FEDERAL COURT OF AUSTRALIA

EIF21 v Minister for Home Affairs [2023] FCA 88

File number(s):	QUD 399 of 2021
Judgment of:	**COLLIER J**
Date of judgment:	14 February 2023
Catchwords:	**MIGRATION** – review of decision made by Minister for Home Affairs – applicant earlier granted general humanitarian visa – where delegate cancelled visa for failing the character test - s 501CA(4) *Migration Act* 1958 (Cth) – applicant made representations to Minister to revoke visa cancellation – no "other reason" for revocation identified by Minister – whether Minister took into account possibility of harm and non-refoulement obligations in decision
Legislation:	*Migration Act* 1958 (Cth)
Cases cited:	*Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 *Plaintiff M1/ 2021 v Minister for Home Affairs* [2022] HCA 17 *Snedden v Minister for Justice for the Commonwealth* [2014] FCAFC 156
Division:	General Division
Registry:	Queensland
National Practice Area:	Administrative and Constitutional Law and Human Rights
Number of paragraphs:	33
Date of hearing:	22 July 2022
Counsel for the Applicant:	Mr E Vuu and Dr J Donnelly
Solicitor for the Applicant:	Crossover Law Group
Counsel for the Respondent:	Mr B McGlade
Solicitor for the Respondent:	Sparke Helmore

ORDERS

QUD 399 of 2021

BETWEEN:	**EIF21** Applicant
AND:	**MINISTER FOR HOME AFFAIRS** Respondent

ORDER MADE BY:	**COLLIER J**
DATE OF ORDER:	**14 FEBRUARY 2023**

THE COURT ORDERS THAT:

1. The application be dismissed with costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

COLLIER J

1 Before the Court is an application under s 476A of the *Migration Act* 1958 (Cth) (**Migration Act**) for judicial review of a decision of the Minister for Home Affairs in which the Minister refused to revoke the cancellation of the applicant's visa under s 501CA of the Migration Act.

BACKGROUND

2 The applicant is a national of Bosnia-Herzegovina. He spent much of his early childhood living in Croatia, Germany and France with relatives and in refugee camps due to the civil war in the former Yugoslavia. In April 2000 the applicant was granted a visa to enter Australia on general humanitarian grounds with his father, stepmother and siblings.

3 The applicant has a substantial criminal record dating back to 2003. These offences include:

- drug offences;
- hinder or obstruct carriage of articles by post;
- fraudulent appropriation offences;
- driving offences, including;
    - driving while disqualified,
    - driving without authorisation,
    - use of vehicle while uninsured,
    - use of vehicle while unregistered, and
    - unlawfully taking or driving motor vehicle with person in or on it.

4 The applicant has also had two convictions for assault occasioning bodily harm. In respect of one of these convictions the applicant was sentenced to 12 months imprisonment, suspended upon entering a section 12 bond.

5 On 21 November 2021 the applicant's Class BA Subclass 200 Refugee visa (**visa**) was cancelled pursuant to s 501(3A) of the Migration Act. The delegate of the Minister was satisfied that the applicant failed the character test due to the operation of s 501(6)(a) of the Migration Act, and on the basis of s 501(7)(c) of that Act.

6 On 24 November 2019 pursuant to s 501CA(4) of the Migration Act the applicant sought revocation of the Minister's mandatory cancellation decision.

7 By her decision of 19 October 2021 the Minister refused to revoke the cancellation decision. The Minister provided detailed reasons for that decision.

MINISTER'S DECISION

8 The primary question for the Minister was whether, for the purpose of s 501CA(4)(b)(ii) of the Migration Act, there was another reason why the cancellation decision should be revoked.

9 In circumstances where the applicant had made representations referable to *Direction No. 90, Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* (the **Direction**) made under s 499 of the Migration Act, the Minister had regard to that Direction.

10 The Minister referred to the protection of the Australian community as a primary consideration:

- In relation to the nature and seriousness of the applicant's conduct, after examining the applicant's convictions and penalties at [15]-[22] the Minister concluded:

> 23. In summary, [the applicant] has a history of offending which includes multiple instances of driving whilst disqualified and two occasions where he was convicted of assault occasioning actual bodily harm. Also, the sentence imposed for his latest assault occasioning actual bodily harm is further confirmation of the seriousness of his offending, leading me to conclude that overall his offending is very serious.

