Administrative Appeals Tribunal

DECISION AND REASONS FOR DECISION

Division:	**GENERAL DIVISION**
File Number:	**2022/4150**
Re:	**Imad Barghachoun**
	APPLICANT
And	**Minister for Immigration, Citizenship and Multicultural Affairs**
	RESPONDENT

DECISION

Tribunal:	**Senior Member Dr M Evans-Bonner**
Date:	**31 July 2023**
Place:	**Perth**

The Reviewable Decision, being the decision of a delegate of the Respondent dated 12 May 2022, is set aside and substituted with a decision that the cancellation of the Applicant's Visa is revoked under s 501CA(4)(b)(ii) of the *Migration Act 1958* (Cth).

.....[Sgd].....

Senior Member Dr M Evans-Bonner

CATCHWORDS

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant's Visa – Applicant fails character test – substantial criminal record – offences include armed robbery, dishonesty offences, assaults, property and traffic/ driving offences – Applicant is a 53-year-old man who arrived in Australia when he was 13 years old – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – no family violence – strength, nature and duration of ties to Australia – best interests of minor stepchildren, great nieces and great-nephews in Australia – expectations of the Australian community – legal consequences of the decision – consideration of the Applicant's protection claims deferred – extent of impediments if removed to Lebanon – Reviewable Decision set aside and substituted

LEGISLATION

Migration Act 1958 (Cth) ss 197C, 499, 499(1), 499(2A), 501, 501(3A), 501(6), 501(6)(a), 501(7), 501(7)(c), 501CA, 501CA(4), 501CA(4)(b)(i), 501CA(4)(b)(ii)

CASES

Minister for Immigration, Citizenship and Multicultural Affairs v HSRN [2023] FCAFC 68

NTTH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] AATA 1143

Wightman and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] AATA 1208

SECONDARY MATERIALS

Department of Foreign Affairs and Trade, Country Information Report, Lebanon (26 June 2023)

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Cth), *Direction No 90: Visa Refusal and Cancellation Under Section 501 and Revocation of a Mandatory Cancellation of a Visa Under Section 501CA* (8 March 2021)

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Cth), Direction No 99: Visa Refusal and Cancellation Under Section 501 and Revocation of a Mandatory Cancellation of a Visa Under Section 501CA (23 January 2023) paras 4(1), 5.1, 5.1(3), 5.1(4), 5.2, 6, 7, 8, 8(1), 8(2), 8(3), 8(4), 8(5), 8.1, 8.1(1), 8.1(2), 8.1(2)(a), 8.1(2)(b), 8.1.1, 8.1.1(1), 8.1.1(1)(a), 8.1.1(1)(b), 8.1.1(1)(b)(ii), 8.1.1(1)(b)(iv), 8.1.1(1)(c), 8.1.1(1)(d), 8.1.1(1)(e), 8.1.1(1)(f), 8.1.1(1)(g), 8.1.1(1)(h), 8.1.2, 8.1.2(1), 8.1.2(2), 8.1.2(2)(a), 8.1.2(2)(b), 8.1.2(2)(b)(i), 8.1.2(2)(b)(ii), 8.2, 8.3, 8.3(1), 8.3(2), 8.3(3), 8.3(4), 8.4, 8.4(4), 8.4(4)(a), 8.4(4)(b), 8.4(4)(c), 8.3(4)(d), 8.4(4)(e), 8.4(4)(f), 8.4(4)(g), 8.4(4)(h), 8.5, 8.5(1), 8.5(2), 8.5(2)(a), 8.5(2)(b), 8.5(2)(c), 8.5(2)(d), 8.5(2)(e), 8.5(2)(f), 8.5(3), 8.5(4), 9, 9(1), 9(1)(a), 9(1)(b), 9(1)(c), 9(1)(d), 9.1, 9.1(1), 9.1(2), 9.1(3), 9.1.1, 9.1.2, 9.1.2(1), 9.1.2(2), 9.1.2(3), 9.2, 9.2(1), 9.3, 9.3(1), 9.4, 9.4(1)

REASONS FOR DECISION

Senior Member Dr M Evans-Bonner

31 July 2023

BACKGROUND

1. The Applicant is a 53-year-old man who was born in Lebanon.

2. He came to Australia on 2 August 1983 when he was 13 years old.

3. On 13 December 2012, the Applicant was convicted in the Sydney District Court of six offences relating to the armed robbery of a truck. These included the offences of "*in company rob while armed with dangerous weapon-SI*" for which he was sentenced to eight years and six months imprisonment, and "*robbery while armed with dangerous weapon-SI*" for which he was sentenced to six years imprisonment. The Applicant appealed the severity of his sentences for the six offences to the Court of Criminal Appeal. His appeal was successful with respect to the two offences I have mentioned with those sentences being reduced to six years and four years respectively (R1/84-85).

4. Consequently, the Applicant's Class BF Transitional (Permanent) visa (**Visa**) was mandatorily cancelled on 25 October 2016 while he was in prison pursuant to s 501(3A) of the *Migration Act 1958* (Cth) (**Migration Act**) on the basis that he failed the character test because he had a substantial criminal record and was serving a fulltime sentence of imprisonment (R1/269) (**Cancellation Decision**).

5. The Applicant requested revocation of the Cancellation Decision but on 12 May 2022 a delegate of the Minister decided not to exercise discretion under s 501CA(4) of the Migration Act to revoke the Cancellation Decision (R1/48) (**Reviewable Decision**).

6. The Applicant sought review of the Reviewable Decision in the General Division of this Tribunal, but on 8 August 2022, a differently constituted Tribunal affirmed the Reviewable Decision (R1/2494) (**First Tribunal Decision**).

7. The Applicant appealed the First Tribunal Decision in the Federal Court of Australia. On 29 September 2022, the Federal Court, by consent, set aside the First Tribunal Decision and ordered that the application be remitted to the Tribunal to be heard and determined according to law. The Court noted that the First Tribunal Decision was affected by jurisdictional error due to a failure to properly consider the impact of the decision on the Applicant's immediate family members in Australia (R1/2898).

8. Thus, the decision under review is the Reviewable Decision of 12 May 2022.

ISSUES

9. The issues that I need to determine are:

   (a) whether the Applicant passes the character test, as defined by s 501(6) of the Migration Act; and

   (b) if he does not pass the character test, whether I am satisfied that there is another reason why the Cancellation Decision should be revoked (see s 501CA(4) of the Migration Act).

THE HEARING AND THE EVIDENCE

10. The re-hearing of this application was in person on 18 and 19 April 2023.

11. The Applicant was represented by Dr J Donnelly of Latham Chambers. The Respondent was represented by Ms C Taggart of Francis Burt Chambers instructed by Ms C Mumford of The Australian Government Solicitor.

12. The Applicant gave evidence on the first day of the hearing.

13. On the second day of the hearing, clinical and forensic psychologist Dr Emily Kwok gave evidence by Microsoft Teams. So did the Applicant's wife, Souraya, and his nephew, Abdul, who gave evidence by telephone.

14. I admitted the following documents into evidence at the hearing:

(a) Supplementary statement of the Applicant dated 26 January 2023 with annexures A-I (**Exhibit A1**);

(b) Supplementary statement of Souraya dated 26 January 2023 with annexures A-D (**Exhibit A2**);

(c) Psychologist report of Dr Kwok dated 9 December 2022 (**Exhibit A3**);

(d) Remittal Bundle, labelled 1-15, comprising pages 1- 2955 (**Exhibit R1**);

(e) Supplementary Remittal Bundle, labelled 16-17, comprising pages 2956-3164 (**Exhibit R2**);

(f) Respondent's Further Tender Bundle, labelled RTB49-RTB54, comprising pages 1-22 (**Exhibit R3**); and

(g) Email trail between the Applicant's wife and Dr Kwok between 28 September 2022 and 2 December 2022 (**Exhibit R4**).

15. The Applicant filed a Statement of Facts, Issues and Contentions (**SFIC**) dated 26 January 2023. At that time, *Direction No 90: Visa Refusal and Cancellation Under Section 501 and Revocation of a Mandatory Cancellation of a Visa Under Section 501CA* (**Direction No 90**) applied.

16. However, a new Ministerial Direction, *Direction No 99: Visa Refusal and Cancellation Under Section 501 and Revocation of a Mandatory Cancellation of a Visa Under Section 501CA* (**Direction No 99**) commenced on 3 March 2023. The Respondent filed a SFIC dated 6 March 2023 which addressed Direction No 99.

17. The Applicant filed submissions in reply on 12 April 2023 which also updated the Applicant's 26 January 2023 SFIC to include submissions regarding Direction No 99.

LEGISLATIVE FRAMEWORK

Migration Act

18. Subsection 501(3A) of the Migration Act provides that:

> *(3A) The Minister must cancel a visa that has been granted to a person if:*

(a) the Minister is satisfied that the person does not pass the character test because of the operation of:

i. paragraph (6)(a) (substantial criminal record), on the basis of paragraph (7)(a), (b) or (c); or

ii. paragraph (6)(e) (sexually based offences involving a child); and

(b) the person is serving a sentence of imprisonment, on a full-time basis in a custodial institution, for an offence against a law of the Commonwealth, a State or a Territory.

19. Subsection 501(6)(a) of the Migration Act provides that:

> *(6) For the purposes of this section, a person does not pass the* **character test** *if:*
>
> *(a) the person has a substantial criminal record (as defined by subsection (7)); or*
>
> (Original emphasis.)

20. A "*substantial criminal record*" is defined by s 501(7)(c) of the Migration Act as follows:

> *(7) For the purposes of the character test, a person has a* **substantial criminal record** *if: …*
>
> *(c) the person has been sentenced to a term of imprisonment of 12 months or more; or*
>
> (Original emphasis.)

21. Section 501CA of the Migration Act further provides, in part:

> *(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.

(Original emphasis.)

Direction No 99

22. Section 499(1) of the Migration Act provides that the Minister may give written directions as follows:

(1) The Minister may give written directions to a person or body having functions or powers under this Act if the directions are about:

(a) the performance of those functions; or

(b) the exercise of those powers.

23. Further, s 499(2A) of the Migration Act states that "[a] *person or body must comply with a direction under subsection (1)*".

24. On 23 January 2023, the Minister for Immigration, Citizenship and Multicultural Affairs made Direction No 99 under s 499 of the Migration Act, which commenced operation on 3 March 2023. As I mentioned above, this Direction replaced the previous Direction No 90 made on 8 March 2021.

25. Paragraph 5.1 of Direction No 99 sets out "[o]*bjectives*", with paragraphs 5.1(3) and (4) being relevant to the current application:

(3) Under subsection 501(3A) of the Act, the decision-maker must cancel a visa that has been granted to a person if the decision-maker is satisfied that the person does not pass the character test because of the operation of paragraph (6)(a) (on the basis of paragraph (7)(a), (b) or (c) or paragraph (6)(e)) and the non-citizen is serving a sentence of imprisonment, on a full-time basis in a custodial institution, for an offence against a law of the Commonwealth, a State or a Territory. A non-citizen who has had their visa cancelled under section 501(3A) may request revocation of that decision under section 501CA of the Act. Where the decision-maker considering the request is not satisfied that the non-citizen passes the character test, the decision-maker must consider whether there is another reason to revoke the cancellation given the specific circumstances of the case.

(4) *The purpose of this Direction is to guide decision-makers in performing functions or exercising powers under section 501 and 501CA of the Act. Under section 499(2A) of the Act, such decision-makers must comply with a direction made under section 499.*

26. Paragraph 5.2 of Direction No 99 sets out "[p]*rinciples*" which "*provide the framework within which decision-makers should approach their task of deciding whether to … revoke a mandatory cancellation under section 501CA*". The principles are:

(1) *Australia has a sovereign right to determine whether non-citizens who are of character concern are allowed to enter and/or remain in Australia. Being able to come to or remain in Australia is a privilege Australia confers on non-citizens in the expectation that they are, and have been, law-abiding, will respect important institutions, such as Australia's law enforcement framework, and will not cause or threaten harm to individuals or the Australian community.*

(2) *Non-citizens who engage or have engaged in criminal or other serious conduct should expect to be denied the privilege of coming to, or to forfeit the privilege of staying in, Australia.*

(3) *The Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they engaged in conduct, in Australia or elsewhere, that raises serious character concerns. This expectation of the Australian community applies regardless of whether the non-citizen poses a measureable* [sic] *risk of causing physical harm to the Australian community.*

(4) *Australia has a low tolerance of any criminal or other serious conduct by visa applicants or those holding a limited stay visa, or by other non-citizens who have been participating in, and contributing to, the Australian community only for a short period of time.*

(5) *With respect to decisions to refuse, cancel, and revoke cancellations of a visa, Australia will generally afford a higher level of tolerance of criminal or other serious conduct by non-citizens who have lived in the Australian community for most of their life, or from a very young age. The level of tolerance will rise with the length of time a non-citizen has spent in the Australian community, particularly in their formative years.*

(6) *Decision-makers must take into account the primary and other considerations relevant to the individual case. In some circumstances, the nature of the non-citizen's conduct, or the harm that would be caused if the conduct were to be repeated, may be so serious that even strong countervailing considerations may be insufficient to justify not cancelling or refusing the visa, or revoking a mandatory cancellation. In particular, the inherent nature of certain conduct such as family violence and the other types of conduct or suspected conduct mentioned in paragraph 8.55(2) (Expectations of the Australian Community) is so serious that even strong countervailing considerations may be insufficient in some circumstances, even if the non-citizen does not pose a measureable* [sic] *risk of causing physical harm to the Australian community.*

27. Informed by the principles set out in paragraph 5.2 of Direction No 99, when making a decision the decision-maker (in this case, the Tribunal – see definition of "*decision-maker*" in para 4(1) of Direction No 99) must consider the primary considerations listed in paragraph 8 of Direction No 99, and the other considerations listed in paragraph 9 where relevant (see para 6 of Direction No 99).

28. Specifically, paragraph 8 of Direction No 99 provides:

> *In making a decision under section 501(1), 501(2) or 501CA(4), the following are primary considerations:*
>
> *(1) protection of the Australian community from criminal or other serious conduct;*
>
> *(2) whether the conduct engaged in constituted family violence;*
>
> *(3) the strength, nature and duration of ties to Australia;*
>
> *(4) the best interests of minor children in Australia;*
>
> *(5) expectations of the Australian community.*

29. Paragraph 9 of Direction No 99 lists other considerations to be considered as follows:

> *(1) In making a decision under section 501(1), 501(2) or 501CA(4), other considerations below must also be taken into account, where relevant, in accordance with the following provisions. These considerations include (but are not limited to):*
>
> *a) legal consequences of the decision;*
>
> *b) extent of impediments if removed;*
>
> *c) impact on victims;*
>
> *d) impact on Australian business interests*

30. Guidance as to how a decision-maker is to apply the considerations in Direction No 99 can be found in paragraph 7, "[t]*aking the relevant considerations into account*", which provides:

> *(1) In applying the considerations (both primary and other), information and evidence from independent and authoritative sources should be given appropriate weight.*
>
> *(2) Primary considerations should generally be given greater weight than the other considerations.*
>
> *(3) One or more primary considerations may outweigh other primary considerations.*

DOES THE APPLICANT PASS THE CHARACTER TEST?

31. The Minister may revoke the Cancellation Decision if the Minister is satisfied that the Applicant passes the character test (s 501CA(4)(b)(i) of the Migration Act).

32. A person will not pass the character test due to the operation of s 501(6)(a) of the Migration Act if they have a "*substantial criminal record*" as defined by s 501(7) of the Migration Act, having been "*sentenced to a term of imprisonment of 12 months or more*" (s 501(7)(c) of the Migration Act).

33. As I mentioned in the background section above, on 13 December 2012, the Applicant was convicted in the Sydney District Court of six offences relating to the armed robbery of a truck. These included the offences of "*in company rob while armed with dangerous weapon-SI*" for which he was sentenced to eight years and six months imprisonment, and "*robbery while armed with dangerous weapon-SI*" for which he was sentenced to six years imprisonment. After appealing the severity of his sentences, his appeal was upheld with respect to those two offences, with the sentences being reduced to six years and four years respectively. His appeal was dismissed with respect to the other four offences, for which he had been sentenced to terms of imprisonment of 12 months or more. These sentences comprised: two offences of "*larceny value >$15000-T1*" for which the Applicant was sentenced to two years imprisonment; an offence of "*larceny value <=$2000-T2*" for which he was sentenced to 12 months imprisonment; and "*take and drive conveyance without consent of owner*" for which he was sentenced to two years and six months imprisonment.

34. Consequently, the Applicant fails the character test, based on any of these sentences of imprisonment. I also note that the Applicant concedes that he does not pass the character test.

35. As the Applicant fails the character test, the statutory power to revoke will only be enlivened if there is "*another reason*" why the Cancellation Decision should be revoked (s 501CA(4)(b)(ii) of the Migration Act).

IS THERE ANOTHER REASON WHY THE CANCELLATION DECISION SHOULD BE REVOKED?

