



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD140/2022

TRISTAN DALE WILDE

Applicant

**MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND
MULTICULTURAL AFFAIRS** and another named in the schedule

First Respondent

ORDER

JUDGE: JUSTICE SC DERRINGTON

DATE OF ORDER: 07 April 2022

WHERE MADE: Brisbane

BY CONSENT, THE COURT ORDERS THAT:

1. The orders of the Court dated 1 April 2022 be vacated.
2. A writ in the nature of certiorari issue, quashing the decision of the Second Respondent dated 21 January 2022 bearing Administrative Appeals Tribunal File Number 2021/8291.
3. A writ in the nature of mandamus issue, remitting the matter to the Second Respondent for determination according to law.
4. The First Respondent pay the Applicant's costs and disbursements of and associated with the application, as agreed or taxed.

THE COURT NOTES THAT:

1. The First Respondent concedes that the decision of the Second Respondent (**Tribunal**) is affected by error, in circumstances where the Tribunal found that, if the cancellation decision was not revoked, the Applicant "is likely to have the ongoing economic support of his partner ... who is currently working" (DR [166]) and "will enjoy ongoing material support from [his partner] which will ensure that he is able to establish himself and maintain basic living standards in New Zealand" (DR [169]).



2. The evidence of the Applicant's partner before the Tribunal was that – in the event that the Cancellation Decision was affirmed and the Applicant would return to New Zealand – she would "follow the Applicant to New Zealand" (DR [177]), involving the "severing of ties to Australia" for both the Applicant and his partner (DR [178]). The Applicant's partner had made representations and submissions to both the Delegate and Tribunal to the effect that she would experience difficulty obtaining employment in New Zealand, and removal would thus leave her and the Applicant "financially destitute".
3. In those circumstances, the First Respondent concedes the decision of the Second Respondent is affected by illogicality or irrationality insofar as it adopted an assumption – contrary to the evidence – that the Applicant's partner would continue to be able to provide economic support for the Applicant if he were returned to New Zealand, by reason of her employment status in Australia: *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 611 at 657–658 [130]; *Minister for Immigration and Border Protection v MZZMX* (2020) 280 FCR 1 at [23]-[25].
4. The First Respondent concedes this error is material, in the sense that there is a realistic possibility the Tribunal decision could have been different had the error not occurred, and thus the error is jurisdictional in nature: *MZAPC v Minister for Immigration and Border Protection* [2021] HCA 17; 390 ALR 590 at [2], [60]. The weight which the Tribunal placed on the strength, nature and duration of the Applicant's ties to Australia and the extent of impediments if removed could have differed if its reasons were not affected by the error identified above: *Khalil v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 26 at [72]-[73]; *Dunasemant v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 13 at [60].

Date that entry is stamped:

Sia Lagos
Registrar



Schedule

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Second Respondent ADMINISTRATIVE APPEALS TRIBUNAL