- In relation to risk to the Australian community, the Minister noted at [25] that the applicant had a substantial history of offending, spanning some 15 years commencing in 2003 at 20 years of age. The Minister noted abatement and then escalation of the applicant's offending, and concluded:

> 25. …Should [the applicant] reoffend in a similar manner, involving violence, it may result in psychological and/or physical harm to members of the Australian community. I also consider that [the applicant's] repeated driving offences may place fellow road users at an increased risk of harm.

- In assessing the likelihood of the applicant reoffending in the future, the Minister considered factors that may assist to explain the applicant's past conduct, as well as his more recent conduct, remorse and rehabilitation.
- The Minister discussed in detail the applicant's family history and childhood (at [27]-[33]). The Minister did not consider that the applicant's unfortunate early life excused

his later criminal conduct, or explained why he continued to offend violently or drive without lawful authority (at [34]). After further discussion the Minister concluded:

> 37. Overall, I accept that [the applicant's] negative childhood experiences, his challenges in adjusting to life in Australia, his difficulties in dealing with his wife's significant psychological issues resulting in him moving out of their home, and his employment concerns were causal factors which have contributed to his offending during his residency in Australia, however I do not consider that they reduce his culpability. I am also concerned that at least some of these matters constitute long term or continuing factors in his life and could therefore again play a role in his adverse conduct, including criminal offending, in future.

- The Minister considered remorse and rehabilitation at [38]-[43]. The Minister concluded:

> 44. …Notwithstanding [the applicant's] stated remorse and insight, his participation in Drug Court, and his compliant behaviour in gaol, I note with concern that [the applicant] has a significant history of reoffending and breaches of judicial orders, particularly in relation to driving while disqualified from doing so.

- The Minister further examined evidence of remorse and rehabilitation, and continued:

> 69. I have considered the support [the applicant] continues to have from family members and friends in Australia, and his likely re-employment upon release which may act to lower his risk of reoffending. However I note that there is no reason to doubt that such family support has always been available to him, but it had not previously prevented him reoffending. I also remain guarded about the extent to which family and friends may act as a protective factor against further offending, noting that his wife's significant mental health issues were a contributing factor towards his latest violent offending.
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> 70. I also take into account the factors indicative of ongoing risk of [the applicant's] reoffending, being his history of offending repeatedly over many years and frequently breaching judicial orders and bail undertakings, his receipt of a NOICC from the Department which included a warning regarding the possible consequences of further offending, his need for ongoing counselling to address the trauma he experienced as a child in the context of civil war, and his association with persons of concern.

- At [73] the Minister concluded:

> 73. Considering the nature and seriousness of [the applicant's] conduct, the potential harm to the Australian community should the non-citizen commit further offences or engage in other serious conduct, and taking into account the likelihood of [the applicant] reoffending, I consider that the need to protect the Australian community from criminal or other serious conduct weighs significantly in favour of non-revocation in this case.

11 The Minister had regard to family violence conduct within the terms of the Direction, and found that there was no evidence of such conduct.

12 The Minister had regard to the best interests of minor children within the terms of the Direction. The Minister noted that the applicant had a very young niece, however, at [79] gave the consideration of her best interests limited weight. This was in circumstances where it was unclear whether she had actually met the applicant, where he was not responsible for her daily care and control, and where all of her parental needs were presumably met by her biological parents who lived interstate.

13 The Minister had regard to the expectations of the Australian community. Materially the Minister observed:

> 80. As explained in the Direction, the Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has engaged in serious conduct in breach of this expectation, or where there is an unacceptable risk that they may do so, the Australian community, as a norm, expects the Government to not allow such a non-citizen to enter or remain in Australia. [The applicant] has breached this trust as he has been convicted of a considerable number of offences in Australia, including repeated breaches of the requirement to hold a valid licence in order to drive on Australian roads, thus posing some risk to other road users. I also note [the applicant] has engaged in violent behaviour and has received a custodial sentence for Assault occasioning actual bodily harm Attachment A.
>
> 81. Given the serious and repeated nature of some of his offences, I conclude that the Australian community would expect that [the applicant] should not hold a visa.
>
> 82. I am also of the view that the community finds the activities of Outlaw Motorcycle Gangs very worrying and note that [the applicant] has been named as a member of such gangs by New South Wales Police, as well as being found in the company of such persons on multiple occasions.