PRIMARY CONSIDERATIONS

Protection of the Australian community (paras 8(1) and 8.1 of Direction No 99)

36. Paragraph 8.1(1) of Direction No 99 provides that:

> *(1) When considering protection of the Australian community, decision-makers should keep in mind that the Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens. In this respect, decision-makers should have particular regard to the principle that entering or remaining in Australia is a privilege that Australia confers on non-citizens in the expectation that they are, and have been, law abiding, will respect important institutions, and will not cause or threaten harm to individuals or the Australian community.*

37. Paragraph 8.1(2) of Direction No 99 then provides:

> *(2) Decision-makers should also give consideration to:*
>
> *a) the nature and seriousness of the non-citizen's conduct to date; and*
>
> *b) the risk to the Australian community, should the non-citizen commit further offences or engage in other serious conduct.*

Nature and seriousness of the conduct (paras 8.1(2)(a) and 8.1.1(1) of Direction No 99)

38. Paragraph 8.1.1(1) of Direction No 99 provides:

> *(1) In considering the nature and seriousness of the non-citizen's criminal offending or other conduct to date, decision-makers must have regard to the following:*
>
> *a) without limiting the range of conduct that may be considered very serious, the types of crimes or conduct described below are viewed very seriously by the Australian Government and the Australian community:*
>
> *i. violent and/or sexual crimes;*
>
> *ii. crimes of a violent nature against women or children, regardless of the sentence imposed;*
>
> *iii. acts of family violence, regardless of whether there is a conviction for an offence or a sentence imposed;*
>
> *b) without limiting the range of conduct that may be considered serious, the types of crimes or conduct described below are considered by the Australian Government and the Australian community to be serious:*

i. *causing a person to enter into or being party to a forced marriage (other than being a victim), regardless of whether there is a conviction for an offence or a sentence imposed;*

ii. *crimes committed against vulnerable members of the community (such as the elderly and the disabled), or government representatives or officials due to the position they hold, or in the performance of their duties;*

iii. *any conduct that forms the basis for a finding that a non-citizen does not pass an aspect of the character test that is dependent upon the decision-maker's opinion (for example, section 501(6)(c));*

iv. *where the non-citizen is in Australia, a crime committed while the non-citizen was in immigration detention, during an escape from immigration detention, or after the non-citizen escaped from immigration detention, but before the non-citizen was taken into immigration detention again, ,* [sic] *or an offence against section 197A of the Act, which prohibits escape from immigration detention;*

c) *with the exception of the crimes or conduct mentioned in subparagraph (a)(ii), (a)(iii) or (b)(i) above, the sentence imposed by the courts for a crime or crimes;*

d) *the frequency of the non-citizen's offending and/or whether there is any trend of increasing seriousness;*

e) *the cumulative effect of repeated offending;*

f) *whether the non-citizen has provided false or misleading information to the Department, including by not disclosing prior criminal offending;*

g) *whether the non-citizen has re-offended since being formally warned, or since otherwise being made aware, in writing, about the consequences of further offending in terms of the non-citizen's migration status (noting that the absence of a warning should not be considered to be in the non-citizen's favour).*

h) *where the conduct or offence was committed in another country, whether that offence or conduct is classified as an offence in Australia.*

39. The Applicant conceded (Applicant's SFIC, para [48]) that:

> *In totality, the Applicant has a very lengthy criminal history in Australia that includes multiple very serious crimes of violence, which are reflected in the lengthy prison sentences he has received. His crimes have resulted in significant harm to the Australian community and the Tribunal would regard them as very serious.*

40. I agree with this assessment for reasons that I will now outline.

41. Some of the Applicant's offences fall within one of the specific categories of offending that Direction No 99 states should be "*viewed very seriously*" because they are "*violent crimes*"

(para 8.1.1(1)(a) of Direction No 99) and "*seriously*" because they are crimes against police in the performance of their duties (para 8.1.1(1)(b)(ii) of Direction No 99). These include, (with the listed dates being Court dates):

(a) three counts of "*assault police*" (8 March 1993);

(b) "*assault*" (29 October 1993); and

(c) two offences for "*assault occasioning actual bodily harm*" (21 February 1995 and 22 February 1996).

42. On 15 December 2020, the Applicant was convicted of four offences committed while he was in immigration detention. Paragraph 8.1.1(1)(b)(iv) of Direction No 99 lists crimes committed while a non-citizen is in immigration detention as a type of crime or conduct that the Australian government and the Australian community view as "*serious*". The offences were two offences of "*Deal with property proceeds of crime<$100000-T2 (Attempt)"* (committed on 4 and 28 December 2019) and two offences of *"Deal with property proceeds of crime<$100000-T2"* (committed on 27 December 2019 and 8 January 2020). The offending involved the Applicant exchanging text messages with a co-offender to make arrangements to obtain cars from car dealers using fraudulent credit cards.

43. The categories of offences that can be regarded as "*serious*" or "*very serious*" are not limited to the categories of offences set out in in paragraphs 8.1.1(1)(a) and (b) of Direction No 99. Those categories are not, exhaustive and other offences can be serious or very serious. In my view, the offences that formed the basis of the Cancellation Decision can be regarded as being serious.

44. These offences were committed by the Applicant on the same day with co-offenders.

45. The sentencing Judge outlined the series of offences as follows. I have included the offence names in bold (R1/163-4):

> *After a four week trial, on 15 October 2012 a jury found the offenders, Hussein, Barghachoun, Manly and Riley, guilty of committing the following offences on 19 August 2011:*
>
> *1. Hussein, Barghachoun and Manly: Attempt to steal an airport shuttle bus, an offence against s 117 and 154A of the* Crimes Act *1900. Maximum available penalty: five years.* [**larceny value >$15000-T1**]

2. *Hussein, Barghachoun and Manly: Attempt to steal a BMW vehicle, an offence against s 117 and 154A of the* Crimes Act *1900. Maximum available penalty: five years.* [**larceny value >$15000-T1**]

3. *Hussein, Barghachoun and Manly: Robbery of a Mazda sedan and contents being armed with a dangerous weapon, an offence against s 97(2). Maximum available penalty: twenty-five years.* [**robbery while armed with dangerous weapon -SI**]

4. *Hussein and Barghachoun: Steal number plates, an offence against s 117. Maximum available penalty: five years.* [**larceny value <$2000-T2**]

5. *Riley: …*

6. *All offenders: Robbery of truck and contents being armed with a dangerous weapon, an offence contrary to s 97(2). Maximum available penalty: twenty-five years.* [**in company rob while armed with dangerous weapon -SI**]

…

10. *Barghachoun and Riley: Steal Mazda bus, an offence against ss 117 and 154A. Maximum available penalty: five years.* **[take and drive conveyance without consent of owner-T2]**

46. The sentencing Judge continued to outline the facts of the offences (R1/165-167).

> *The facts of the offences are that, at about 9pm on 19 August 2011, an unmarked Pantech truck left Bankstown with a valuable cargo including mobile telephone handset and foreign currency. The truck was to drive north along the Pacific Highway to Queensland.*
>
> *Offences 1 and 2: At about 9:05pm on 19 August, Hussein and Barghachoun entered a service station at Silverwater for the purpose of stealing a vehicle for use in the intended robbery of the truck. They wore hoodie tops that partially concealed their faces. Hussein wore a black and white scarf across his face. He approached the driver of an airport shuttle bus that was located at the petrol pumps. He asked for the keys to the bus. The driver refused and ran to the office of the petrol station. Hussein and Barghachoun then approached the driver of a BMW. Barghachoun asked for the keys to that vehicle. The driver made an excuse and did not provide the keys. Hussein and Barghachoun ran from the service station. Manly had been waiting nearby in his dark blue Subaru WRX vehicle. Hussein and Barghachoun entered Manly's vehicle.*
>
> *Offence 3: Manly drove to the Vittoria Coffee Warehouse, which was about a block away. A security officer was seated in his silver Mazda vehicle at the warehouse entrance, waiting to be admitted to the premises. Manly stopped his vehicle behind that of the security officer. Hussein exited Manly's vehicle armed with a Browning pistol. He opened the door of the Mazda and cocked the pistol. The security officer vacated the Mazda. Hussein drove the Mazda from the premises. The Mazda and Manly's Subaru travelled north up the Pacific Highway. After the vehicles reached northern Sydney, Barghachoun and Manly called each other. Inferentially, by that stage Barghachoun was in the stolen Mazda. From about Ourimbah, the vehicles travelled in convoy until they reached Bulahdelah.*
>
> *…*

Offence 4: At a highway service station, Hussein and Barghachoun, the occupants of the stolen vehicle, stole number plates from a parked vehicle and attached them to the stolen Mazda for the purpose of disguising the vehicle.

Offence 6 and 7: pattern about 11:30pm, in an area of road works just north of Bulahdelah, the stolen Mazda overtook the Pantech truck, blocked its part, and forced the truck driver to stop the vehicle. Hussein, Barghachoun and Riley were in the stolen Mazda. Hussein exited the stolen Mazda armed with the Browning pistol. He fired a shot at the truck windscreen, striking the passenger side of the windscreen. Hussein walked to the driver's door of the truck brandishing a firearm and indicated that the driver should leave the vehicle. The driver got out of the vehicle. When he began to walk towards the rear of the truck, Hussein fired a shot at the ground and directed the driver to the side of the road near the front of the truck. He indicated that the driver should kneel on the ground. Hussein pushed the firearm into the driver's back and directed him to remain in a kneeling position. Barghachoun and Riley entered the rear cargo area of the truck. Manly was at least waiting in the vicinity for the purpose of assisting if required.

…

Offence 10: Barghachoun and Riley drove the Pantech truck north up the highway for a short distance. They then turned off the Pacific Highway and drove towards a waste depot. Inadvertently, they drove the truck into a roadside culvert. Forced to abandon the truck, they walked a considerable distance through bushland south towards Bulahdelah. On the northern side of Bulahdelah, they came to a sawmill. They stole the bus belonging to the sawmill, which they drove north east to the Forster area. At about 3am on 20 August, police arrested them. When he was taken into police custody, Barghachoun appeared to be withdrawing from heroin use.

…

47. The following remarks from the sentencing Judge indicate the seriousness of the truck robbery (R1/169):

> *Offence 6 was an objectively serious armed robbery. It was planned. The Pantech truck was unmarked and carried a valuable cargo. The offenders must have been aware of the cargo and targeted the truck because of the cargo that it was carrying. The offenders were prepared to drive a considerable distance up the Pacific Highway to rob the particular truck. Some hours before the robbery, they attempted to steal a vehicle for use in the robbery. As a travelled up the highway, they maintained telephone contact. The offence was committed in company. The truck driver was aware that Hussein was accompanied by at least two other people.*

48. The sentencing Judge also commented on the detrimental impact the offence had on the truck driver, which in my view is a further indication of the seriousness of the offending (R1/164-165):

> *At this point I should acknowledge that the injury suffered by the victim of the truck robbery was a very serious injury. He continues to experience a high level of emotional trauma associated with the offence. Prior to August 2011, he enjoyed his job. In June 2012, he terminated his employment because it placed him under too much stress. He continues to experience a high level of anxiety and has difficulty*

> *finding enjoyment in any aspect of his life. Among other things, he is unable to enjoy the former pleasures of spending time with his children and grandchildren. In the witness box, the victim appeared to be extremely anxious. He was visibly shaking.*

49. The sentencing Judge later stated (R1/169):

> *I accept that the driver suffered very serious emotional harm. However, the offence was very serious.*

50. Additionally, the sentencing Judge observed: "*The victim was in a vulnerable position as a truck driver driving in the country late at night*" (R1/170).

51. Further, the sentencing Judge remarked that other relevant aggravating features were that the Applicant was on bail all at the time that he committed the offences and that he had it record of previous convictions for offences of the same nature, namely "*serious offences of dishonesty*" (R1/169-170).

52. I find that the sentencing Judge's comments, including that the offending was pre-meditated, serious, in company and against a victim in a vulnerable position who suffered considerable emotional harm as a result, supports a finding that the "*in company rob while armed with dangerous weapon-SI*" offence was very serious. The other offences in which the Applicant was a co-offender are also serious because they were part of a series of offences that led to and facilitated the robbery of the truck.

53. The Applicant also has driving offences in 1988 (unregistered vehicle, carry pillion passenger, uninsured vehicle, not wear helmet) and in 1991 (drive whilst disqualified, unregistered vehicle and uninsured vehicle). Whilst driving offences are sometimes regarded as being serious because of their potential to harm innocent road users, they are early in his record and are at the less serious end of the scale than other driving offences, for example those involving reckless or dangerous driving or driving under the influence of drugs.

54. The Applicant has committed numerous dishonesty offences of varying degrees of seriousness. They include "*break, enter and steal*", "*receiving*", "*imposition*" (social security fraud), "*stealing*", "*make false instrument"* and *"use false instrument".* Other dishonesty offences are of a more serious nature including "*armed robbery*", "*robbery being armed*" and "*attempt dispose property – theft = serious indictable offence >$5000-T1*", "*deal with*

property suspected proceeds of crime" and "*deal with property proceeds of crime < $100000-T2*".

55. Direction No 99 also contemplates that the decision-maker can consider a non-citizen's conduct to date as well as his offending. There have been numerous incidents concerning the Applicant in immigration detention which I discuss in further detail in the next part of this section concerning the likelihood of engaging in further criminal or other serious conduct. However, these incidents, including an alleged assault of another detainee in April 2017, did not result in any criminal charges. Overall, I do not think these incidents in immigration detention affect, in a material or significant way, my overall finding about the nature and seriousness of the Applicant's offending (or conduct) in this section.

56. The Applicant's criminal history shows that he has received some fines, but that the Courts have also imposed numerous sentences of imprisonment. These include the following sentences:

(a) Two years imprisonment with a 12-month non-parole period on 22 March 1989 for "*steal motor vehicle*";

(b) Imprisonment (for six months, four months, two months and a further two months each on three counts), reparation and a two-year good behaviour bond for "*imposition*" (social security fraud) offences on 1 June 1994;

(c) 12 months imprisonment for three counts each of "*stealing*", "*make false instrument*" and "*use false instrument*" on 11 May 1995;

(d) A four-year fixed term of imprisonment for "*robbery being armed*" and a minimum term of four years add term of two years and six months release subject to supervision for another offence of "*robbery being armed*" on 1 September 1995;

(e) A fixed term of four months imprisonment for "*assault occasioning actual bodily harm*" on 22 February 1996;

(f) 16 months imprisonment, a non-parole period with conditions and release subject to supervision for "*deal with property suspected proceeds of crime*" on 8 October 2008;

(g) 12 months imprisonment with a non-parole period of nine months and release subject to supervision for "*attempt dispose property – theft = serious indictable offence >$5000-T1*" on 18 September 2009; and

(h) As I have mentioned above in the sections on "*background*" and whether the Applicant passes the character test, after a partly successful appeal of the severity of his sentences on 13 December 2012, the Applicant's sentences of imprisonment were reduced to six years imprisonment for "*in company rob while armed with dangerous weapon*" and four years imprisonment for "*robbery while armed with dangerous weapon-SI".* The sentences for the other offences that were not disturbed by the appeal were: "*larceny value >$15000-T1*" (two offences) for which the Applicant was sentenced to two years imprisonment; "*larceny value <=$2000-T2*" for which he was sentenced to 12 months imprisonment; and "*take and drive conveyance without consent of owner-T2*" for which he was sentenced to two years and six months imprisonment.

57. These numerous and sometimes lengthy sentences reflect the seriousness with which the Courts regarded the Applicant's offending (para 8.1.1(1)(c) of Direction No 99).

58. The Applicant's adult history consists of approximately 44 criminal offences between 1988 and January 2020. His offending can therefore be regarded as frequent. There was a break in the Applicant's offending between 2002 to 2007 which suggests that the Applicant is capable of living in the community and not offending.

59. Dishonesty offences appear throughout the Applicant's criminal record, and his assault offences appear earlier in his record (1993, 1995, 1996), as do his driving offences. He has several serious offences throughout his history, as reflected by the nature of these offences (for example, offences involving violence and armed robbery). Overall, there is a slight trend of increasing seriousness which is reflected in his lengthy sentence for the offences concerning the armed robbery of the truck in company that formed the basis for the Cancellation Decision (para 8.1.1(1)(d) of Direction No 99).

60. There would be a cumulative effect of repeated offending due to the many court appearances, fines imposed, and numerous terms of imprisonment. This would have the effect of burdening the resources of police, corrective services and the Courts which are ultimately funded by the taxpayer (para 8.1.1(1)(e) of Direction No 99).

61. I am also required to consider whether the Applicant has provided false or misleading information to the Department of Home Affairs, including not disclosing prior criminal offending (para 8.1.1(1)(f) of Direction No 99). There is no evidence of any such conduct.

62. Paragraph 8.1.1(1)(g) of Direction No 99, requires me to consider whether the Applicant previously received any formal or other written warnings that further offending may affect his migration status. The Applicant has received two prior warnings. At the hearing there was some confusion about the dates of the warnings. I think this was because he was not asked about the first warning in 2001, and because the Applicant recalled he received warnings in 2010 and 2016. There was some confusion here because the 2016 "*warning*" was in fact the current Cancellation Decision.

