other visa, the applicant would become an unlawful non-citizen and be subject to mandatory detention and removal from Australia. The applicant may be eligible to make a valid visa application for certain visas without the Minister's intervention although there would be limited types of visas he can apply for onshore. The applicant may be subject to an exclusion period in relation to some visas. The cancellation of a permanent visa would result in the applicant losing some benefits that he may have been entitled to as a permanent resident of Australia. The applicant states that he has applied for Australian citizenship and the Tribunal acknowledges that if the applicant is not the holder of a permanent visa, he may not be entitled to Australian citizenship. He may also lose other entitlements he acquired as a permanent resident of Australia.

Any other relevant matters (including the degree of hardship that may be caused to the visa holder and any family members)

46. In his response to the NOICC and evidence to the Tribunal the applicant has expressed remorse for providing incorrect answers. The Tribunal does not accept the applicant is genuinely remorseful for his actions. The Tribunal is mindful that the applicant made three applications – the Student visa, the Provisional Skilled visa and the permanent Skilled visa – and in all three he provided incorrect answers. Having given incorrect answers in multiple applications, the applicant then made no effort to notify the Department of the incorrect answers once his visas were granted and at any time before the NOICC was issued. It was only when the NOICC was issued and when the information was already before the delegate that the applicant provided truthful information and admitted the errors. In such circumstances, the Tribunal considers the applicant's expression of remorse to be opportunistic.

47. The applicant states that if his visa is cancelled, he would lose the opportunity to become an Australian citizen, for which he has worked hard. The Tribunal accepts that if the applicant is not a holder of a permanent visa, he may not be entitled to Australian citizenship and the Tribunal accepts that the applicant would like to become an Australian citizen. The Tribunal is of the view, however, that there is benefit in the applicant being assessed against the visa criteria on the basis of all available and truthful information and only then the applicant should be granted permanent residence which may lead to the grant of citizenship to him.

48. The applicant claims that the cancellation of his visa would cause significant emotional hardship and distress to his friends in Australia who are Australian citizens. The applicant claims that his friends are from different countries and they go out together and participate in various activities. The Tribunal accepts, as noted above, that the applicant has formed meaningful friendships and ties in Australia but the applicant has not satisfied the Tribunal that the cancellation of his visa would cause 'significant emotional hardship' to his friends in Australia, even if the cancellation will result in the applicant having to leave Australia. The Tribunal is of the view that the applicant may be able to maintain some form of relationship with his Australian friends even if he does not reside in Australia although the Tribunal acknowledges that such relationships may be in different forms and of different nature than if the applicant remains in Australia. The applicant states that it is hard to maintain contact if people live in different countries and he has lost contact with friends in India but the Tribunal does not consider that living in different countries would prevent the applicant from maintaining contact with his friends in Australia if he decides to do so. As noted above, the nature of the relationships may change if the applicant was to leave Australia and the Tribunal accepts, in general, that some hardship may arise as a result of the visa cancellation that would affect the applicant's friends in Australia, as well as the applicant himself.

49. The applicant states that he would face hardship if removed to India due to the need to reintegrate in the Indian community. The applicant notes that he has lived in Australia for over seven years and has built social and professional networks in Australia and made Australia his home. The applicant states that his elderly parents do not work and rely on him for financial support. The applicant states that due to the impact of COVID, he would have significant impediment to obtaining employment in India. The Tribunal finds that evidence unpersuasive. While the applicant refers to the general country information and the situation in India, he presented no satisfactory evidence that in the particular circumstances of his case, he would be unable to find employment and provide financial support to his parents. For example, the applicant presented no evidence of having applied for jobs and of having been denied jobs and he told the Tribunal that he had not applied for any jobs in India recently. He presented no evidence of employment opportunities specifically for people with his characteristics. It is unhelpful, in the Tribunal's view, to refer to the general situation in

the country or the high unemployment rate without assessing the applicant's particular circumstances. The applicant referred to the rights of farmers being taken away. The applicant states that he does not have formal qualifications and farming would be his only option but he cannot do that anymore. The applicant states that there are many applicants for each job and there is discrimination so it would be difficult for him to get a job. On the basis of presented limited evidence the applicant has not satisfied the Tribunal he would be unable to find employment in India. The Tribunal also does not consider that the period of the applicant's residence in Australia is so long that it would make it difficult for the applicant to re-integrate in Indian society. While the Tribunal accepts that the applicant would have to re-establish himself and renew the links he has to that country, and that is likely to cause some hardship at least initially, the Tribunal does not accept the applicant would be unable to do so.