14 The Minister had regard to international non-refoulement obligations as follows:

> 86. The Direction provides that, in making a decision under s50ICA, decision-makers should carefully weigh any non-refoulement obligation against the seriousness of the non-citizen's criminal offending or other serious conduct. While I am not legally bound by the Direction, I was mindful that if non-refoulement obligations were engaged in this case, that would be a factor in favour of revocation of the cancellation of [the applicant's] visa.
>
> 87. In the context of his request for revocation of the mandatory cancellation decision made under s501(3A), [the applicant] made representations that he will face harm if returned to Bosnia-Herzegovina. I note that [the applicant] also stated that he is afraid of returning to his birth country due to his previous experience in the war torn country. Furthermore, [the applicant] states that Bosnia has recently experienced military conflict, ethnic violence and civil unrest...

88. I accept that [the applicant] was granted a visa to enter Australia on general humanitarian grounds in April 2000 and he arrived with his family in Australia on 1 June 2000... While I also accept that Bosnia-Hercegovina was the scene of much warfare and loss of life in the civil conflict that occurred in the former Yugoslavia between 1992 and 1995 and is likely to suffer some degree of ongoing civil unrest because of tensions between the different ethnic groups [mainly Bosniaks (Bosnian Muslims), Serbs and Croats] in the country and pressures from political forces in nearby countries, [the applicant] has not provided any independent or authoritative supporting information to corroborate his claims of recent military conflict and ethnic violence to an extent that would imperil persons going to the country.

89. [The applicant] was granted a visa to enter Australia on general humanitarian grounds. I accept that Bosnian Muslims suffered particularly badly in the wars of the 1990s, but not that simply being of that ethnicity in Bosnia-Hercegovina today is in itself sufficient to establish that such a person is owed non-refoulement obligations and [the applicant] has not particularised his claims any further than a general statement.

90. I consider that there is insufficient information for me to determine whether any non-refoulement obligations is owned to [the applicant] by reason of past military, civil and ethnic unrest, including any risk of him being targeted on account of his previous experiences in the war torn country.

91. A conclusive finding as to whether non-refoulement obligations are in fact owed in respect of [the applicant] is not possible without a full and comprehensive assessment through a process similar to what is required to assess a Protection visa application. Nevertheless, for the purposes of the present decision, I accept there is at least a possibility that [the applicant] could face a real risk of suffering or harm due to military conflict, ethnic violence and civil unrest.

92. Consequently, for the purposes of this decision, I accept that there is at least a possibility that non-refoulement obligations are enlivened in relation to [the applicant], with the country of reference being Bosnia-Herzegovina. This means that his removal to Bosnia-Herzegovina may potentially breach these obligations. I also accept that there is currently no known prospect of removing [the applicant] to any other country. I am aware that the statutory consequence of a decision to not revoke the cancellation of [the applicant's] visa is that, as an unlawful non-citizen, [the applicant] would become liable to removal from Australia under s l98 of the Act as soon as reasonably practicable.

93. However the requirement to remove [the applicant] under s l95 would not apply if he is granted another visa. I acknowledge that if I decide not to revoke the cancellation of [the applicant's] visa under s 50ICA, he will be prevented by s501E of the Act from making an application for another visa, other than a Protection visa or a Bridging R (Class WR) visa (as prescribed by regulation 2.12A of the Migration Regulations 1994). Given the nature of the claims made by [the applicant], I consider it likely that he will apply for a Protection visa.

94. A Protection visa application is the key mechanism provided by the Act for considering claims by a non-citizen that they would suffer harm if returned to their home country. Provided that [the applicant's] visa application is valid, the duty to remove him under s l98 of the Act will not apply while his application is being determined. In that context, any claim by [the applicant] that he would face harm on return to Bosnia-Herzegovina could be

conclusively assessed in the context of his Protection visa application to the extent that those claims are relevant to the criteria for visa grant.

95. In this regard, I have noted that s 36A of the Act ensures that the Minister assesses and records findings against the protection obligations criteria when considering a valid Protection visa application, even where the visa can be refused on other grounds.

96. I am cognisant of the possibility that [the applicant] may be refused a Protection visa because of the ineligibility criteria, even if found to satisfy the protection criteria. However, even if he is not granted a Protection visa, any protection finding made for [the applicant] in the course of considering his Protection visa application in respect of Bosnia-Herzegovina would prevent him from being removed to Bosnia-Herzegovina, except in the limited circumstances set out in s l97C(3)(c) (such as where the Minister has decided that [the applicant] is no longer a person in respect of whom any protection finding would be made and that decision is no longer subject to merits review).