63. The first warning was in a letter dated 5 July 2001 given to the Applicant when he was in Long Bay prison which advised him of a decision not to cancel his visa and warned him that cancellation could be considered in the future (R1/210). He was also given a verbal warning (R1/211). The Applicant recalled receiving a warning when he was in Long Bay prison, which I infer was this warning (transcript/21). He was not asked about why he did not take this warning seriously, and so I draw no adverse inference from this warning.

64. On 21 May 2010 the Applicant was notified, in a letter sent to his representative, that his visa may be liable for cancellation under s 501 of the Migration Act on character grounds. In a subsequent undated letter (that appears to have been sent to the Applicant on or after 23 November 2010) advising him that the delegate had decided not to cancel his visa, the Applicant was given a warning (R1/213) that:

> *… visa cancellation may be reconsidered if you commit further offences or otherwise breach the character test in future. Disregard of this warning will weigh heavily against you if your case is reconsidered.*

65. He was asked about this second warning at the hearing. The Applicant's evidence was that he did not take the warning seriously and that he thought that after his lawyer dealt with the matter that the issue had gone away (transcript/22-23).

66. After receiving this warning, the Applicant committed the truck robbery offences which formed the basis of the Cancellation Decision. After his release from prison into immigration detention on 19 February 2017, the Applicant committed one offence whilst he was in prison and four offences in immigration detention. In prison, on 14 April 2016, he committed the

offence of "*inmate possess mobile phone/SIM card*" for which he was sentenced to two weeks imprisonment. I have already discussed the four offences he committed in immigration detention above (for which he appeared in Court on 15 December 2020) which involved the Applicant and co-offenders trying to obtain cars from a car dealer by fraudulent means. It is concerning that the Applicant did not take the November 2010 warning seriously and that he committed numerous offences after receiving it. That, in my view, adds to the overall seriousness of his offending.

67. The Applicant has not committed any offences in another country, and so I am not required to consider whether any such offence is an offence in Australia (para 8.1.1(1)(h) of Direction No 99).

68. The Applicant has a lengthy criminal history of frequent offending, and his frequent offending would have had a cumulative effect. His offending includes some offences (such as dishonesty and driving offences) which can be considered less serious but also more serious offences including armed robberies and violent offences such as assault occasioning bodily harm. He has received several sentences of imprisonment including a lengthy sentence for the offences on which the Cancellation Decision was based. Sentences of imprisonment and release on bail have not, however, deterred him from further offending. The Applicant has reoffended after serving sentences of imprisonment, since being formally warned that further offending would affect his migration status, and whilst in prison and immigration detention.

69. Overall, I find that paragraph 8.1.1 of Direction No 99, the nature and seriousness of the conduct, weighs strongly against the revocation of the Cancellation Decision.

The risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct (paras 8.1(2)(b) and 8.1.2 of Direction No 99)

70. Paragraph 8.1.2(1) of Direction No 99 provides:

> *(1) In considering the need to protect the Australian community (including individuals, groups or institutions) from harm, decision-makers should have regard to the Government's view that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases. Some conduct and the harm that would be caused, if it were to be repeated, is so serious that any risk that it may be repeated may be unacceptable.*

71. Paragraph 8.1.2(2) of Direction No 99 provides, in part, in relation to assessing risk:

> *(2) In assessing the risk that may be posed by the non-citizen to the Australian community, decision-makers must have regard to, cumulatively:*
>
> *a) the nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal or other serious conduct; and*
>
> *b) the likelihood of the non-citizen engaging in further criminal or other serious conduct, taking into account:*
>
> *i. information and evidence on the risk of the non-citizen re-offending; and*
>
> *ii. evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since their most recent offence (noting that decisions should not be delayed in order for rehabilitative courses to be undertaken).*
>
> *…*

<u>*Nature of the harm (para 8.1.2(2)(a) of Direction No 99)*</u>

72. Broadly speaking, I am required to assess the risk of harm to the Australian community if the Applicant were to engage in further criminal or other serious conduct. This firstly requires a consideration of the nature of the harm to individuals or the Australian community should he engage in further criminal or serious conduct (para 8.1.2(2)(a) of Direction No 99).

73. The harm that could result to members of the Australian community if the Applicant were to reoffend in a violent manner could include serious physical injury, temporary or permanent impairment or even loss of life. Violent offending may also result in psychological harm to victims. As I outlined above, that was certainly the case with the truck driver victim who suffered significant psychological distress and reduced enjoyment of life because of the offending.

74. Dishonesty offences such as "*stealing*", "*armed robbery*", "*larceny*", "*imposition*" and offences involving dealing with the proceeds of crime can cause psychological distress to victims and financial harms in the form of increased costs to the community including increased insurance premiums.

75. These harms are applicable to this application if the Applicant was to reoffend in a violent manner or if he was to commit further dishonesty offences.

76. The Applicant has some driving offences early in his criminal record (1988, 1991 and 1993). Road traffic laws such as laws that require drivers to be licensed and that vehicles be registered and insured exist to ensure that persons driving cars are appropriately qualified and safe to do so. Contraventions of these laws can result in serious consequences, including fatalities from road traffic accidents, as well as physical and psychological injuries to innocent road users. However, given that the Applicant only has several offences of this nature committed over 30 years ago, it is unlikely that the Applicant will engage in that type of conduct in the future.

Likelihood of engaging in further criminal or other conduct: Information and evidence on the risk of reoffending and evidence of rehabilitation (para 8.1.2(2)(b) of Direction No 99)

77. Next, I am required to consider the likelihood of the Applicant engaging in further criminal or other serious conduct if he were permitted to remain in the Australian community, taking into account information and evidence on the risk of reoffending, and evidence of rehabilitation, giving weight to time spent in the community since the most recent offence (para 8.1.2(2)(b)(i) and sub-para (ii) of Direction No 99).

78. The Applicant is a 53-year-old man who has a lengthy criminal history spanning over 30 years. He has reoffended despite numerous prison sentences and opportunities for supervision in the community. He committed the offences associated with the armed robbery of the truck whilst on bail, and after receiving two warnings that further offending may result in his visa being cancelled. As I have detailed above, he has also committed one minor offence in the controlled environment of prison and four offences in immigration detention after the cancellation of his visa. This history suggests a likelihood of reoffending.

79. There was, however, a period between October 2002 and September 2007 where the Applicant did not commit any offences. On 19 January 2010, a sentencing Judge who decided an appeal against the severity of the Applicant's sentence for "*attempt dispose property – theft = serious indictable offence >$5000-T1*", confirmed the conviction but observed that he was released to parole in 2007 and lived a law-abiding life until September 2007 (R1/175-176). This suggests that the Applicant is capable of living in the community without committing any offences. The Judge also noted that at the time the Applicant committed this offence, and an earlier offence for which he had been in prison and served a sentence, "*he was under enormous financial pressure*". The Judge observed that one of the Applicant's brothers "*took advantage of his ageing parents*" and had taken out a

mortgage over his parents' home. The Judge explained that: "[i]*n view of the obligations of trying to repay enormous debts he was working fifteen to sixteen hours a day six to seven days a week, trying to finance those repayments*"; that he was using amphetamines to "*stay awake to be able to do the work he was doing*"; and that "*I suspect that it was a crushing burden for him"* (R1/176). The writer of a Violent Offender's Therapeutic Program (**VOTP**) report for the Applicant dated 28 August 2017 stated that the Applicant had disclosed he was using heroin and methamphetamine (ice) at the time of the truck robbery offences and that he also had gambling issues with poker machines. He also stated that he intended to use the money from the truck robbery to prevent the bank repossessing the family home (R1/334). The Applicant's parents are now deceased, and he is likely not to have to face this type of burdensome financial issue if he is released into the community because he no longer has to service this debt, will live with his wife and will have stable employment with his nephew.

80. The Applicant experienced childhood trauma. In a statutory declaration dated 30 October 2017, the Applicant described seeing legs and body parts in the street and seeing his next-door neighbour being raped (R1/376). He also described to clinical psychologist Yvette Aiello from STARTTS (NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors), who wrote a report dated 21 December 2017, that his only memories of Lebanon are of war and that "*he was exposed to frequent horrific scenes as a result of the civil war in Lebanon*" including "*often seeing dismembered body parts and having to sleep in the 'dungeons' of the building they lived in because of bombing*" (R1/739). Ms Aiello stated that the Applicant, "*presented and reported symptoms of Depression, Anxiety and Post Traumatic Stress Disorder (PTSD) as a consequence of his experiences in Lebanon which have been re-triggered by the threat of a forced repatriation in the context of his detention in VIDC* [Villawood Immigration Detention Centre]" (R1/744). These findings were consistent with those stated in an earlier report dated 14 July 2017 by registered psychologist Thea Gumbert-Jourjon who noted the Applicant reported symptoms of depression and anxiety and that he showed significant symptoms of post-traumatic stress disorder (**PTSD**) (R1/482). The Applicant has previously been prescribed anti-depressant and anti-psychotic medication from approximately 2012, but Ms Gumbert-Jourjon reported that at the time of her assessment (April 2017), he had stopped taking those medications approximately a year ago (R1/476). The Applicant has previously attempted suicide on at least two occasions in 1994 and 2014 (A3/4; see also R1/733). Ms Gumbert-Jourjon recommended that the Applicant would likely benefit from the maintenance program of the

VOTP, from participation in Narcotics Anonymous to assist him to manage his addiction to heroin and ice and counselling, including trauma counselling (R1/745).

81. As I have mentioned, the Applicant has a history of illicit drug use which he described to psychologist Ms Gumbert-Jourjon, and which she outlined in her report dated 14 July 2017 (R1/469). The Applicant was first introduced to heroin at age 27 by his cousin. He stopped using drugs in approximately 2003 or 2004, but then relapsed in 2006. He sought assistance and was prescribed buprenorphine which helped him to remain abstinent for six months until 2007 when he began using crystal methamphetamine, relapsing to heroin use shortly after. He used ice (methamphetamine) every day and heroin to sleep at night. When sentencing the Applicant on 13 December 2012 for the offences arising from the truck robbery, the sentencing Judge referred to the Applicant having "*an apparently entrenched drug addiction that seemingly continued during periods of incarceration*". The sentencing Judge doubted the Applicant's stated intention that he wanted to reform (R1/168). Ms Gumbert-Jourjon also stated that the Applicant used heroin, ice, and buprenorphine while in custody between 2012 and 2014 but made the decision to cease drug use on his birthday in 2014 (R1/475). At the hearing, he admitted having approximately five lapses to drug or alcohol use since 2014 in prison or immigration detention including getting drunk on home brewed alcohol and that he "*had a joint*" in immigration detention. His last lapse was approximately two years ago when he had a drink of home brewed alcohol (transcript/33-34, 48-49). His evidence was that although he had these lapses, he had not been an addict since 2014 (transcript/37). On the one hand, the Applicant's lengthy and entrenched history of drug use is concerning and suggests that it may be difficult for him to abstain in the community. On the other, his period of abstinence, with his last lapse being approximately two years ago, may assist him to remain abstinent if he is released into the Australian community.

82. At the hearing the Applicant showed insight and remorse into his offending. He said he was "*disgusted*" by his offending and that his criminal behaviour was "*pathetic*". He stated (transcript/2):

> *It's not the way I was raised, you know what I mean. I was off the rails. I was off the rails for a long time. I done a lot of bad things that I can't take back unfortunately, and looking back now I'm glad I didn't kill someone or even worse, do you know what I mean. I've been getting in trouble a long time, a long time in the past.*

83. The Applicant accepted that his offending would have caused harm to the community including physical and psychological harm (transcript/2-3). The Applicant also said that he has let down his family by his offending and detention, stating "*this is killing the whole family*" and that his offending "*was embarrassing for the family*" (transcript/3 and 17). He further said that his adult daughter, Mariam, "*just wants this nightmare to be over*" (transcript/17). I note here, for clarity, that the Applicant also has a nine-year-old stepdaughter who is also called Mariam whose interests are discussed below under the best interests of minor children primary consideration. The Applicant also stated that he is calmer and has matured (transcript/18). This insight and acceptance of responsibility for his offending and the impact on his family shows some maturity and may be a protective factor that may lower the likelihood of future reoffending.

84. The Applicant is now a 53-year-old man who has been in prison and immigration detention for approximately 12 years. He described that being in detention had "*been the biggest wakeup call of all*", that he had matured, the impact of his parents passing away while he was in custody and his desire to have a "*normal*" life (transcript/6):

> *I won't be committing any more crime. I've over that life, I'm over it. I'm over it. I've had enough. I've lost my mum and dad while I'm in custody, and I will never forgive myself for that, but unfortunately it's just the way life is, we're all going to die one day, you know what I mean, but I'm different, I'm a different man. I've over it. I want to be - I want to have a good life whatever is left, I want to have a good life. I want to enjoy life. I don't want to look over my shoulder every day, I just want to live like normal human beings, like a normal Australian citizen, normal, normal people, man. That's all I want.*

85. The lengthy time the Applicant has spent in immigration detention, his fear of the prospect of deportation to an unfamiliar country (transcript/11) and permanent separation from his family is likely to deter the Applicant from future reoffending if he is released into the Australian community.

86. He described having matured and that his cousin who was a negative influence died in 2014, and another friend who was also a negative influence, died in 2018. He did not, however, seek to blame his negative peers, and said of his cousin (transcript/5):

> *He introduced me to armed robberies. He introduced me to violence in this country. I can't blame him, like now that he's passed away. I blame it in myself because that's the choice I made, because (indistinct) I used to always blame everyone and anyone except myself. It's called system bashing or - but I can only blame myself because at the end of the day it was my choice, and they're the choices I made and that's*

what got me in trouble and that's why we're here today, and I'm sorry for that, I really am.

87. During cross-examination, the Applicant described how he thought he had wasted his life and that he now took responsibility for his offending, instead of blaming others (transcript/35):

> *I've been wasting my life for the last 25 years. I've been just wasting it. I've been putting myself through trauma, giving myself a hard time for getting locked up instead of being out and enjoying life, going to a restaurant, going to a family outing, doing - going for a drive, you know what I mean, take your wife and the kids out, enjoying life to its fullest. Instead I chose - I chose the shit life, which landed me in jail for the most part of my life. That's the honest truth and who can I blame for that except for myself. No one. True. It took me a long time to accept that it's not them. It's me because if I didn't do this I wouldn't be here. If I didn't do that I would be there. It took a long time, man. I used to always blame the police and blame the corrective services, blame everyone else except myself. Everyone else except myself and that's the truth. That's what I used to do before, but I've got to look at myself. It's my fault. They're the choices I made and that's what got me in here and I can only blame myself for me being here, right here, in front of you now. I can only blame myself. No one else. No one else. No one else*

88. The Applicant's insight about the role of negative peers whilst accepting his own responsibility for his choices, and the absence of these negative peers if he is released into the community, is likely to be a protective factor.

89. The Applicant also has a very supportive extended family in Australia. Many of his family members including his adult daughter Mariam, ex-wife Nasrien, siblings (Bill, Dib and Fouadi), nephews Abdul and Hiam and niece Randa and her husband Samer, have offered to support the Applicant (including to provide him with accommodation) if he is able to stay in Australia. The Applicant admitted at the hearing that he had the support of his family members in the past but that it was not protective (transcript/35). Nevertheless, the Applicant's family have stood by him, even during the last 12 years he has been in prison and immigration detention. He appreciates the detrimental impact that his offending, incarceration, and detention have had on them, which is likely to offer some motivation for him not to reoffend.

90. Since 2020 (for approximately three years), the Applicant has been in a relationship with his wife Souraya and has formed a strong bond with her three minor children whom he regards as his stepchildren. The Applicant described how his outlook on life changed after he met Souraya (transcript/34-35):

I couldn't give a fuck if I was dead or alive sometimes, most times - excuse the language, Miss - most times. I'm being honest with you, I don't - I couldn't care if I'm dead or alive, I swear to God, but when I met Souraya I've got a new lease on life with her and the kids. I've never looked at life the way I look at it now. That's honest to God truth. I have never been so positive in my way till up to about say two and a half years ago. I've looked at the world in a total different way, whether it's the age or it's not, whether it's her, her positive input on me. It's mainly her and the kids and me looking at the world in a different perspective, you know what I mean.

91. He stated of the children (transcript/6-8):

I've got the best relationship with the children. I consider them my own.

…

I bring the best out of them and they bring the best out of me.

…

They bring happiness to my life. They bring happiness to my life. They help - I could be having the worst day and just - you get on the video call and, bang, they put a big smile on my face, and (indistinct) too, you know what I mean. We play roles and we play games on the phone. I never had the opportunity with my daughter, because I've got a daughter as well. I never had the opportunity with my daughter, because we never had phones in jail. Obviously you can't have phones in jail, but in detention you can have phones and video calls and that. Yes, because I wasn't there when my daughter was growing up, I was in jail. So I missed out on this best part of her life as well, so I'm getting it back, that experience through Souraya's kids, and it's beautiful, man, it is. It is.

…

They're my stepchildren, they're like my kids. I love them just as much as my kids. I love them with all my heart.