50. Nevertheless, the Tribunal accepts that the applicant has spent considerable time in Australia and outside of his home country, that he has settled in Australia and would have to re-settle in India if he is required to leave Australia as a result of his visa being cancelled.

51. The applicant claims that as a Sikh, he would be in a minority group in India and would suffer impediments that the Indian Sikh community face in that country. The applicant states that India does not have a welfare system or a free healthcare system. The applicant outlined the hardship and impediments he would experience as a Sikh, including violence and discrimination. The Tribunal acknowledges the applicant's reference to various country reports but is also mindful that the applicant is eligible to seek another visa in Australia, such as a protection visa, that would assess whether there is a real chance or a real risk of the applicant experiencing the harm he describes, if he were to return to India. Generally, as noted elsewhere, the Tribunal accepts that significant hardship would be caused to the applicant if his visa is cancelled.

52. The applicant's former partner, Ms Kaur, spoke about their relationship and the support they provide to each other. Ms Kaur states that the applicant is a good person and refers to the links he has made to Australia to support himself and his family, and support the community. Ms Kaur spoke about the reasons why the applicant gave incorrect answers, stating that he was trying to protect what he had achieved. The Tribunal acknowledges Ms Kaur's evidence. The Tribunal is prepared to accept the applicant and Ms Kaur maintain a close friendship and is prepared to accept that some hardship would be caused to Ms Kaur if the applicant was required to leave Australia. The Tribunal acknowledges Ms Kaur's evidence that she has considered speaking to her family about re-marrying the applicant but has not done that yet. The Tribunal acknowledges that there does not appear to be a spousal or de facto relationship in existence at present.

53. Overall, the Tribunal accepts that considerable hardship would be caused to the applicant and others (in particular friends, work colleagues and Ms Kaur) by the cancellation of the visa if it results in the applicant being required to leave Australia. The Tribunal accepts that this may include emotional, financial, psychological and other forms of hardships.

54. The applicant refers to the implications of COVID in India and its effect on the health system. The Tribunal is prepared to accept that evidence but the Tribunal is of the view that if the applicant is required to leave Australia, he is eligible to seek a Bridging visa on departure grounds and explain his circumstances in that forum so that the applicant may be granted the visa to leave at a time when he is able to travel.

55. The applicant states that his siblings are unable to provide him with financial or practical support due to their residence in a different country and their own financial obligations. While the Tribunal does not accept that residence in a different country prevents the possibility of being able to provide financial support (as is the case with the applicant and his parents, for

example), the Tribunal accepts that any such support may be limited due to the siblings having other obligations. As noted above, the Tribunal accepts that hardship – which may include financial hardship – would be caused by the cancellation of the applicant's visa, although the Tribunal has rejected the applicant's evidence that he would be unable to find gainful employment in India.

56. The applicant told the Tribunal that he hoped to study in Australia after acquiring his Australian citizenship. The applicant explained to the Tribunal that he had not studied after being granted a permanent visa and before it was cancelled because he wanted to save money and he also claims he was depressed after his divorce. However, the applicant told the Tribunal that he has no savings at present and will need to save money if his visa is reinstated and he is able to work. the applicant's study plans appear to be merely aspirational at present. The Tribunal acknowledges that if the applicant is not a holder of an Australian visa, he may be unable to study in Australia and if he intends to study as a holder of a temporary visa (such as a Student visa) in the future, such fees are likely to be much higher.

57. The applicant submits that he would not make the same mistake again and will not breach the Australian laws. The Tribunal accepts that it is highly unlikely that the applicant would again breach s 101 of the Act (or other provisions) in the future, if his visa is reinstated, because the applicant is unlikely to be applying for any visas in the future if he holds a permanent visa or if he acquires the Australian citizenship. As for the general breaches of the law, the Tribunal is of the view that it is not possible to make that determination but the Tribunal accepts that it is very unlikely that the applicant would breach the law, given his past compliance with the law.

58. The applicant claims that he provided false information not to achieve a benefit to himself, not to acquire a 'lavish lifestyle' or travel or acquire other benefits but he was simply trying to provide a better life for himself and support his family. However, the applicant's evidence to the Tribunal is that he believed he could not get the visa if he did disclose the correct information and for that reason, he decided to provide incorrect answers in his initial application. That is, he did so to acquire a benefit (the Australian visa) which he believed he would not have been otherwise entitled to. In his subsequent application he chose to provide the same incorrect answers so as to be able to remain in Australia where he preferred to live. Again, the applicant did so to preserve his achievements. Thus, the Tribunal does consider that the applicant provided incorrect answers, on multiple applications, in order to achieve a benefit for himself.