97. Further, where a criterion for a Protection visa grant implements a non-refoulement obligation, consideration of whether [the applicant] meets that criterion is in effect consideration of whether that non-refoulement obligation is in fact engaged in his case. However, I am mindful that Australia's international non-refoulement obligations may not be fully encompassed by the Protection visa criteria in s36(2).

98. I am also mindful that consideration of whether [the applicant] satisfies a Protection visa criterion under s36(2), in the context of determining his Protection visa application, cannot be regarded as a substitute for consideration of non-refoulement claims in the present context. I accept that case law indicates that the issue to be determined under s501CA(4) (that is, whether there is 'another reason' why a cancellation decision should be revoked) is less categorical than the issue of whether a person satisfies a relevant criterion under s36(2), and that the material or representations advanced in support of a claim in the context of s50ICA are not required to meet predetermined benchmarks.

15 The Minister had regard to the extent of any impediments that the applicant could experience in establishing himself and maintaining basic living standards if removed from Australia to his home country. In particular the Minister noted:

- The applicant’s age and health;
- That although the applicant would have retained some knowledge of the language and customs of Bosnia-Herzegovina, in light of his prolonged absence he would experience challenges in adjusting to life again in that country;
- The applicant had some, but limited, family support in Bosnia-Herzegovina;
- The applicant had considerable trade work experience which would enable him to obtain future employment in Bosnia-Herzegovina; and

- The applicant would be capable of adjusting to life in Bosnia-Herzegovina in due course.

16 The Minister considered the effect of non-revocation upon the applicant's immediate family in Australia, and accepted that those persons would experience emotional, practical and financial hardship. At [119] the Minister noted that she had separately considered the effect of non-revocation upon the applicant's wife, and accepted that she would suffer substantial emotional, practical and financial hardship. This factor weighed strongly in favour of revocation.

17 The Minister also noted that the applicant had resided in Australia for the past two decades, and took into account at [123] that he had positively contributed to the community through his paid employment.

18 The Minister concluded as follows:

> 124. I have considered whether there is another reason why the decision to cancel [the applicant's] visa should be revoked, despite [the applicant] not satisfying me that he passes the character test.
>
> 125. I find that the best interests of [the applicant's] niece… as a primary consideration, weighs in favour of revocation of the cancellation of [the applicant's] visa.
>
> 126. In addition, I have found that a number of other factors also weigh in favour of a decision to revoke. These include strength and nature of ties to Australia, and impediments to return. I acknowledge [the applicant's] close family ties in Australia, noting that his wife … suffers from significant psychological conditions and that she would benefit from his continued support. Furthermore, I have considered the length of time [the applicant] has made a positive contribution to the Australian community of some 15 years via his paid employment, and the hardship he would experience upon return to Bosnia-Herzegovina.
>
> 127. I have also considered [the applicant's] claims that he will face harm, including his fear of danger or death, if he returns to Bosnia-Herzegovina. As noted earlier, I am unable to make any finding in this regard without further substantiation of those claims.
>
> 128. However, I have also given significant weight to the very serious nature of the crimes committed by [the applicant], noting that he has a history of offending which includes two occasions where he was convicted of assault occasioning actual bodily harm. Due to the very serious nature of this offending, the Australian community would expect that [the applicant's] visa cancellation not be revoked.
>
> 129. Furthermore, I have considered that the Australian community, as a norm, expects the Government to not allow non-citizens who have engaged in violent conduct causing physical injury to another person to continue to hold a visa, even applying a higher tolerance of likelihood of reoffending by [the applicant] than I otherwise would because he has lived in Australia for approximately

half of his life from a young age. I give this primary consideration significant weight as well towards non-revocation of the visa cancellation.

130. Additionally, I have considered [the applicant's] rehabilitation and mitigating factors. I am of the view that [the applicant] represents an ongoing risk to the community due to his history of repeated offending over many years despite being made aware of the effect of s 501, his history of breaching judicial orders and bail undertakings, his need for ongoing counselling to address the trauma he experienced as a child in the context of civil war, and his association with persons of concern.

131. I am cognisant that where great harm could be inflicted on the Australian community even strong countervailing considerations may be insufficient for me to revoke the decision to cancel the visa.

132. On balance, I find that the factors that weigh against revocation of [the applicant's] visa outweigh the factors in favour of revocation. Therefore, I am not satisfied that there is another reason why the decision to cancel [the applicant's] Class BA Subclass 200 Refugee visa should be revoked, as required by s 501CA(4)(b)(ii) of the Act.