92. Souraya is a pro-social person who cares deeply for the Applicant. His desire to be a family with her, and the children, is likely to provide motivation not to relapse to drug use or to reoffend.

93. The Applicant was also able to demonstrate some consequential thinking at the hearing and described the impact that future offending may have on his stepchildren (transcript/41).

… it took long long time for me to think of the consequences if I was to do this or if I was to do that. There's couple of times come close where I was going to, like do something that's illegal and then you think of the consequences and then just step back for a second. Just chill out. Think. Now if I do this this can happen, that can happen, that can happen, this can happen. You eliminate it - is it worth it and then you just go backwards, "Is it worth it losing the kids? Is it worth it, this? Is it worth it, that?" Making better choices - I'm making better choices, and I am happy by the choices I'm making, lately, in the last couple of years. I am very happy. I am.

94. The Applicant also has a plan for when he is released into the community. He will live with Souraya and the children in Sydney. He will continue his mental health treatment including seeing a general practitioner to obtain a mental health plan and will see a psychologist on a regular basis (transcript/10). He will obtain full-time employment with his nephew at a concrete pumping business which has already been arranged and which will involve regular drug testing before he is permitted onsite (transcript/42-43). He wants to marry Souraya under Australian law (because they have only had a religious ceremony via Zoom), to sustain and develop his relationship with her and to be a family with Souraya and the children. He wants to provide emotional, financial, and practical support to Souraya and the children and to be a father to them (R1/1294-1295). Having a mental health plan, participating in family life and employment are positive factors that are likely to be protective and may assist the Applicant not to resume drug use and not to reoffend.

95. The Applicant also gave evidence that he had learnt a lot from completing the VOTP. He said that he started the program in 2015 but did not finish it until 2017 because he had to stop the program due to disciplinary issues. He was honest in admitting that when he first started the course, he found it difficult and that when he first attempted to do it in 2001, he was not motivated (R1/376). His evidence was that the program taught him a lot about himself, about peer pressure and acting on impulse. He said that it was the best thing that ever happened to him (transcript/3-4). I note that the report from the VOTP stated that he was "*currently assessed as within the high risk category for violent reoffending"* (R1/349). The report continued to detail the context in which he may reoffend violently which, in summary, was "*if he were to return to a similar way of life as he had during his previous community living*" including if he continued to use illicit substances, engaged in gambling, associated with anti-social peers, lacked community supports and felt overwhelmed or stressed by community life (such as having family issues or financial issues) (R1/349-351). On the one hand, it is of concern that the Applicant apparently remained a high risk at the time of completing the program. On the other, I find that he is unlikely to "*return to a similar way of life*". He now has a plan for mental health treatment in the community, to abstain from drugs, his anti-social peers are deceased, and he has substantial support from his wife Souraya, and his family members. I also note that in her report dated 14 July 2017, Ms Gumbert-Jourjon reported that the Applicant had engaged well with the VOTP, that facilitators had reported that he had demonstrated treatment gains and positive emotional changes, developed insight, and taken responsibility for his offences. She noted his commitment to maintaining a drug free lifestyle and to engaging in treatment in the future

(R1/482-483). This suggests that the Applicant did make some positive treatment gains after completing the program.

96. The Applicant described being treated by a "*psych*" during the times he was "*on and off in jail*" (R1/376). He has previously completed other programs between October 2013 and January 2016 but described the VOTP as being "*more intense and more helpful than the other courses*" (R1/377). These included the Best Bet Program, Getting Smart Program (12 sessions), Smart Recovery (four sessions), Equips Foundation Program (20 sessions), "*RUSH*" Program: Real Understanding of Self-Help and Health Survival tips program (R1/422; 476; and 218-223). Ms Aiello also stated in her report of 21 December 2017 that the Applicant had connected with Narcotics Anonymous while he was at Villawood Detention Centre and that he had contacted his previous counsellor in Long Bay Correctional Facility for support after a recent lapse (R1/742-743). In a report dated 17 July 2020 (R1/775), consultant psychologist Mr Tim Watson-Munro noted that the Applicant:

> *… has now started with the STARTTS program (NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors) and has evidently had two sessions with a Psychologist. He intends to continue treatment whilst in detention and if he is permitted to return to the community, there will be additional follow-up sessions.*

97. Mr Watson-Munro opined that the Applicant "*would benefit from ongoing supportive and motivational psychotherapy, in addition to Dialectical Behaviour Therapy*". He further stated that: "*It is clear that there are a range of protective factors in place for him should he be released to the community, including strong family ties, the offer of employment, an absence of substance use, expressions of remorse and a desire for treatment*" (R1/1074).

98. The Applicant also told Dr Kwok, who wrote a report dated 9 December 2022, that prior to his release from custody into immigration detention in February 2017, he attended six sessions of Narcotics Anonymous and Crystal Meth Anonymous. He also told Dr Kwok that he attended "*two or three*" STARTTS counselling sessions and about 10 individual counselling sessions at the detention centre (A3/5).

99. Dr Kwok, who gave evidence at the hearing, thought that the Applicant met the diagnostic criteria for PTSD. She assessed the Applicant as being a moderate risk of reoffending, at the lower end of moderate. She recommended treatment by an interdisciplinary team consisting of a general practitioner, psychiatrist, and psychologist with training in PTSD, including cognitive behavioural therapy and drug counselling to prevent relapse to

substance abuse. Even though she had been engaged by the Applicant's wife (R4) who had not specifically asked about the risk of recidivism to assess him, I was satisfied that Dr Kwok had included that assessment in her report because she understood her role and how the report would be used. Dr Kwok was appropriately qualified and experienced and the detail in her report shows that she undertook a thorough assessment of the Applicant. Importantly, it was clear to me that she understood her duty to provide impartial assistance to the Tribunal. I therefore accept her opinion that the Applicant is a moderate risk of reoffending, at the lower end of moderate. Dr Kwok stated in her report that the Applicant (A3/14):

> *… has a low moderate risk of re-offending and risk/threat/danger to the Australian community. This can be further reduced if he refrains from leaving his supportive home environment, remains abstinent from illicit drug use, establishes connections with prosocial peers and complies with the treatment plan as outlined in this report.*

100. If an Applicant has been involved in incidents in the controlled environments of prison and immigration detention, it may raise concerns about their ability to regulate their behaviour in the community. I noted above that there have been numerous incidents involving the Applicant in immigration detention. The Applicant could not recall everything put to him but was candid in accepting that if he had been charged with something then the incident had occurred. He admitted to some minor incidents such as being in possession of a box containing straws, wires, a razor, foil, and broken nail clippers left by a roommate. He admitted possessing lighters "*a couple of times*". He could not recall being in possession of a pen sharpened to be a shiv but accepted that over the years he may have been charged with possession of a pen with nail clippers at the front of it that he used as a tool to fix things.

101. He also recalled being sent a parcel in 2020 in his name without his consent, but he did not see the parcel before it was intercepted. He was told that it contained buprenorphine. He did not realise that it also contained methylamphetamine. His evidence was that another detainee had used his name on the parcel and that the other detainee had taken responsibility for it. I found this explanation to be plausible. There were two more recent incidents where small packages containing contraband were thrown over the fence. The Applicant was in the vicinity on one occasion in January 2023, and on the other occasion in February 2023. The Applicant and other detainees picked up several packages that had been thrown over the fence. The Applicant was not asked about these incidents at the hearing and there is no evidence that the parcels were intended for him or that he knew about their contents (transcript/29, 32-33, 47-48; R3/8 and 12).

102. I also note that there was an alleged assault of another detainee in April 2017 and other behavioural incidents noted in immigration detention records between February 2017 and August 2020, but these were not put to the Applicant at the hearing. There is reference to the Applicant in an incident report which stated that he and another detainee refused to relocate to another compound after being identified as being involved in an alleged assault on another detainee on approximately 6 March 2023. However, there is no incident report concerning the alleged assault and this was not put to the Applicant at the hearing. I find that the appropriate inference is that, since as late as April 2017, there is insufficient evidence of any recent incidents involving aggression or violence on the part of the Applicant.

103. On the one hand, the numerous incident reports concerning the Applicant in immigration detention raise some concerns that if the Applicant cannot conform to the rules in a controlled environment, that he may struggle to do so in the community which may lead to reoffending. Of particular concern is that some of the incidents involved the possession of contraband and drugs such as suboxone, and the Applicant has a history of drug use. He was, however, candid in admitting that he had lapsed by reusing drugs or alcohol approximately five times whilst he was in immigration detention, although he claimed not to have used drugs for approximately 22 months (transcript/49). He also accepted responsibility for the conduct in immigration detention that was put to him at the hearing. Given that he has been in immigration detention since February 2017, it is plausible that he would not be able to recall some of the incidents put to him, however when he could not recall, he accepted that if he had been charged that the incident most likely occurred.

104. There is a file note dated 14 September 2020 on Department of Home Affairs letterhead stating that the Department received information from the NSW Police regarding the Applicant's involvement in organised crime. The note states that: "*There is no recent solid information that he is a member of OMCG* [outlaw motorcycle gang] *however he has very close associations with many high profile MEOC* [Middle Eastern organised crime] *and Organised Crime Targets*" (R1/866). On 19 January 2010, the Judge who confirmed the Applicant's conviction for "*attempt dispose property – theft = serious indictable >$5000-T1*" stated that the Applicant "*does not appear to have been the prime motivator behind what seems to have been a fairly well organised racket of stealing from freight forwarders and the freighting companies. He seems to have been caught in the middle of it*" (R1/177). That judicial comment is not sufficient to suggest that the Applicant has links to outlaw motorcycle

or organised crime syndicates, and there is otherwise insufficient evidence to support such a finding. Further, the information from the NSW Police is untested and highly prejudicial. I accept that the Applicant offended with co-offenders who were negative peers, but I reject any submission that the Applicant has links to outlaw motorcycle or organised crime syndicates.

105. In summary, the following factors are not protective or suggest some likelihood of reoffending:

(a) His lengthy criminal history and the lack of deterrence provided by community supervision, lengthy prison sentences and prior warnings. He has reoffended whilst in prison and immigration detention.

(b) He has longstanding mental health issues, including depression, anxiety and PTSD, which are at least in part attributable to childhood trauma, and he still requires significant treatment intervention in the community for PTSD and drug addiction.

(c) His significant drug addiction for heroin and methamphetamine and several lapses and incidents where he has been caught with drugs and contraband in prison and immigration detention.

(d) There have been numerous incidents involving the Applicant in immigration detention which raises some concerns about his ability to regulate his behaviour outside of a controlled environment in the community.

(e) He was assessed as a high risk of reoffending at the time he completed the VOTP.

(f) Dr Kwok assessed the Applicant as being a moderate risk of reoffending, at the lower end of moderate.

106. The following factors are protective and may reduce the likelihood of the Applicant reoffending:

(a) The period between October 2002 and September 2007 where the Applicant did not commit any offences suggests that he is capable of living offence-free in the community.

(b) His insight and remorse into his offending, including taking responsibility for his offending, and his appreciation of the impact of his offending on his family.

(c) The "*wake up call*" he has received from spending a lengthy period in prison and then in immigration detention with no fixed chronological end point and in circumstances where he faces the prospect of permanent separation from his family to a country he fears returning to.

(d) His circumstances have changed. He is now more mature, feels that he has wasted his life, has a pro-social wife and has formed a relationship with her children whom the Applicant regards as his own. He no longer associates with negative peers and no longer has financial pressures.

(e) He has support from pro-social family members including his siblings, nieces and nephews, 18-year-old daughter, former wife and his current wife, Souraya, who are willing to offer social, emotional and practical support. He wants to be a family with Souraya and the children and to support them.

(f) He has stable accommodation with Souraya (as well as offers of accommodation from family members) and an offer of employment.

(g) He has a plan for his release into the community, including continuing his mental health treatment.

(h) He has completed the VOTP where he made treatment gains, as well as other programs and counselling.

107. Overall, after balancing the protective factors against those that suggest a likelihood of reoffending, I find that the Applicant is likely to be a moderate risk of reoffending, at the lower end of moderate.

108. I therefore find that paragraph 8.1.2 of Direction No 99, being the risk to the Australian community should the Applicant commit further offences, weighs moderately against the revocation of the Cancellation Decision.

Summary on para 8.1 of Direction No 99

109. I have found that paragraph 8.1.1 weighed strongly, and paragraph 8.1.2 weighed moderately against revocation of the Cancellation Decision. Therefore, overall, I find that primary consideration 8.1, being the protection of the Australian community, weighs moderately to strongly against the revocation of the Cancellation Decision.

Family violence committed by the non-citizen (paras 8(2) and 8.2 of Direction No 99)

110. Paragraph 8.2 of Direction No 99 requires decision-makers to have regard to family violence committed by the non-citizen. The Applicant has not committed any family violence and so this primary consideration is not applicable.

The strength, nature and duration of ties to Australia (paras 8(3) and 8.3 of Direction No 99)

111. Paragraph 8.3(1) of Direction No 99 provides that:

> *(1) Decision-makers must consider any impact of the decision on the non-citizen's immediate family members in Australia, where those family members are Australian citizens, Australian permanent residents, or people who have a right to remain in Australia indefinitely.*

112. Paragraphs 8.3(2) and (3) of Direction No 99 direct decision-makers to consider the non-citizen's ties to any children, and the strength, duration, and nature of any family or social links to members of the Australian community who are citizens, permanent residents or who have an indefinite right to remain in Australia:

> *(2) In considering a non-citizen's ties to Australia, decision-makers should give more weight to a non-citizen's ties to his or her child and/or children who are Australian citizens. Australian permanent residents and/or people who have the right to remain in Australia indefinitely.*
>
> *(3) The strength, duration and nature of any family or social links generally with Australian citizens, Australian permanent residents and/or people who have a right to remain in Australia indefinitely.*

113. Further, in paragraph 8.3(4) of Direction No 99, decision-makers are required to consider the strength, nature and duration of any other ties that the non-citizen has to the Australian community. Specifically:

> *(4) Decision-makers must also consider the strength, nature and duration of any other ties that the non-citizen has to the Australian community. In doing so, decision-makers must have regard to:*

a) The length of time the non-citizen has resided in the Australian community, noting that:

- *considerable weight should be given to the fact that a non-citizen has been ordinarily resident in Australian during and since their formative years, regardless of when their offending commenced and the level of that offending; and*
- *more weight should be given to time the non-citizen has resided in Australia where the non-citizen has contributed positively to the Australian community during that time; and*
- *less weight should be given to the length of time spent in the Australian community where the non-citizen was not ordinarily resident in Australia during their formative years and the non-citizen began offending soon after arriving in Australia.*

114. The Applicant's immediate family are in Australia.

115. He has an adult son, Bilal, from his previous marriage, who is 29 years old. The Applicant does not currently have a relationship with Bilal but would like to have one with him in the future (transcript/10-11). There is no evidence, such as a statement from Bilal, before me of the impact that my decision would have on him.

116. The Applicant also has an adult daughter, Mariam, from his previous marriage. Mariam is 18 years old, and the Applicant has a close and loving relationship with her (R1/386). In a statement dated 13 July 2022 (R1/1532), Mariam described having a very close relationship with her father and that she speaks to him several times per week. She stated that, "*I love my father with all my heart. I know that my father loves me with all his heart*" and that when her father was moved to immigration detention in Western Australia she was "*incredibly sad*" because she could not visit him in person. Mariam stated that she had "*been waiting for a very considerable period for my father to be returned to the Australian community. I miss him terribly and need him in my life".* Mariam stated that it would be "*devastating*" if her father was deported to Lebanon. Mariam stated that she has been suffering from depression and that "*a bad outcome for my father in these Tribunal proceedings will adversely impact my mental well-being in the long term*". Mariam further stated:

> *It is my wish and desire that my father is released back into the Australian community as a matter of urgency. I love my father very much and need him in my life. Please give him an opportunity to be with me in Sydney. Dad has already been away for so long in both prison and immigration detention.*
>
> *Although I will be 18 in April 2023, I still need my father in my life. I need him physically present. Although I have a particularly good and close relationship with*

my mother, I also have a good relationship with my father. I need both my parents in my life.

117. In a report dated 24 May 2021, Mr Watson-Munro stated that he had interviewed the Applicant's former wife and daughter. With respect to Mariam, he stated that (R1/1063):

> *In relation to his daughter Mariam, she is currently suffering by his absence. She is highly anxious regarding the possibility of his deportation, which will effectively mean that she will not see him again for many years, if at all. She and her mother were involved in a serious motor vehicle accident on 13 October 2020 and arising from this and her injuries, which have impacted upon her secondary education and capacity to perform as a dancer, her need for her father's support has never been higher.*

118. Mariam's mother, Nasrien, provided statements dated 4 October 2017 and 13 July 2022 in support of the Applicant. She has maintained an amicable relationship with the Applicant and confirmed that Mariam maintains a very close and loving relationship with her father and speaks to him frequently (R1/1535). In her statement dated 4 October 2017, Nasrien stated that Mariam had become depressed due to her father being in immigration detention and facing deportation and that she fears Mariam's psychological wellbeing would decline further if her father was deported (R1/315).

