



Federal Court of Australia
District Registry: Western Australia
Division: General

No: WAD267/2022

PETER DOBROSAVLJEVIC
Applicant

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

CONSENT ORDER

JUDGE: JUSTICE JACKSON

DATE OF ORDER: 23 June 2023

WHERE MADE: Perth

THE COURT NOTES THAT:

- A. The first respondent concedes that the reasoning of the second respondent that the risk of the applicant relapsing into drug use or engaging in criminal offences (**Identified Risk**) if he returned to Serbia was:
- a. an impediment that weighed in favour of revoking the decision to cancel his visa; and
 - b. was not an impediment,
- was inconsistent and therefore illogical.
- B. It is not possible to determine if and how the second respondent weighed the Identified Risk when deciding whether there was another reason to revoke the cancellation of the applicant's visa under s 501CA(4)(b)(ii) of the *Migration Act 1958* (Cth). In the circumstances, the first respondent accepts the error was material and amounts to jurisdictional error.

BY CONSENT THE COURT ORDERS THAT:

1. The application is allowed.



2. The decision of the Administrative Appeals Tribunal made on 28 November 2022 is set aside.
3. The matter is remitted to the Tribunal for determination according to law.
4. The first respondent must pay the applicant's costs of the application to be assessed if not agreed.

Date that entry is stamped: 23 June 2023

Sia Lagos
Registrar



Schedule

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Second Respondent ADMINISTRATIVE APPEALS TRIBUNAL