



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1349/2021

**MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND  
MULTICULTURAL AFFAIRS**

Applicant

**THYM** and another named in the schedule

Respondent

**ORDER**

**JUDGE:** JUSTICE HALLEY

**DATE OF ORDER:** 16 June 2022

**WHERE MADE:** Sydney

**THE COURT ORDERS, BY CONSENT, THAT:**

1. A writ of certiorari issue directed to the second respondent quashing its decision in the matter of *THYM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] AATA 4364 made on 19 November 2021.
2. A writ of mandamus issue directed to the second respondent requiring it to determine the first respondent's application for review of the decision of a delegate of the applicant dated 11 March 2020 according to law.
3. There be no order as to costs.

**THE COURT NOTES, BY CONSENT, THAT:**

4. The first respondent accepts that the second respondent's decision dated 19 November 2021 is affected by jurisdictional error in that it misconstrued s 36(1C)(b) of the *Migration Act 1958* (Cth) (**Act**). The first respondent accepts that the second respondent assessed whether the first respondent was a "danger to the Australian community" on the basis that he was in immigration detention, when the criterion in s 36(1C)(b) of the Act should be assessed on the basis that he would not be in immigration detention.



5. It is a matter for the President of the second respondent, informed by these orders, to determine whether the second respondent should be constituted differently for the purpose of determining the first respondent's application for review according to law.

Date that entry is stamped: 16 June 2022

*Sia Lagos*  
Registrar



## **Schedule**

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Second Respondent      ADMINISTRATIVE APPEALS TRIBUNAL