119. In her most recent statement, Nasrien described the detrimental effect that a negative decision would have on her and Mariam:

> *If Imad was unsuccessful in these proceedings, it has been explained to me by Dr Donnelly that Imad faces the prospect of being removed to Lebanon permanently. I was very distressed to hear this news. I do not support Imad being removed from Australia.*
>
> *Both Mariam and I would be very distressed if Imad was deported from Australia. We would equally be devastated if Imad remained in immigration detention indefinitely or for a prolonged period*
>
> *Imad has been a good father to our daughter in the past, providing her with emotional, financial, and practical support where possible. I apprehend, given that history, that Imad would continue to be good father to our daughter into the future.*
>
> *I hold profoundly serious concerns for my daughter's mental health if Imad is unsuccessful in these proceedings.*

120. Her father's absence has had a negative impact on Mariam's mental health and wellbeing. I find that Mariam would suffer emotional detriment if the Applicant was returned to Lebanon. She is missing her father, whom she has a close relationship with, and wants him to stay in Australia. As is contemplated in paragraph 8.3(2) of Direction No 99, the Applicant's ties to

Mariam add weight to his ties to Australia because, even though she is now an adult, she is the Applicant's child.

121. Nasrien also supports the Applicant staying in Australia and I find that she would also suffer emotional detriment if the Applicant was removed from Australia, particularly as it is likely to have a detrimental impact on her daughter, Mariam.

122. The Applicant's wife, Souraya, has known him from an early age because their parents were family friends, and her brother went to school with the Applicant. They commenced a romantic relationship sometime in 2020 after she acted for him as a registered migration agent in his s 501 matter (R1/1306-1309). Souraya and the Applicant had an Islamic marriage via Zoom on 14 February 2022, and the Applicant and Souraya intend to marry under Australian law as soon as they can be together in person again (R1/1293; R1/1313-1314).

123. Souraya described the Applicant as her "*soul mate*" and her "*best friend*". She stated that she "*could not imagine a life without him*" and that "*If he was deported, I would really struggle emotionally, as would my children*" (A2, paras [9]). At the hearing she described how she had previously been a victim of domestic violence and how the Applicant had helped her recover (transcript/32-33) and had given her, and the three children love and support. She stated (transcript/23):

> *… the reality that he could actually be refused, he could actually be deported like, you know, someone's in control of me and my children's potential happiness, or me and my children's future, it's - it's actually devastating and so I feel like in this tribunal it's - it's actually really frightening and it's - they could say no and we could lose him and everything that, you know, we - we've hoped for and we've been - you know, the love and the - and the - just everything, all these beautiful things that we've finally got to feel. You know, even from a distance he's started to make us feel like we're a family and he made us feel like we were a family and he's given us so much love and support. I don't see that happening when he's overseas. It will be very, very difficult for that to happen overseas if he was deported and so, you know, me and my children have had a lot of loss in our life. To lose Imad, I think, would just - it would be really, really devastating for me and the children. We have no one else. He is our - he is our family.*

124. I accept Souraya's evidence that if the Applicant did return to Lebanon, she would not relocate there with the children because it is a "*third world country*" (transcript/24-25).

125. The Applicant's niece, Randa, also wrote in a statement dated 13 July 2022 (R1/1540) that:

> *… I know that Souraya and her children would also suffer significant emotional and practical hardship if Imad was not released into the Australian community. Souraya is a single parent trying to take care of three children and work. Souraya has incredibly challenging and difficult circumstances.*

126. The Applicant has a close and loving relationship with his wife, and she relies on him for emotional support and is raising three children as a single parent. I find that the Applicant's wife would suffer emotional and practical detriment if the Applicant was unable to stay and live with her in the Australian community.

127. I have considered the interests of Souraya's children (the Applicant's minor stepchildren), and his minor great nieces and nephews, as part of the best interests of minor children primary consideration below. They are nevertheless indicative of his close ties to Australia.

128. The Applicant's adult nephew, Abdul, gave evidence at the hearing. In a written statement dated 13 July 2022, Abdul described having an "*extremely close*" relationship with the Applicant who was "*like a father to me when I needed him*". He stated that if the Applicant was returned to Lebanon he would "*feel like I have genuinely lost my brother*" (R1/1518, 1521). In his statement Abdul also described how difficult it would be for the Applicant's family if he were deported:

> *It would be difficult for my immediate family and our extended family if Imad was deported from Australia. Imad is well respected by the family and has always made himself available for us, providing us considerable emotional support and wisdom over many years.*

129. When asked at the hearing about how he would feel if the Applicant had to return to Lebanon, Abdul stated that "*sending a human to Lebanon is - is like - it's - it's a - it's a complete farewell, like forever*". He described fearing for the Applicant's safety if he was returned to Lebanon, including that it was not safe to travel there and the risk of kidnapping (transcript/37). When asked at the hearing how he would feel if the Applicant had to remain in immigration detention indefinitely, Abdul replied that (transcript/36-37):

> *- he needs to be close to us, close to his family and I - I would be really, really traumatised. It's emotional, depressing. I would be shattered. My kids, we are extremely looking forward to have him - to have him very close to us, even within our own house he's welcome to stay here. So, yes, I would - it would be very - very sad and it will be very hard to swallow. I'd be very - very emotionally upset and distraught.*

130. I find that Abdul, who has a close relationship with the Applicant and is concerned for the Applicant's wellbeing if he is returned to Lebanon, would also suffer emotional detriment.

131. The evidence before me indicates that the Applicant has a large family in Australia, that the family is overwhelmingly supportive of the Applicant and that they are anxious for the Applicant to stay in Australia. There are many statements in the materials before me in support of the Applicant from various family members.

132. For example, the Applicant's brother Dib who has a wife and four adult children, stated that (R1/1522):

> *All members of my immediate family have a relationship with Imad. My children absolutely adore Imad. They look up to their uncle as a caring, loving, and beautiful person. Imad has always had time for my family, including my children. Imad has a very caring nature and has always been admired by our extended family in Australia.*

133. Dib further stated that he and his family members would worry about the Applicant's wellbeing if he was returned to Lebanon (R1/1524):

> *If Imad is deported from Australia, it will be an absolute disaster for my family. I will be incredibly sad and distressed. I also do not believe that my brother would have much hope in surviving in Lebanon. Lebanon is a war-torn country with very significant social and economic challenges for residents of the country.*

134. Dib also described having practical difficulties due to a knee issue and that the Applicant may be able to provide him with practical assistance (R1/1524):

> *My current circumstances are extremely challenging. I am currently receiving income protection payments because of my inability to work. I have had about fifteen operations on my knee and have had a left knee replacement. So, I have my own practical difficulties. Imad could help alleviate my current life difficulties.*

135. Similarly, I find that Dib would suffer emotional and practical detriment if the Applicant was removed from Australia.

136. The Applicant has a close relationship with his sister, Fouadi, who is an Australian citizen. In a statement dated 13 July 2022, Fouadi described having a special relationship with the Applicant and that she has maintained a close relationship with him through telephone and video calls while he has been in immigration detention. Fouadi described being distressed that her brother was in immigration detention. She also described how the Applicant gave her emotional support to leave a violent marriage and that he gave her "*the courage to start*

again". She stated that she suffers from multiple sclerosis and that if the Applicant was released into the Australian community, he could provide her with practical assistance such as helping her with medical appointments, cleaning and assisting her with grocery shopping (R1/1525-1528).

137. A letter dated 10 May 2021 (R1/1099-1100) from Fouadi's psychologist states that she has been undertaking treatment for adjustment disorder including cognitive behavioural therapy and psycho-education and referred to her history of being in a domestic violence relationship. The letter states that "*additional stressors … can hinder her treatment program and progress*" and gave the example of the Applicant being in immigration detention. The letter stated, "*I would highly recommend* [the Applicant] *not to be deported as he has been* [Fouadi's] *one and constant support throughout her life, particularly as she was struggling psychologically*".

138. The Applicant's niece, Randa, also provided statements dated 1 October (the year is omitted but surrounding documents suggest it is 2017) (R1/356) and 13 July 2022 (R1/1537). She stated that she regards the Applicant "*to be like an older brother and a best friend to me*". Randa made the following comments about the implications of an adverse outcome for the Applicant (R1/1540):

> *If Imad is unsuccessful in these proceedings, I understand that Imad would be liable to be removed to Lebanon. If that were to occur, I would be absolutely shattered and heartbroken. As explained earlier in my statement, I enjoy a close and reliable relationship with Imad.*
>
> *I also know that my husband and three children would be extremely upset if Imad were deported from Australia. Imad holds a special place in our family unit. I understand that Imad has an extensive criminal history in Australia. He has served his time for those offences and already spent a considerable period in immigration detention.*

139. Randa also stated that she would be worried about the Applicant's wellbeing if he was returned to Lebanon, as well as his ability to communicate freely with his family in Australia if he was returned there. She further stated (R1/1541):

> *Imad is a much loved and respected figure in our extended family. Imad has touched the lives of his nieces and nephews, uncles, aunts, and other extended family members. Imad has always made himself available for his family and provided considerable wisdom and advice of a positive nature, despite his own misgivings and difficulties.*

140. Randa's husband, Samer, also provided a statement in support of the Applicant. His evidence was that he and his immediate family members have a very close relationship with the Applicant. Samer stated that he speaks to the Applicant by telephone and Facebook several times per week. Samer stated (R1/1543):

> *Speaking for myself, I would be absolutely devastated if Imad were deported to Lebanon. Imad has been an important part of my life. Moreover, I know that my wife and children would be extremely upset if Imad were removed to Lebanon. We would all be very distressed.*
>
> *I am a partial paraplegic. I am disabled. In about the year 2000, I broke my back. Consequently, I am largely committed to a wheelchair and cannot walk. As such, it is difficult for me to leave my home residence and travel around. Despite my disability, Imad has always treated me with respect and dignity.*
>
> *I would really like for Imad to be released into the Australian community where I could spend more physical time with him.*

141. I find that Randa and Samer are likely to suffer emotional detriment if the Applicant is removed from Australia.

142. The Applicant's older brother, Bill, also provided a statement dated 31 August 2017 in support of the Applicant staying in Australia (R1/366). Bill stated:

> *We all love him and look forward to him getting out. We will support him moving forward. We will look after him with anything he needs. Everybody loves him.*

143. Bill further expressed concerns for the Applicant's wellbeing if he was returned to Lebanon (R1/366):

> *Imad has no one in Lebanon. … He is suicidal at the thought that he might have to go back I am really scared he will commit suicide if he is sent back to that hell. If he is taken away from his daughter he will die. It is a jungle there.*

144. Based on this evidence, I find that it is also likely Bill will suffer emotional detriment if the Applicant was returned to Lebanon.

145. The Applicant's nephew, Hiam, also provided a statutory declaration dated 1 November 2017, in support of the Applicant staying in Australia (R1/367). So did his niece, Raoa, who stated in a declaration dated 26 October 2017 that she would "*be sad to see my uncle deported as my family and I would be missing the most important member of our family*" (R1/372). This nephew and niece may also suffer emotional detriment if the Applicant is returned to Lebanon.

146. As well as suffering emotional and possibly practical detriment if he is returned to Lebanon, (or detained indefinitely), the Applicant's extensive and close family in Australia are indicative of his strong ties to Australia.

147. Further evidence of the Applicant's close ties to the Australian community are contained in statements from friends in the Australian community. In a statement dated 13 July 2022 Souraya's best friend, Janet, described his loving relationship with Souraya and the children, including his communicating with the children via video calls. Janet's evidence was that the family will be "*torn apart*" if the Applicant was deported (R1/1531).

148. Other friends of the Applicant have provided statements in support of him including a statement dated 5 October 2017 from his friend Jennifer who met the Applicant in approximately 1997 (R1/309). These are further indicative of his ties to the Australian community.

149. The Applicant has resided in Australia for approximately 40 years since he was a 13-year-old child, having arrived on 2 August 1983. All his teenage years, which are formative years, were spent living in Australia. His high school education up to year nine was completed in Sydney, and he commenced TAFE qualifications in auto-mechanics. All his teenage and adult life has been spent in Australia. Thus, even though the Applicant appeared in Court for juvenile offences in August 1986 and July 1988, I am directed to give "*considerable weight*" to the fact that the Applicant has resided in Australia since his formative years, regardless of when he started offending (para 8.3(4)(a) of Direction No 99).

150. With respect to the length of time that the Applicant has resided in Australia, I can also give "*more weight*" where the Applicant has contributed positively to the Australian community (para 8.3(4)(a) of Direction No 99). The Applicant has worked for a fabrication company where he operated cranes and drove trucks, as a crane operator working for others, and then in his own business (R1/777). In his personal circumstances form, the Applicant stated that he has always worked and paid his taxes (R1/389).

151. The Applicant has also made some contributions to the Australian community. In his personal circumstances form he also stated that in 1993 he used trucks from his delivery business to help with bushfires. He also stated that he helped his elderly neighbours mowing their lawns and with odd jobs (R1/389). In many of the statements from the Applicant's

family and friends they spoke of the emotional support, advice, and encouragement that he has given them.

152. The Applicant's immediate family members reside in Australia. They are a close family who are supportive of the Applicant and have strongly expressed that they want him to remain in Australia. His ties to his wife, adult daughter (noting he also has a son whom he does not have a relationship with), six siblings, and adult nieces and nephews in Australia are very strong. As I have outlined above, many of the Applicant's family members, including his wife and adult daughter gave evidence that they would be negatively impacted if he was removed to Lebanon. The Applicant spent his formative years in Australia and has resided here for approximately 40 years having arrived as a 13-year-old child. He has made some contributions through employment and community work. On balance, I find that the strength, nature and duration of the Applicant's ties to Australia are strong. Consequently, this primary consideration should weigh strongly in favour of revocation of the Cancellation Decision.

Best interests of minor children in Australia affected by the decision (paras 8(4) and 8.4 of Direction No 99)

153. Paragraph 8(4) of Direction No 99 states that in making a decision under s 501CA(4), "*the best interests of minor children in Australia"* is a primary consideration.

154. Direction No 99 states that decision-makers must determine whether the decision under review is, or is not, in the interests of a child affected by the decision. The first three paragraphs of 8.4 provide:

> *(1) Decision-makers must make a determination about whether cancellation or refusal under section 501, or non-revocation under section 501CA is, or is not, in the best interests of a child affected by the decision.*
>
> *(2) This consideration applies only if the child is, or would be, under 18 years old at the time when the decision to refuse or cancel the visa, or to not revoke the mandatory cancellation of the visa, is expected to be made.*
>
> *(3) If there are two or more relevant children, the best interests of each child should be given individual consideration to the extent that their interests may differ.*

155. Paragraph 8.4(4) of Direction No 99 sets out the factors that the decision-maker must consider where relevant:

(4) In considering the best interests of the child, the following factors must be considered where relevant:

a) the nature and duration of the relationship between the child and the non-citizen. Less weight should generally be given where the relationship is non-parental, and/or there is no existing relationship and/or there have been long periods of absence, or limited meaningful contact (including whether an existing Court order restricts contact);

b) the extent to which the non-citizen is likely to play a positive parental role in the future, taking into account the length of time until the child turns 18, and including any Court orders relating to parental access and care arrangements;

c) the impact of the non-citizen's prior conduct, and any likely future conduct, and whether that conduct has, or will have a negative impact on the child;

d) the likely effect that any separation from the non-citizen would have on the child, taking into account the child's or non-citizen's ability to maintain contact in other ways;

e) whether there are other persons who already fulfil a parental role in relation to the child;

f) any known views of the child (with those views being given due weight in accordance with the age and maturity of the child);

g) evidence that the child has been, or is at risk of being, subject to, or exposed to, family violence perpetrated by the non-citizen, or has otherwise been abused or neglected by the non-citizen in any way, whether physically, sexually or mentally;

h) evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen's conduct.

Three stepchildren

156. The Applicant has three minor stepchildren who live in Sydney with their mother, Souraya, who is the Applicant's wife under Islamic law. The children are:

(a) Mariam, a nine-year-old girl;

(b) Ahmad, a seven-year-old boy; and

(c) Mohammed, a three-year-old boy.

157. I will first outline the main evidence before me concerning the three children before addressing the specific sub-paragraphs in Direction No 99.

158. As I discussed above in the section on the strength, nature and duration of the Applicant's ties to Australia, Souraya's evidence was that she commenced a relationship with the Applicant in approximately 2020 and that he began to call her every day to check on her and the children. The children began to develop a relationship with the Applicant via telephone and video calls.