DECISION

133. Since I am not satisfied that [the applicant] passes the character test, nor am l satisfied that there is another reason why the cancellation decision should be revoked, my power under s501CA(4) to revoke the cancellation decision is not enlivened and the [applicant's] visa remains cancelled.

GROUNDS OF APPLICATION

19 At the hearing of the application both the applicant and the Minister were represented. The grounds on which the applicant relied were as follows:

1. The respondent failed to complete the exercise of her jurisdiction.

    a. Section 501CA(4)(b) of the Migration Act 1958 (Cth) (the Act) imports an assessment by the Minister of the propriety of a revocation decision, balancing factors both in favour and against revocation.

    b. The Minister failed to lawfully complete the balancing exercise mandated by s 501CA(4)(b) of the Act.

    c. First, when considering the other consideration of international non-refoulement obligations, the Minister, inter alia, found that for the purposes of this decision:

        - there is at least a possibility that the applicant could face a real risk of suffering or harm due to military conflict, ethnic violence and civil unrest in his home country ([91]);
        - accepted there is at least a possibility that non-refoulement obligations are enlivened in relation to the applicant ([92]);
        - removal of the applicant to his home country may potentially breach Australia's international non-refoulement obligations ([92]).

d. Secondly, when the Minister came to undertake the final balancing exercise at [124]-[132],the Minister failed to weigh in the balance the positive findings it made at [91]- [92] as extracted at 1(c) above.

e. Read in context, at [127] of the decision, the Minister merely found that she was unable to make any finding concerning the applicant's claims concerning fear of danger or death if returned to Bosnia-Herzegovina. The Minister appears to have given this other consideration no weight as a result.

f. Thirdly, the Minister's error was material. Had the Minister weighed in the balance the favourable findings made at [91]-[92], it was open to the Minister to give that factor (i.e. international non-refoulement consideration) weight in favour of the applicant. Ultimately, in the broad exercise of discretion, there was the realistic possibility of a different result.

20 In summary, the applicant submitted that:

(1) The Minister made "clear findings" concerning non-refoulement obligations.

(2) In the conclusion the Minister failed to weigh in the balance the risk of harm to the applicant.

(3) The Minister's findings for the applicant were not used in her ultimate balancing exercise, but rather were simply ignored or forgotten by the Minister.

(4) There was a realistic possibility that a different decision could have been reached by the Minister if the Minister had taken into account factors both in favour and against revocation.

21 In summary, the Minister submitted that:

(1) It was inherently improbable that the Minister forgot about possible harm or non-refoulement obligations and findings, when such issues were extensively discussed at [86]-[98] of the Minister's decision.

(2) When the Minister stated that she was "unable to make any finding [about the Applicant's harm/non-refoulement claims] without further substantiation of the claims" she was referring to [90]-[91] of her decision

(3) The Minister's first sentence in [127] was cross-referenced to her consideration of harm and non-refoulement in [86]-[98].

(4) The Minister identified factors in favour of revocation at [125]-[127]. The applicant's submission that the Minister gave no weight to the prospect of harm or non-refoulement was not available, as the Minister discussed it at [127].

(5) The Minister was not required to refer in detail to every factor of her decision.

(6) If there was a jurisdictional error, it would not have been a material error.

(7) The non-refoulement obligations were not a mandatory consideration.

CONSIDERATION

22 Section 501CA of the Migration Act relevantly provides:

> ***Cancellation of visa--revocation of decision under subsection 501(3A) (person serving sentence of imprisonment)***
>
> (1) This section applies if the Minister makes a decision (*the original decision*) under subsection 501(3A) (person serving sentence of imprisonment) to cancel a visa that has been granted to a person.
>
> (2) For the purposes of this section, relevant information is information (other than non-disclosable information) that the Minister considers:
>
> (a) would be the reason, or a part of the reason, for making the original decision; and
>
> (b) is specifically about the person or another person and is not just about a class of persons of which the person or other person is a member.
>
> (3) As soon as practicable after making the original decision, the Minister must:
>
> (a) give the person, in the way that the Minister considers appropriate in the circumstances:
>
> (i) a written notice that sets out the original decision; and
>
> (ii) particulars of the relevant information; and
>
> (b) 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.
>
> (4) 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.
>
> (5) If the Minister revokes the original decision, the original decision is taken not to have been made.
>
> (6) Any detention of the person that occurred during any part of the period:
>
> (a) beginning when the original decision was made; and

(b) ending at the time of the revocation of the original decision;

is lawful and the person is not entitled to make any claim against the Commonwealth, an officer or any other person because of the detention.

