



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD40/2023

ADAM ASAD

Applicant

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

Respondent

ORDER

JUDGE: JUSTICE ABRAHAM

DATE OF ORDER: 05 April 2023

WHERE MADE: Sydney

BY CONSENT, THE COURT ORDERS THAT:

1. A writ of certiorari issue directed to the second respondent (**Tribunal**), quashing its decision dated 14 December 2022 to affirm a decision of a delegate of the first respondent (**Minister**) not to revoke the cancellation of the applicant's Five-Year Resident Return (Class BB) (Subclass 155) visa (**visa**).
2. A writ of mandamus issue directed to the Tribunal requiring it to determine the application for review made to it on 23 September 2022 according to law.
3. The Minister pay the applicant's costs, as agreed or assessed.

THE COURT NOTES THAT:

1. The Minister concedes that the Tribunal's findings at [76]-[77] of its decision concerning the "Extent of impediments if removed from Australia" consideration (**extent of impediments consideration**) under paragraph 9.3(1) *Ministerial Direction no. 90 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* are affected by jurisdictional error. Namely, the Tribunal's finding that the extent of impediments consideration weighed against revoking the mandatory cancellation of the applicant's visa was irrational and/or unreasonable. Further and relatedly, there was no evidence upon which the Tribunal could rely to find that the applicant had returned to Iraq since arriving in Australia.



The Minister accepts that the Tribunal's decision could realistically have been different if these errors had not been made and accordingly, they were material to its decision: *MZAPC v Minister for Immigration and Border Protection* (2021) 390 ALR 590, at [51].

Date that entry is stamped: 5 April 2023

Sia Lagos
Registrar



Schedule

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Second Respondent ADMINISTRATIVE APPEALS TRIBUNAL