159. In her statement dated 27 June 2022, Souraya described the Applicant's relationship with her children and how he has engaged with them using technology (R1/1310-1312):

> *During his calls to the kids, he would ask Mariam and Ahmed about their day at school and make conversation with them about what they had learnt, what their interests were and so on. He would call on video call and put all sorts of entertaining filters for them and they would do the same back. He engaged with each child in accordance with their interests.*
>
> *For example, Ahmed loves the solar system and space, and so Imad would call him, and role play they were in a rocket about to lift off into space. With Mariam, he would engage in her interests also; like watching and joining in on her many performances which include singing, dancing, weather reports and so on. He even purchased a train that he built for them as a gift and showed it to them and is in the process of finding a way to post it to the kids.*
>
> *Mariam and Ahmed are extremely comfortable with Imad. They can have a conversation with him that flows, and they are excited to call him and share their news with him about their achievements and milestones. For instance, recently Mariam received a school invitation to next week's gold badge assembly, and she asked to ring Imad to share the news. This contrasts with phone calls with their father, where they feel awkward and say, I don't know what to say, because he has not bothered to invest any time into getting to know them and build a bond as Imad has with them. Imad even calls and has aerobics time with the children which they find very funny.*
>
> *Mohammed being too young to talk, Imad would ask to spend time with him on video call playing with him strumming his lips, putting balls or toilet paper rolls on his head, and dropping them. Imad even made a toy for him that makes noises. It started to feel like Imad was here in the home with us and a member of our family. We were no longer isolated and alone. We had a support person in our life.*
>
> *When it came time to transition Mohammed from his bassinet to a cot, Imad was a great support (being on video call with me helping settle the baby to sleep). There was one night the baby kept crying and trying to climb out of the cot. Imad kept telling me to reassure him but stay strong - because I am very soft. The baby looked straight at Imad and started drumming his lips while crying. Imad just crumbled because that was an indication that he was directly communicating with Imad for help to get out of the cot because they often drum their lips to each other.*
>
> *Imad also was instrumental in Mohammed's transition from crawling to walking. I would have Imad on video call on one end of the room and I would be on the other and he would walk back and forth to us until he learnt to walk. This week we are helping him toilet train.*

> *To fake the amount of time that Imad spends with the children would be impossible. Imad is a part of their life daily. Ahmed refers to him as a family member and says he is in* our circle of trust*. When Mariam was asking for another sibling, she asked if I could go to Perth and get a baby from Imad. They know Imad is in Perth in Redcliffe.*
>
> *I often find Ahmed on google maps in Perth where he claims he is visiting Amou (i.e. Imad). Mariam often is checking the weather and time difference between us and Imad also. He really does love them. The children really found stability in him as a father figure and role model.*
>
> *Imad is very fair and treats them all equally, helps me with discipline and rewarding the children. Imad always tells me it is important to get down to their level and explain things to them. He has a lot of respect for me as a mother and loves the way I am so very loving and nurturing towards my children.*
>
> *Imad's advice is helpful. Imad has been able to share his experiences with me to help navigate parenthood. He loves the children and has Mohammed's picture reflected as a screen saver on his phone for a long time. Imad refers to Mohammed as* my medicine*. I knew he adored the children, but it was only until then that I realised just how deeply he felt for the kids.*
>
> *Having the opportunity to watch Mohammed grow from a baby in front of Imad - from being so small has given him a second chance to experience the things that he missed with his own children. In a way Imad is giving the children what they a missing and he often thanks me for allowing him the opportunity to experience what he missed with his own children. Having the kids in his life is like his second chance at being a present father that will be there for it all.*
>
> *To date, Imad has ensured his presence via video call and has not missed a birthday (their father does not wish them a happy birthday because he does not believe in birthdays, nor does he celebrate any holiday with them but Eid). Imad shared experiences with the children on video calls at events like school excursion send offs, school assemble award ceremonies Christmas, Easter, Valentine's Day, tooth fairy visits, Eid. Imad even joined us by video call for Mohammed's first ride that happened at this year's Easter show on the Thomas the Tank train. He was on the ride with us talking to the kids on video call the entire ride. He has had such an impact on the baby's life that Imad (ummo - which means uncle in Arabic) is one of his first words).*

160. Souraya also described how the children's biological father has had minimal involvement in their lives (R1/1310):

> *It was nice to have somebody show an interest in the children as we had nobody and were socially isolated. A matter of particular concern was that my son Ahmed had no contact with any male role model. We were isolated. Ahmed's father never bothered to show up and as a result Ahmed was struggling with bullying and making friends at school.*

161. She further explained the lack of involvement of the children's biological father (R1/1309):

> *I explained to him* [the Applicant] *that their father* [the children's biological father] *barely rings or visits them. I explained to him that their father has never had any restrictions to see them and that I had never asked for child support; and he had*

never offered. Sadly, at the time that Imad and I had this conversation, my youngest Mohammed would have been about 7 months old and had only seen his father twice at the hospital when he was born for no more than five minutes; then one other time for a few minutes.

In fact, his father had not even bothered to complete the forms to put his name on his birth certificate even until now where is 2.5 years of age.

162. At the hearing Souraya stated that the older two children "*really depend on*" the Applicant and that if something happens, they want to call him and speak to him. They also like to tell the Applicant about their day when they finish school. Souraya described the Applicant as being the only male father figure for the children and that her youngest child "*doesn't really know his father*" and that the Applicant is the only father figure he knows. She said that the children independently video call and message the Applicant and that they speak with him numerous times per day (transcript/22). She also described the Applicant helping her parent the children by telling them to pick up their toys and setting boundaries (transcript/25-26).

163. In a statement dated 13 July 2022, Souraya's best friend Janet, whose children are friends with Souraya's children, also discussed the lack of involvement of the children's father in their lives (R1/1529-1530):

Souraya and her children were extremely isolated when we met. She has no family support and I have been a witness to her relationship with her family being non-existent.

She often looked exhausted. I started to offer support by looking after baby so she could get some sleep, or even just have some time to herself, as she was raising the three children on her own with no support. Her ex-husband was never present, and I can testify that it was extremely rare that he would call and speak to the children, or even visit. I have never seen him at the school, at any award ceremony or any family event such as birthdays.

In relation to Mohammed (being the youngest - or as we call him Hamoudi), it is safe to assume does not know his biological father. I know through my conversations with Souraya and the amount of time I physically spent with Souraya and the children that since Mohammed was born, he has only seen him a handful of times for a very short period.

For Mariam and Ahmed, they never mention their father. He has not been around, so he is not an active member of their life. I have witnessed when he has called to speak to them; they are very quiet and keep saying I do not know what to say; they do not have a relationship with him.

I am aware that he does not see them on weekends or holidays, and unfortunately their father does not provide them with any emotional or material support.

164. I note evidence in the form of a letter dated 14 August 2019 from a clinical psychologist/ counsellor from the NSW Department of Health confirming that Souraya and the two older

children had left the family home when she was pregnant with the youngest child due to family violence perpetrated by Souraya's former husband. The letter indicates that the children witnessed acts of violence against their mother and other conduct such as their father being cruel to their pet birds (such as throwing them across the room). It further indicates that the two older children have experienced behavioural issues because of living in a household with significant and verbal physical abuse (R1/1317-1318). There is also a letter from a Child and Family Counsellor / Clinical Psychologist dated 25 June 2019 stating that Mariam and Souraya had attended counselling and that, "[b]*ehavioural concerns were noted, in the context of significant family conflict"* (R1/1320).

165. Sourrya's evidence was that the children look up to the Applicant as a father figure and described the potential impact on the children if he was deported (R1/1314):

> *When I think about the prospect of Imad being deported, I feel devasted (not just for myself and Imad as a couple, but mostly for my children). My children have endured so much loss around them that extends beyond this statement (in terms of their father and issues with my family which I have not had a chance to address in this statement). They love Imad, they depend on him, and they look forward to a fun and loving future with him.*
>
> *Mariam dreams of having a father figure that will take us out as a family on a Sunday. Ahmed dreams of having a father figure to take him for a haircut and to work with in the backyard. Mohammed cannot articulate his hopes because his not fully talking yet, but he loves Imad and starts showing off as soon as he sees that Imad's number is being dialed on the phone.*
>
> *I am pleading with the Tribunal to please consider my children, who have no father figure but Imad. My children have already been abandoned by their real father. They have had their hearts broken by my family. Please do not break their hearts again by taking Imad away from them. Please give them the chance to know what a family feels like, please give them the chance to feel they have a complete home.*

166. Regarding seven-year-old Ahmed, Souraya stated (R1/1310):

> *In fact, Ahmed is in year 1 now and has only just started to come out of his shell a few weeks ago; engaging in games like tips with other boys at school. Much of Ahmed's social progress I can honestly attribute to Imad spending quality time with him on the phone and video call.*

167. In his statement dated 27 June 2022, the Applicant described his family relationship with Souraya and the children (R1/1293-1294):

> *I have a loving, caring and compassionate relationship with Souraya and her three children. I speak to the family several times a day by both telephone and video call. As detailed in Souraya's statement, we are married under Islamic tradition and custom.*

The evolution of my relationship with Souraya and her children was unexpected. Souraya is a beautiful person and has shown me nothing but compassion and love during the full extent of my time in immigration detention. Souraya have shown me respect, tolerance and has a very caring nature.

It has been a great privilege to develop a meaningful and loving relationship with Ahmad, Mariam, and Mohammed. Each of the children are unique and distinctive in their own ways. Collectively, the children are incredibly talented and often impress me by how smart they are.

Ahmad has a great passion for space and has previously indicated to me that he would like to be a pilot. Mariam has particularly good design skills and is competitive in a positive way. She is enthusiastic about life. Mohammed, being the youngest child in the family, is growing to be a respectful and beautiful young boy.

Souraya works from home and has no real support from her ex-partner, who is the biological father of the three children. In that way, Souraya has had to raise the children as a single parent. Souraya has had many difficulties in her life but not having proper support from her ex-partner is regrettable to say the least.

But I have attempted over the last two years to be a good partner and guide for Souraya and the children. That family unit has become my family. I dedicate a part of each day to the family. It is, may I say, the best part of my day in immigration detention.

168. He further stated regarding his future plans (R1/1295):

> *I will provide emotional, financial, and practical support to my family in Australia. I am particularly committed to playing an important fatherly role in the lives of Mariam, Ahmed, and Mohammed. As outlined earlier in this statement, the biological father of the children does not play a fatherly role.*

169. In his written statement dated 13 July 2022, the Applicant's adult nephew, Abdul, stated (R1/1520-1521):

> *Imad has also told me that he treats Souraya's three children as if they were his own children. He told me that he wishes to take care of them in the future and play a fatherly role in their lives. When Imad speaks about Souraya and her children, it is always a* [sic] *positive and warm.*

170. The Applicant's brother Dib similarly wrote in his statement dated 13 July 2022 (R1/1523):

> *Souraya's three children are shy. However, I know that Imad loves them deeply and has developed a special connection with them. Souraya comes to visit my mother, on occasions more than my siblings in Australia. Souraya has become a part of our family, as has her children.*

171. The Applicant's sister Fouadi also described his relationship with the children in her statement dated 13 July 2022 (R1/1527):

> *Imad has also developed a loving and close relationship with Souraya's three children (Mariam, Ahmed, and Mohammed). Imad has assumed a stepfather role to*

Souraya's three children. Imad speaks with the children frequently on both the telephone and through FaceTime.

Imad provides the children with emotional and practical advice. Imad is committed to playing an important fatherly role in the lives of Souraya's three children in the future. I understand that the biological father of Souraya's three children has not provided ongoing assistance and care to Souraya.

172. Souraya's best friend Janet, also described the Applicant's relationship with Souraya's three children (R1/1530-1531):

I have witnessed Imad on video calls with the kids talking to them, watching them having fun (for instance at the park), encouraging them with their school, and being a father figure to them.

I have also witnessed that Imad would attend their birthdays and award ceremonies at school on video call. Recently on Mariam's birthday, we took the kids to the city. Imad called and messaged many times throughout the day speaking with Mariam showing her love on her birthday.

The children are very comfortable with him. I have witnessed their conversations where they talk, play with filters, and take photos together.

He would always check in if they were okay, did they get home safe, have they eaten just everyday things.

173. Janet also made the following statement concerning the impact of an unsuccessful outcome on Souraya and the children (R1/1531):

If Imad is unsuccessful in these proceedings, I understand that Imad faces the real prospect of being deported to Lebanon. This is of great concern to me as my best friend's family will be torn apart. Other than I, Imad is the only family her and the children have, and the children are reliant on his love and support. They would be devasted.

This will impact Souraya and the kids a lot because they are already a family unit, he supports them mentally and emotionally.

174. In her statement dated 13 July 2022, the Applicant's niece Randa stated (R1/1539-40):

… I can also confirm that Imad has developed a very caring, loving, and meaningful relationship with Souraya's three children (Mariam, Ahmed, and Mohammed).

I have seen with my own eyes both Souraya and her children speak with Imad both on the telephone and through videocalls. My impression is that the relationship between the parties is warm, bubbly, and pleasant. The children feel comfortable communicating with Imad.

Imad is very invested in the lives of Souraya's children. In my direct conversations with Imad, he has told me specifically that he wishes to play I [sic] *father role for the children in the Australian community and take care of their mother. Imad seemed very genuine and determined when he communicated this to me. I believe him.*

Evaluating the interests of the Applicant's three stepchildren

175. I will now consider the factors set out in the specific sub-paragraphs from Direction 99 with respect to Souraya's children, Mariam, Ahmad and Mohammed.

176. As much of the evidence before me concerns the children collectively, I will deal with the children together, pointing out where their interests differ.

177. Although the Applicant refers to the three children as his stepchildren, the relationship is non-parental, and he has only had a relationship with them since approximately mid-2020 when he commenced a relationship with the children's mother. He has been in immigration detention for the duration of his relationship with the children and has not had an in-person relationship with them. The evidence that I have outlined above tends to suggest that the children and the Applicant share a genuine bond and that they regard him to be a father figure. The children speak with the Applicant via telephone and video call daily and the Applicant is as involved in their lives to the full extent that he could be. Despite their physical separation, the evidence supports a finding that the Applicant has a close and loving relationship with each of the three children (para 8.4(4)(a) of Direction No 99).

178. There are approximately nine years until Mariam turns 18, 11 years until Ahmad turns 18 and 15 years until Mohammed turns 18. This is a substantial amount of time for each of the children, especially for the youngest child. The Applicant genuinely cares for the children and wants to provide for them and to be a father to them. The evidence shows that he has had significant daily involvement with the children, even though he has been physically absent from them, including playing a role in parenting the children. The eldest two children were exposed to domestic violence perpetrated by their father against their mother when they were very young, and the Applicant's in person involvement in their lives would provide additional support and stability. The Applicant is likely to be actively involved in the children's lives and would be a positive role model to them if he was returned to the Australian community (para 8.4(4)(b) of Direction No 99).

179. There is no evidence to suggest that the Applicant's prior conduct has had a direct negative impact on the children. In terms of future conduct, it is unlikely that the Applicant would engage in any future conduct that would have a negative impact on the children. However, if he were to form an in-person relationship with the children and was separated from them

again due to imprisonment and deportation due to offending again, the children are likely to suffer emotional and practical detriment (para 8.4(4)(c) of Direction No 99).

180. With respect to this sub-paragraph (para 8.4(4)(c) of Direction No 99), the Respondent submitted that Souraya and the Applicant knowingly allowed him to enter into a relationship with the children knowing that they may suffer detriment if he was deported (Respondent's SFIC, para [43]). I accept Souraya's evidence that when she engaged in counselling due to being a victim of domestic violence, she learnt that "*you don't have to be completely blunt with your children about things but they do have a right to have an awareness of what's going on in their life, if not all the nitty-gritty details but an awareness*" (transcript/31). As well as her not wanting to hide her relationship from the children, I accept Souraya's evidence that the Applicant's relationship with the children developed naturally and that it was not planned (transcript/31). I do not think that there was any deliberate intention to expose the children to potential emotional trauma to improve the Applicant's prospects of remaining in Australia. To the contrary, the evidence suggests that the Applicant's relationship with the children is genuine and that Souraya is a loving mother who wanted to be honest with her children and did not deliberately expose them to potential harm.

181. Souraya's evidence was that she could not relocate with the children to Lebanon if the Applicant was returned there. The Applicant could continue to maintain contact with the children by telephone or video call. However, the evidence suggests that the children rely on the Applicant and have bonded with him as a father. The current arrangement of communicating via telephone or video call is therefore not likely to adequately meet their interests in the long term in the way that an in-person relationship would. The evidence supports a finding that the Applicant would be a very involved father to the children. I find that maintaining telephone and video contact would be a poor substitute to the Applicant being physically present to help raise and care for the children in person (para 8.4(4)(d) of Direction No 99).

182. Souraya has been raising the children as a single parent. The children's father is not involved in their upbringing, does not financially support them, and rarely communicates with them. The children's father also perpetrated domestic violence against their mother and was cruel to the children's pets. Having exposed the eldest two children to such an environment, their biological father is unlikely to be a good role model to them. There is substantial evidence that each of the children have bonded with the Applicant and that he

will raise them as a loving stepfather if released into the Australian community. The children's interests would be better served by having two parents to care for them, with the Applicant physically in their lives as their stepfather. For the youngest child, Mohammed, the Applicant is the only father figure he has known, because his mother fled from his father when she was two months pregnant with him due to domestic violence (transcript/22). The family is somewhat isolated, and I accept that they have no other male role models apart from the Applicant (para 8.4(4)(e) of Direction No 99).