(7) A decision not to exercise the power conferred by subsection (4) is not reviewable under Part 5 or 7.

Note: For notification of decisions under subsection (4) to not revoke, see section 501G.

23 There was no controversy concerning the facts of the case and its procedural history. As the applicant submitted, the dispute between the parties was of very narrow compass, confined to a number of passages of the Minister's reasons for decision. Essentially, the applicant's case concerned the comments of the Minister at [91], in particular that:

- while the Minister found that she was not in a position to make a conclusive decision concerning non-refoulement obligations (if any) owed to the applicant,
- she was nevertheless prepared (for the purposes of the decision) to accept that there was at least a possibility that the applicant could face a real risk of suffering or harm due to military conflict, ethnic violence and civil unrest, however
- this positive finding appeared nowhere later in the decision and
- the proper inference for the Court to draw was that the Minister failed to take into account the prospect of harm to the applicant in weighing relevant factors and reaching her decision.

24 Accordingly, in the applicant's submission, there had been a constructive failure by the Minister to undertake the statutory task conferred by s 504CA(4)(b)(ii) of the Migration Act.

25 In my view there has been no constructive failure by the Minister to undertake the statutory task, conferred by s 501CA(4)(b)(ii) of the Migration Act, of determining whether there was another reason why the cancellation decision should be revoked.

26 In the present case, the Minister plainly gave consideration to the possibility of harm to the applicant. At [87] the Minister referred to the applicant's representations to that effect, and the history of conflict in Bosnia-Herzegovina. The Minister examined those representations. It appears that the applicant did not particularise his claims, or provide information to the Minister in support of any assertion of harm. Giving the applicant the benefit of the doubt, the Minister nonetheless specifically accepted that there was a possibility of non-refoulement obligations owed to the applicant. Critically, however, the Minister was unable to take the matter further,

other than to note that the applicant was not prevented from applying for a protection visa or a Bridging R (Class WR) visa in the event that the revocation of the cancellation decision was refused.

27 In my view this approach of the Minister was reasonable, and more particularly fell within the confines of the exercise by the Minister of her decision-making function as conferred by s 501CA(4)(b)(ii) of the Migration Act.

28 It is well-established that decisions of an administrative decision-maker should not be scrutinised minutely or with a view to the perception of error, and must be read as a whole: *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 (at [272]). The Minister returned to the issue of possible harm to the applicant on repatriation to Bosnia-Herzegovina in the conclusion of her reasons at [127], reiterating the lack of information and her consequent inability to make any finding in this regard without further substantiation of such claims. Clearly, the Minister at [127] was referring to the earlier part of her reasons at [86]-[98] where she had discussed the issue of non-refoulement – the Minister considered such issues but specifically was unable to reach a conclusion given the lack of material before her. The submission of the applicant that the Minister failed to weigh claims of possible harm is not substantiated.

29 Further, even if it could be said that, in her conclusory findings, the Minister had failed to take into account the prospect of harm to the applicant, I am not satisfied that such an error would have been material to the Minister's decision. I note the detailed examination by the Minister of the applicant's claims, and relevant factors in favour of and against revocation. At [131] the Minister stated:

> 131. I am cognisant that where great harm could be inflicted on the Australian community even strong countervailing considerations may be insufficient for me to revoke the decision to cancel the visa.

30 Counsel for the Minister referred to the Minister's findings and weight attributions. He submitted that it was, at the very least, improbable, that the Minister would ever attribute dispositive weight to the possibility of harm, and that that conclusion was bolstered in circumstances where the possibility of harm was merely a possibility. Counsel also submitted that the Minister's discussion of the possibility of harm to the applicant was largely based on the Minister's willingness to make assumptions favourable to the applicant, notwithstanding the absence of evidence before her. I agree.

31 Finally I note the submissions of Counsel concerning whether any error on the part of the Minister would have been within jurisdiction or otherwise, having regard to such cases as *Plaintiff M1/ 2021 v Minister for Home Affairs* [2022] HCA 17 and *Snedden v Minister for Justice for the Commonwealth* [2014] FCAFC 156; (2014) 230 FCR 82. In my view, given my earlier findings, it is unnecessary for me to make any further comments on this issue.

CONCLUSION

32 I am unable to identify any error in the Minister's reasons going to jurisdiction.

33 The application is dismissed. Costs follow the event.

I certify that the preceding thirty-three (33) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Collier.

Associate:

Dated: 14 February 2023