59. The Tribunal has considered the totality of the applicant's circumstances. The Tribunal has found that the applicant completed the forms in a way that incorrect answers were given, he had not complied with s 101 of the Act and there are grounds for cancelling his visa.

60. There are factors that weigh against the cancellation. Most significantly, in the Tribunal's view, the applicant has lived in Australia for a number of years, has settled in this country and has formed employment, social and personal ties. The Tribunal accepts that hardship would be caused to the applicant and others around him if the visa is cancelled and the cancellation would also mean that the applicant would lose the opportunity to acquire the Australian citizenship at present (although nothing prevents him from seeking another visa in the future which may lead to the grant of the Australian citizenship). The Tribunal is prepared to accept that if the cancellations will lead to the applicant being required to leave Australia, this would also affect his ties in Australia, in particular the social ties and friendships he has formed, as well as his relationship with his former partner. The Tribunal accepts that the applicant may experience financial hardship and his financial situation may also affect his family, in particular his parents who rely on the applicant's financial support. The Tribunal accepts that the applicant is well regarded by friends and colleagues and has contributed to

the community and acknowledges the evidence of the applicant's friends who support his stay in Australia. The Tribunal also accepts the applicant's evidence about limited opportunities that he would have in India, including limited employment opportunities. While the Tribunal has formed the view that the applicant is likely to be able to support himself in the future through employment, the Tribunal acknowledges that it may take time for the applicant to re-settle in India and find a job and these factors would also cause hardship to the applicant. The Tribunal also accepts that the applicant has contributed to the Australian community.

61. The Tribunal acknowledges the applicant's evidence about the situation in India, including the treatment of Sikhs, the effect of COVID, limited employment opportunities to which the applicant refers, and other issues that he has raised, and the Tribunal accepts that all of these matters, and in particular the combination of these matters, may cause significant hardship to the applicant and to others. These are strong factors that are against the cancellation.

62. However, the Tribunal has decided to place greater weight on other factors. The Tribunal places weight on the circumstances in which the ground for cancellation arose. This is not the case where the applicant made a genuine mistake, nor did the applicant have any misunderstanding of the questions asked on the form. Rather, the applicant sought professional advice and was informed that he could not get the visa if the correct information about his residence in the UK and the circumstances of his removal from that country were disclosed. In these circumstances, the applicant made a decision to withhold that information and to give incorrect answers on the form so as to ensure that he was granted the visa. The applicant continued with the same falsehoods in his subsequent applications so as to remain in Australia and preserve his way of life.

63. The applicant's evidence is that he was informed by an agent that he could not get the visa if he had disclosed the correct information and so he made the deliberate decision to mislead the Department for the reason of obtaining the visa he believed he could not otherwise get. He did so on multiple occasions when seeking visas, and over a number of years. The Tribunal has formed the view that the applicant's conduct has shown his persistent disregard for the Australian laws.

64. The Tribunal also places weight on the fact that the decision to grant the visa was based, in part, on incorrect information. The applicant submits that he could have been granted the visa, if the correct information was known. That may be the case, and it is also possible that the applicant would have been found to not be of good character. At the very least, the applicant would have been required to provide the penal certificate from the UK if it was known that he resided there. It is neither possible, nor necessary for this Tribunal to determine whether the visa would have been granted if the correct information was known. What is significant is that the decision to grant the visa was based on incorrect information and the full information was not before the decision-maker.

65. The Tribunal has formed the view that the cancellation of the visa would not result in a breach of Australia's international obligations and in particular, would not breach Australia's non-refoulement obligations and would not adversely affect the best interests of any children. The cancellation of the visa would not preclude the applicant from seeking other visas in the Australia in the future (even if he is subject to an exclusion period), which may include a Student visa and, should the applicant resume his relationship with Ms Kaur, other visas.

66. Overall, and having regard to the particular circumstances of this case, the Tribunal has decided to place greater weight on the fact that the applicant had deliberately provided incorrect answers, on multiple occasions, in breach of his obligations under the Act and that

he had deliberately chosen to breach the requirements of the Act to achieve a benefit that he believed he was not otherwise entitled to. That is, the Tribunal places greatest weight on the circumstances in which the non-compliance occurred and the fact that the decision to grant the visa was based, in part, on incorrect information.

67. The Tribunal has decided that there was non-compliance by the applicant in the way described in the notice given under s 107 of the Act. Having regard to all the relevant circumstances, as discussed above, the Tribunal concludes that the visa should be cancelled.

DECISION

68. The Tribunal affirms the decision to cancel the applicant's Subclass 189 - Skilled - Independent visa.

Kira Raif
Senior Member