183. There are no known views of the children, but they clearly have a close relationship with the Applicant, and I infer that they would prefer him to be physically present in their lives (para 8.4(4)(f) of Direction No 99).

184. The Applicant is, on the evidence before me, a loving stepfather who is eager to be actively involved in the daily lives and upbringing of his stepchildren. There is no evidence that the children would be at any risk of being abused or neglected by the Applicant (para 8.4(4)(g) of Direction No 99). There is no evidence that the children have experienced any physical or emotional trauma from the Applicant's conduct (para 8.4(4)(h) of Direction No 99).

185. After considering and weighing the factors in paragraphs 8.4(4)(a) to (h) of Direction No 99, I find that revocation of the Cancellation Decision is in the best interests of Mariam, Ahmad and Mohammed. I find that each of their interests weighs strongly in favour of the revocation of the Cancellation Decision.

18 great nieces and great nephews

186. The Applicant is one of seven siblings. He has adult nieces and nephews who have children. He has identified the following 18 relevant children (great nieces and nephews) who live in New South Wales:

(a) Four children of his niece Mervat. The children are aged 17, 14, 10 and 8. Five children are listed in the Applicant's SFIC (para [154]) but one of the children appears twice.

(b) Four children of the Applicant's nephew Abdul. The children are aged 13, 11, 10 and seven.

(c) Three children of the Applicant's niece Abir. The children are aged 16, 12 and nine.

(d) Six children of his niece Nahla. The children are aged 15, 13, 12, 10 and six and two.

(e) One child of his niece Randa. Two children were listed, however, one of them is now 18 and is therefore not included in this section which concerns minor children. The minor child is aged 14.

187. There is less information before me concerning the Applicant's great nephews and nieces than his stepchildren. I will provide an outline of some of the evidence concerning these children that is before me.

188. The Applicant was asked about his relationship with his great nieces and nephews at the hearing. He described himself as "*the favourite uncle*" (transcript/7). When asked about his relationship with his minor great nieces and nephews, the Applicant's evidence was (transcript/8):

> *I have a very good relationship with them. I've always been close. When I'm out we're always - every Sunday they come to our family, mum and dad's house, and I had my house right next to my parents' house, so it was one messy backyard, all my sisters and brothers come over every Sunday. The kids used to play there and we used to build cubby houses and we used to work on cars, and some of them used to do boxing and some of them used to do aerobics. Call the ice-cream truck down, it used to come down and give them ice-cream cones, or take them out on a picnic. Hire one of them big … bus, put in them in a bus and take them on a picnic, or take them to the beach. We used to take them to the beach. We used to go on a bike track in Prospect, go-carting. I love my family, man, I love - I'm a family man when I'm a family man, but when I stuff up I just stuff up. But who ended up losing in the end? Me. And whoever I've hurt in the process to get me back in jail.*

189. He later stated (transcript/39):

> *I get on with all my nieces and nephews and that, like I give them the time and the day. I make an effort for their birthdays or for whatever occasion. Christmas. Whatever the occasion is I'll make an effort …*

190. The Applicant agreed at the hearing that his great nieces and nephews had parents who were part of their lives and that they had supportive family around them. He stated that he keeps in contact with his great nieces and nephews on the telephone but acknowledged that his relationship with them was deteriorating because of the time he had been away from them (transcript/41):

> *It's deteriorating because the time - the length that I've been away from society now, away from them - it's not the same. On the phone is not the same as being there,*

you know what I mean? You can't compare being there physically: Buying them a cake for their birthdays; or buying a little bike for their first bike; or taking them to just the ice-cream shop; working on the cars; taking them to the beach.

191. At the First Tribunal hearing on 25 July 2022, the Applicant was asked about his relationship with his great nieces and nephews. The following exchange is relevant (transcript/21; R3/2976):

DR DONNELLY:	*Well, in this case there's a lot of children that the tribunal has to look at. I'm not going to read out every single one of your nieces and nephews. I'll try to do in a sensible, practical way. Could you give some examples of what sort of relationship you have 5 with your nieces and nephews?*
APPLICANT:	*We've got a very healthy, loving relationship of all of them. They look up to me. I give them moral support. I make sure - when the boys if they're ever giving their mum and dad a hard time, I talk to them about - let them know what could happen to them if they proceed the way they're going, and they're going to end up going to a place where they don't want to go, where I've been. So I'm teaching them by what I went through, so they don't have to go through it, you know what I mean. I've given them moral support they need. I'm the favourite uncle. You ask me - I love my family with all my heart, and I've always kept in contact with them throughout this time, like ever since they were born. They used to come when I was in Sydney, come and visit. Just play, we used to play - used to play football with them, soccer with them, you know what I mean. I love kids. Like, I've always loved my nieces and nephews, like, kids in general, you know, because they bring the best out of people, kids.*
DR DONNELLY:	*If you were permitted to stay in the Australian community in the future, do you have any plans in relation to your nieces and nephews?*
APPLICANT:	*It depends. If I continue to be a positive role model to them, and hopefully they don't make the same mistake that I've made and live a big chunk of their lives for – for nothing, for no value.*

192. At the hearing of this application, the Applicant acknowledged that he went to prison in 2011, and into immigration detention in 2017 and so for much, or all, of the children's lives he has been in prison or immigration detention (transcript/42).

Mervat's children

193. An undated statement by an unknown person in the material before me states that, "*Imad has constant contact with the Children of his niece Mervat*" and lists the children's names and dates of birth (R1/1109).

194. A submission from the Applicant's representatives stated that (R1/1553):

> *The applicant has a very special and close relationship with the youngest child, Amir ... This child gives the applicant a lot of attention. When the applicant was being detained at the Villawood Immigration Detention Centre (VIDC), the applicant's niece and various of her children visited the applicant there. The applicant would spend most of the visit playing with Amir in the children's play centre (whether it be playing soccer or engaging in other activities).*

Abdul's children

195. In a statement dated 13 July 2022, the Applicant's nephew Abdul, described the Applicant's relationship with his minor children as follows (R1/1519-1520):

> *My four oldest children ask about Imad fairly frequently. They seek updates from me on his situation. I would say they have a stronger relationship with Imad than my four younger children. …*
>
> *My four youngest children speak to Imad occasionally, especially when I am otherwise speaking to him on the telephone. They have a positive and amicable relationship with Imad. My children consider Imad as a close part of our extended family unit.*
>
> *Given the significant impact that Imad has had in my life, if Imad is released into the Australian community, I want him to continue playing an uncle role to all my children. Naturally, if Imad is in the Australian community, he will be able to play a more active and closer uncle role to my children.*

196. In an earlier undated statement, Abdul described the positive relationship that the Applicant has with his children, and that his 13-year-old daughter, Khadija is particularly close to the Applicant (R1/1101):

> *He has also been a major source of love and understanding to my minor children Ayoub …* [11 years old], *Khadija …* [13 years old], *Layla* [7 years old] *and Saadideen …* [10 years old]. *Imad regularly calls the children on video call and spends a lot of time talking to them and making them smile, he gives them love and attention and always lets them feel that he is there for them and a support, he is in a sense the only connection they have to their late grandfather. He is especially close to my daughter Khadija who is now 12 years of age* [13 years old as at the date of this decision]. *She adores Imad and as her grandfather passed away when she was extremely young, she feels he is the closest connection she has to him. He has been very helpful in helping Khadija navigate through this tumultuous time when young*

girls become teenagers, and mentoring her about life and having good friends, having a good education and being a decent member of society. All of my children will be significantly impacted by uncle Imads deportation, particularly Khadija as she sees him as a rock in her life and she relies on him extensively for emotional support.

Abir's children

197. A submission from the Applicant's representatives stated that (R1/1554-1555):

> *The applicant has been supportive towards Abir's children, as members of the applicant's extended family. For example, the applicant has been supportive towards Abir's eldest daughter. There was a point where she was in a relationship that was not going well. The applicant was very motivational to her throughout her hardship and that was valued by her.*
>
> *Abir's second daughter has multiple health issues. The applicant has been supportive in checking up on her as well. Abir's teenage son looks up to the applicant and enjoys every moment he has had with him. He looks forward to continuing that relationship if the applicant is released into the Australian community. Abir's children have maintained contact with the applicant by telephone and videocalls.*

Nahla's children

198. The Applicant's niece, Nahla, and her children regularly visited the Applicant when he was in Villawood Detention Centre. In a statement dated 11 May 2021, Nahla stated that the Applicant is a positive influence and role model to her children (R1/1112):

> *As with me, he is now especially close to my eight children, 6 of whom are under the age of 18. He really is invested in their lives and does all he can to be a positive influence and role model. He shows them love and support as much as he can by phone and video call, whether it's playing with the baby on video or having a chat to my other children about the importance of making good decisions in life. If he were to be deported they would really loose* [sic] *leading figure in their family who is always there to encourage them and advise them about growing up and doing the right things. We all really love Imad, he has never deviated from being a constant love and support in all of our lives especially my younger children Rukaya, Zaynab, Husayn, Hasan and Ibrahim.*

Randa's children

199. The Applicant's niece Randa, has three children, with only her youngest son, Izhaaq, being a 14-year-old minor. In her statement dated 13 July 2022, Randa stated (R1/1538):

> *My immediate family in Australia has a very close relationship with Imad. My children grew up calling Imad* uncle Imad*. Imad has given practical lifestyle advice to my children about various life issues. For example, Imad has … encouraged … Izhaaq to surround themselves with good people and live a fulfilling and healthy life.*

I can vouch for the fact that my children have a special bond with Imad. My children love Imad's bubbly nature and the fact that he always has time for them. He has provided my children with considerable emotional and practical support over many years.

…

Izhaaq also admires Imad. Izhaaq and Imad will play games together on the telephone and FaceTime. They have cheeky conversations and there is always a lot of laughter when the two connect. Imad has had a positive influence on Izhaaq.

…

*When Imad was at the Villawood Immigration Detention Centre (the **VIDC**), our family would visit Imad frequently. In our family, Sunday is prescribed as the family day. However, given how close we are to Imad, we would often spend Sunday having lunch with him at the VIDC.*

200. More generally, Randa described the Applicant as a dedicated member of her family (R1/1541):

Imad is a much loved and respected figure in our extended family. Imad has touched the lives of his nieces and nephews, uncles, aunts, and other extended family members. Imad has always made himself available for his family and provided considerable wisdom and advice of a positive nature, despite his own misgivings and difficulties.

201. In his written statement dated 13 July 2022, Randa's husband Samer, wrote about the Applicant's relationship with his three children (R1/1542-1543). As I have noted, it is only the youngest child, Izhaaq, whose interests are relevant here because the other children are 18 and over:

Imad has a very close relationship with my three children. For example, Imad speaks to my children on both the telephone and FaceTime. Imad provides my children with emotional support and is a positive influence for my children. My children always enjoy speaking to Imad.

… Imad has a very good relationship with my sons Ali and Izhaaq. I would say that both Ali and Izhaaq see Imad like a second dad. The same is true of Mya.

Imad gives good practical advice to my children. I have complete trust in Imad and his relationship with my children.

…

I would like for Imad to play an important uncle role for my children in the future. As already explained, my immediate family unit has a close relationship with Imad. Given the nature of that relationship, and the positive impact Imad has had on my children, I would like that to continue in the future.

Evaluating the interests of the Applicant's 18 great nieces and great nephews

202. I will now consider their interests together, pointing out where those interests differ.

203. The Applicant is the great uncle of the minor children and so less weight is given to the relationship because it is non-parental. There have also been long periods of absence because he has been in prison or immigration detention since 2011, with some of the children having been born during that time. The Applicant, nevertheless, has still managed to communicate with the children through immigration detention visits (for example, Mervat and Randa's children) and video and telephone calls and has developed a relationship with them as their uncle. I accept that he has close relationships with some of the children including Khadija (para 8.4(4)(a) of Direction No 99).

204. There are differing amounts of time until the Applicant's great nieces and nephews turn 18. Their ages range from three years of age, through to 17 years of age. For the older children, his influence is likely to be less important to their social and emotional development because there is less time until they turn 18. For the younger children, there is more time until they turn 18 and they may benefit from having a loving uncle in their lives. The Applicant appears to be a devoted uncle who is committed to his family members and is likely to be an involved and positive role model to them if returned to the Australian community (para 8.4(4)(b) of Direction No 99).

205. There is no evidence to suggest that the Applicant's prior conduct has had a direct negative impact on any of the children. In terms of future conduct, it is unlikely that the Applicant would engage in any future conduct that would have a negative impact on his great nieces and nephews, unless he were to resume a relationship with them which was required to cease due to future offending, prison time and deportation (para 8.4(4)(c) of Direction No 99).

206. The Applicant has been maintaining contact with his great nieces and nephews by telephone or video call. However, this type of contact is likely to be less meaningful and beneficial than the Applicant being able to participate in family events and celebrations in person (para 8.3(4)(d) of Direction No 99).

207. The children have their parents in their lives to care for them and they are part of a large and close-knit extended family (para 8.4(4)(e) of Direction No 99).

208. There are no known views of the children, other than those communicated through the children's parents that I have outlined above. Those views suggest that the children have a

meaningful relationship with their uncle and would like him to be involved in their lives, such as being present at family events (para 8.4(4)(f) of Direction No 99).

209. The Applicant appears to be a loving uncle who the children can rely upon for guidance and emotional support. There is no evidence of any risk of the children being abused or neglected by the Applicant (para 8.4(4)(g) of Direction No 99). There is no evidence that they have experienced any physical or emotional trauma from the Applicant's conduct (para 8.4(4)(h) of Direction No 99).

210. I have considered and weighed the factors in paragraphs 8.4(4)(a) to (h) of Direction No 99, including:

- that the Applicant appears to be a caring uncle despite the substantial period of absence or separation due to being in prison or immigration detention;
- the likelihood that the Applicant would be personally involved in the childrens' lives if released into the community;
- the relationships are non-parental and the children have parents to care for them; and
- the children have been able to communicate and develop relationships with the Applicant by telephone and video call and could continue to do so in that manner.

211. On balance, I find that the revocation of the Cancellation Decision is in the best interests of the Applicant's great nieces and nephews. I find that their interests weigh slightly in favour of the revocation of the Cancellation Decision.

Expectations of the Australian community (paras 8(5) and 8.5 of Direction No 99)

212. A decision-maker must consider the expectations of the Australian community when making a decision under ss 501 or 501CA.

213. These expectations are set out in paragraph 8.5 of Direction No 99, which provides:

> *(1) 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.*

(2) *In addition, visa cancellation or refusal, or non-revocation of the mandatory cancellation of a visa, may be appropriate simply because the nature of the character concerns or offences is such that the Australian community would expect that the person should not be granted or continue to hold a visa. In particular, the Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they raise serious character concerns through conduct, in Australia or elsewhere, of the following kind:*

a) *acts of family violence; or*

b) *causing a person to enter into, or being party to (other than being a victim of), a forced marriage;*

c) *commission of serious crimes against women, children or other vulnerable members of the community such as the elderly or disabled; in this context, 'serious crimes' include crimes of a violent or sexual nature, as well as other serious crimes against the elderly or other vulnerable persons in the form of fraud, extortion, financial abuse/material exploitation or neglect;*

d) *commission of crimes against government representatives or officials due to the position they hold, or in the performance of their duties; or*

e) *involvement or reasonably suspected involvement in human trafficking or people smuggling, or in crimes that are of serious international concern including, but not limited to, war crimes, crimes against humanity and slavery; or*

f) *worker exploitation.*

(3) *The above expectations of the Australian community apply regardless of whether the non-citizen poses a measureable* [*sic*] *risk of causing physical harm to the Australian community.*

(4) *This consideration is about the expectations of the Australian community as a whole, and in this respect, decision-makers should proceed on the basis of the Government's views as articulated above, without independently assessing the community's expectations in the particular case.*

214. I must give effect to the "*norm*" stipulated in paragraph 8.5(1) of Direction No 99, being that the Australian community expects non-citizens to obey Australian laws whilst in Australia. This will, in most cases, weigh against revocation of a cancellation decision if that expectation has been breached or if there is an unacceptable risk that it may be breached in the future. The Applicant has breached this expectation by not obeying Australian laws by committing numerous criminal offences, including the six offences he was sentenced for on 13 December 2012 which related to the armed robbery of a truck. Consequently, the expectation of the Australian community would be that the Applicant's Visa should remain cancelled (para 8.5(1) of Direction No 99).

215. As is evident from the reference to the "*norm*" in paragraph 8.5(1) of Direction No 99, I am being told unequivocally what the community's expectations are. Further, paragraph 8.5(4) of Direction No 99 confirms more explicitly that the Australian community's expectations are what the Government deems them to be, because decision-makers are directed to proceed based on the Government's views about community expectations without independently assessing them (see *Minister for Immigration, Citizenship and Multicultural Affairs v HSRN* [2023] FCAFC 68 at [41]-[44]).

216. I agree with the observations of Senior Member Morris in *NTTH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] AATA 1143, which were adopted by Deputy President Boyle in *Wightman and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] AATA 1208 (***Wightman***). I note that Deputy President Boyle was writing about the previous Direction No 90, however the wording in Direction 99 is identical in this regard, and therefore those observations apply equally to Direction No 99.

217. In *Wightman*, Deputy President Boyle stated, at [85]–[86]:

> *… Direction 90 superseded Direction 79 on 15 April 2021. Senior Member Morris in* NTTH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (**NTTH**) *at [194] noted that the provisions of Direction 90 contain generally similar wording to the corresponding provisions in Ministerial Direction No 65 (**Direction 65**), the predecessor to Direction 79. Those corresponding provisions in Direction 65 were considered by the Full Court of the Federal Court of Australia in* FYBR v Minister for Home Affairs (**FYBR**)*.*
>
> *Senior Member Morris at [195] and [196] of* NTTH *summarises the view expressed by the Full Court in* FYBR *and the adoption of some of the language of the judgment in* FYBR *into Direction 90 as follows:*
>
> > 195. It was the Court's view that it is not for a decision-maker to make his or her own personal assessment of what the 'expectations' of the Australian community may be. In this respect, the expectations articulated in the Direction are *deemed* — they are what the executive government has declared are its views, not what a decision-maker may derive by some other assessment or process of evaluation.
> >
> > 196. It is significant that the new Direction imports the statement that the expectations of the Australian community are to be considered as a 'norm', which I take to be an acknowledgement of the approach taken by the plurality of the Court in *FYBR*. ...
>
> (Original emphasis and footnotes omitted.)

218. Further detail about the Australian community's expectations with respect to certain types of conduct is given in paragraph 8.5(2) of Direction No 99. That paragraph states that the

Australian community expects that the Australian Government should cancel a non-citizen's visa if they raise serious character concerns through specific conduct listed in sub-paragraphs 8.5(2)(a)–(f). The Applicant was convicted of three counts of "*assault police*" on 8 March 1993, which would fall within the category of "*commission of crimes against government representatives or officials due to the position they hold, or in the performance of their duties*" in paragraph 8.5(2)(d). The Applicant's offending does not otherwise fall within any of these sub-paragraphs.

219. Paragraph 8.5(3) of Direction No 99 further confirms that the Australian community's expectations are what the Government deems them to be, by effectively telling decision-makers that the stated expectations apply regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community. Thus, even though I found above that the Applicant is likely to pose a moderate risk of reoffending, the community's expectations as stated apply regardless.

220. Further, paragraph 8.5(4) of Direction No 99 tells decision-makers that this consideration is about the expectations of the Australian community as a whole. It directs decision-makers to proceed based on the Government's articulated views without assessing the community's expectations in the particular case. I therefore cannot speculate about what the community's views might be about the Applicant such as whether they would have a higher level of tolerance for a person who had a history of trauma and mental health issues, for example.

221. I can, however, have regard to the principle in paragraph 5.2(5) of Direction No 99 which provides, in part, that "*Australia will generally afford a higher level of tolerance of criminal or other serious conduct by non-citizens who have lived in the Australian community for most of their life, or from a very young age*". The Applicant is a 53-year-old man, who arrived in Australia when he was a 13-year-old child and has lived in Australia for approximately 40 years. I therefore find that Australia would have a higher level of tolerance for the Applicant because he has lived in Australia for most of his life, starting from the beginning of his formative teenage years.

222. Overall, I find that the primary consideration in paragraph 8.5 of Direction No 99, being the expectations of the Australian community, weighs moderately against the revocation of the Cancellation Decision.

OTHER CONSIDERATIONS (PARA 9(1) OF DIRECTION NO 99)

223. As I outlined above, Direction No 99 directs decision-makers to have regard to a non-exhaustive list of several other considerations to the extent they are applicable.

Legal consequences of decision under section 501 or 501CA (para 9(1)(a) and 9.1 of Direction No 99)

224. Paragraph 9.1 of Direction No 99 identifies the legal consequences that decision-makers must bear in mind when making a decision under s 501 or 501CA of the Migration Act.

225. The first sub-paragraph, 9.1(1), of Direction No 99, outlines that a non-citizen is liable for removal from Australia, notwithstanding any non-refoulement obligations:

> *(1) Decision-makers should be mindful that unlawful non-citizens are, in accordance with section 198, liable to removal from Australia as soon as reasonably practicable in the circumstances specified in that section, and in the meantime, detention under section 189, noting also that section 197C(1) of the Act provides that for the purposes of section 198, it is irrelevant whether Australia has non-refoulement obligations in respect of an unlawful non-citizen.*

226. The next two sub-paragraphs of Direction No 99, 9.1(2) and (3), address Australia's non-refoulement obligations:

> *(2) A non-refoulement obligation is an obligation not to forcibly return, deport or expel a person to a place where they will be at risk of a specific type of harm. Australia has non-refoulement obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol (together called the Refugees Convention), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT), and the International Covenant on Civil and Political Rights and its Second Optional Protocol (the ICCPR). The Act, particularly the concept of 'protection obligations', reflects Australia's interpretation of non-refoulement obligations and the scope of the obligations that Australia is committed to implementing.*
>
> *(3) International non-refoulement obligations will generally not be relevant where the person concerned does not raise such obligations for consideration and the circumstances do not suggest a non-refoulement claim.*

227. The Direction provides guidance in the situation where the non-citizen is covered by a protection finding, as defined by s 197C of the Migration Act (para 9.1.1 of Direction No 99), and where the non-citizen is not covered by a protection finding (para 9.1.2 of Direction No 99). No protection finding has been made regarding the Applicant, and so the latter sub-paragraph is applicable.

228. Paragraph 9.1.2(1) of Direction No 99 provides that if a non-citizen raises non-refoulement claims, the decision-maker must consider them:

> *(1) Claims which may give rise to international non-refoulement obligations can also be raised by a non-citizen who is not the subject of a protection finding, in responding to a notice of intention to consider cancellation or refusal of a visa under section 501 of the Act, or in seeking revocation of the mandatory cancellation of their visa under section 501CA. Where such claims are raised, they must be considered.*

229. If the non-citizen can apply for a protection visa the decision-maker will not be required to consider the non-refoulement issues in the same level of detail as for a protection visa. Paragraph 9.1.2(2) of Direction No 99 explains that the decision-maker must consider the non-citizen's representations, but can proceed on the basis that those claims will be assessed if the person applies for a protection visa:

> *(2) However, where it is open to the non-citizen to apply for a protection visa, it is not necessary at the section 501/section 501CA stage to consider non-refoulement issues in the same level of detail as those types of issues are considered in a protection visa application. The process for determining protection visa applications is specifically designed for consideration of non-refoulement obligations as given effect by the Act and where it is open to the person to make such an application a decision-maker, in making a decision under section 501/section 501CA, is not required to determine whether non-refoulement obligations are engaged in respect of the person. Having considered the person's representations, the decision-maker may choose to proceed on the basis that if and when the person applies for a protection visa, any protection claims they have will be assessed, as required by section 36A of the Act, before consideration is given to any character or security concerns associated with them.*

230. Further information for decision-makers is provided by paragraph 9.1.2(3) of Direction No 99. It firstly identifies that non-refoulement obligations identified outside of the protection visa process, such as in an International Treaties Obligations Assessment , do not prevent the non-citizen from being removed. It also states that decision-makers must carefully weigh any non-refoulement obligation against the seriousness of an applicant's criminal offending or other serious conduct. The sub-paragraph further confirms that even if non-refoulement obligations are owed to a non-citizen, this does not preclude the cancellation or refusal of their visa, because they will not necessarily be removed to the country where the non-refoulement obligation exists. This is because the Minister can consider other options, including removal to a third country, or exercising personal discretion to grant another visa or to make a residence determination. Also, if the non-citizen can apply for a protection visa, they will not be removed from Australia while that application was being determined:

(3) *Non-refoulement obligations that have been identified for a non-citizen with respect to a country, via an International Treaties Obligations Assessment or some other process outside the protection visa process, would not engage section 197C(3) to preclude removal of the non-citizen to that country. In these circumstances, in making a decision under section 501 or 501CA, decision-makers should carefully weigh any non-refoulement obligation against the seriousness of the non-citizen's criminal offending or other serious conduct. However, that does not mean an adverse decision under section 501 or 501CA cannot be made for the non-citizen. A refusal, cancellation or non-revocation decision will not necessarily result in removal of the non-citizen to the country in respect of which the non-refoulement obligation exists. For example, consideration may be given to removal to another country, or the Minister may consider exercising his/her personal discretion under section 195A to grant another visa to the non-citizen, or alternatively, consider exercising his/her personal discretion under section 197AB to make a residence determination to enable the non-citizen to reside at a specified place in the community, subject to appropriate conditions. Further, following the visa refusal or cancellation decision or non-revocation decision, if the non-citizen makes a valid application for a protection visa, the non-citizen would not be liable to be removed while their application is being determined.*

231. I will now consider the non-refoulement claims that the Applicant has made (para 9.1(1) of Direction No 99).

232. The First Tribunal Decision noted that the initial submission from the Applicant's lawyer in support of revocation of the Cancellation Decision was that: "*Our client does not advance any protection claims".*

233. However, before the previous Tribunal, the Applicant advanced the claim that "*he will face harm if returned to Lebanon due to his religion, nationality, or membership of a particular social group, being those with extensive ties to the West*". He also made submissions regarding harm based on religious observance, specifically, to the effect that he may face harm because "*although born into the Sunni Muslim faith, he is not a practising or committed member of that faith*" and that "*these attitudes* [not praying, fasting or abstaining from alcohol or non-halal food] *and practices will draw the adverse attention of the religiously conservative and fanatical elements of the Sunni Muslim community in Lebanon*" (R1/2647-2648, paras [205]-[206]).

234. At the hearing of this application that I presided over, the Applicant did not make submissions that he would face harm due to religious observance. He did, however, submit that his indifference to the Islamic faith would cause isolation from society. This was because members of the Sunni Muslim faith would not want to associate with an individual

who was perceived to have abandoned his religion or a westerner. The submission was characterised as this being an impediment to his removal (under that other consideration) (Applicant's SFIC, para [232]). At the rehearing, his submissions regarding non-refoulement were, in summary, that he faced harm due to generalised violence and because he would be perceived to be a westerner.

235. I will now outline these submissions in more detail.

236. In a statement dated 27 June 2022 (R1/1295-1296, paras [15]-[17]), the Applicant stated:

> *If I were forcefully removed to Lebanon, I believe that I would commit suicide and end everything. From what I understand, Lebanon is an absolute mess at the present time. There has been considerable migration of refugees into Lebanon from Syria. There is big corruption in government circles in Lebanon. The COVID-19 pandemic has impacted the economic, health and political outlook in Lebanon in a bad way.*
>
> *Since leaving Lebanon as a child, I have never looked back. I have never returned to Lebanon nor kept ties in that country. I would have no support on the ground in Lebanon. My mental health would deteriorate. I fear that I would not be able to obtain sufficient mental health treatment for my health issues, inclusive of being able to afford prescription medication.*
>
> *I also fear a risk of harm in Lebanon on account of being perceived as a foreigner. I have an Australian accent. I consider myself an Australian. I am not familiar with the local customs and culture in Lebanon. I consider myself a Muslim Australian with little real connection to the Islamic faith. I am scared that I could be kidnapped or otherwise targeted in Lebanon as a perceived westerner or foreigner. I believe my life could be at risk if removed to Lebanon.*

237. In a subsequent statement dated 26 January 2023 (A1, para [17]), the Applicant stated:

> *I plea* [sic] *with the Tribunal to give me another chance. I cannot go back to Lebanon. I face the real prospect of either dying there or suffering serious harm in that country.*

238. The Applicant then referred to travel advice concerning Lebanon (A1/Annexures A to F), and reports from Human Rights Watch on Lebanon (A1/Annexures G to I) which the Applicant stated, "*describe a horrendous state of affairs in Lebanon*" (A1, para [27]).

239. When asked by Dr Donnelly at the hearing about what concerns the Applicant had if he had to return to Lebanon, the Applicant replied (transcript/11-12):

> *My concerns? Mate, I'm Australian. I am Australian. I'm an Australian Lebanese. Yes, I was born in Lebanon. Yes, yes, but I'm Australian Lebanese. This is my country. If I go to Lebanon - well, it's not an option for me. I'd rather kill myself, I'm just telling you right now. I'm saying it on record and I'll say it again. Go to Lebanon*

> *I kill myself. Let's just say I ended up in Lebanon what's going to happen to me. I'm Australian. My accent is Australian. They're going to think you come from Australia, you're loaded, you got cashed up. They don't - and with my criminal record going to Lebanon how do you think I'll be treated in Lebanon. How do you think I'll be treated in Lebanon. Lebanon is not an option for me. I didn't stand (indistinct) all these (indistinct) fighting, fighting and fighting, right, to go back to Lebanon. I'm not going to Lebanon. There's nothing - I don't know anyone in Lebanon. I've never been back to Lebanon. Since I come here in 1983 I've never been back to Lebanon. Lebanon is not an option for me. This is where I grew up, and this is where I would love to stay if I was given a chance, but Lebanon is not an option for me.*

240. The Applicant stated that his family brought him to Australia because of the civil war in Lebanon. He stated that, as a child in Lebanon, he had witnessed seeing dead and dismembered bodies and his best friend being killed in front of him by a sniper when he was eight years old (transcript/12).

241. He expressed concerns that he might be kidnapped in Lebanon for a ransom. He also stated that he would be "*labelled*" and "*persecuted*" due to his Australian accent, Australian criminal record and for being a returnee (transcript/13-14).

242. In the Applicant's SFIC (para [200]), it was submitted that, "*there is a real risk he* [the Applicant] *will be killed or otherwise subjected to significant physical harm if returned to Lebanon"*. In support, information from the Department of Foreign Affairs and Trade (**DFAT**), the United Kingdom Home Office, and the United States Department of State was cited (Applicant's SFIC, paras [200]-[202]). In summary, this information referred to:

- the volatile security situation in Lebanon due to civil unrest because of economic, political and religious tensions, as well as from conflict in Syria;
- terrorist attacks are likely, with terrorists and extremists attacking westerners;
- kidnappings have occurred, with targets including foreigners; and
- crime has increased due to the economic situation and there has been an increase in theft, robbery, sexual harassment, and assaults in public areas, unsolved killings, and weapons are common.

243. The submissions continued to state that (Applicant's SFIC, para [203]):

> *The Tribunal would be satisfied that Australia has protection obligations because the Tribunal has substantial grounds for believing that, as a necessary and foreseeable consequence of the Applicant being removed from Australia to Lebanon, there is a real risk that the non-citizen will suffer significant harm.*

244. From the totality of the evidence that I have outlined above, I understand the Applicant's claims to be that he fears for his life, or fears violence if he is returned to Lebanon because Lebanon is a violent country due to economic, political, and religious unrest and tensions, including the threat of terrorism. He fears being targeted as a foreigner and being subjected to kidnapping or a terrorist attack as a result.

245. As is contemplated by the Direction, the Applicant can apply for a protection visa and so it is not necessary for me to determine whether non-refoulement obligations are engaged. In my view this is the more appropriate course if the Applicant is unsuccessful in this application. This is because his non-refoulement claims have changed over time, are somewhat general in nature and because he previously made claims about religious observance that were not pressed at this hearing. If the Applicant makes a protection visa application, he will have the opportunity to make more detailed and specific non-refoulement claims, that will be conclusively assessed prior to consideration being given to any character concerns (para 9.1.2(2) of Direction No 99). In other words, deferring consideration of the Applicant's protection claims to a specific protection visa process would allow him to fully articulate all relevant claims and for those claims to be considered in detail by a specialised decision-maker. He will also not be removed from Australia while a valid protection visa application was being determined (para 9.1.2(3) of Direction No 99).

246. I therefore give this consideration neutral weight.

Extent of impediments if removed (paras 9(1)(b) and 9.2 of Direction No 99)

247. Paragraph 9.2(1) of Direction No 99 provides:

> *(1) Decision-makers must consider the extent of any impediments that the non-citizen may face if removed from Australia to their home country, in establishing themselves and maintaining basic living standards (in the context of what is generally available to other citizens of that country), taking into account:*
>
> *a) the non-citizen's age and health;*
>
> *b) whether there are substantial language or cultural barriers; and*
>
> *c) any social, medical and/or economic support available to them in that country.*

248. The Applicant is 53 years of age.

249. The Applicant has longstanding mental health issues.

250. A report dated 14 July 2017 by Ms Gumbert-Jourjon reported that the Applicant was "*experiencing elevated symptoms of depression, anxiety and stress*" and severe psychological distress (R1/477-478). Her opinion was that he "*has a longstanding history of depressive symptomatology, which is likely to be exacerbated in custodial environments*". Further, Ms Gumbert-Jourjon opined that the Applicant "*shows significant symptoms of posttraumatic stress disorder, which warrant further assessment and careful follow-up with regard to ongoing management*". Ms Gumbert-Jourjon also stated that the Applicant's "*deportation would foreseeably result in significant hardship and distress*" and that the Applicant's assertion that he would take his own life if deported "*should be viewed with particular seriousness given his prior suicidal tendencies in custody*" (R1/482). I note that the Applicant has maintained that he would take his own life if he is returned to Lebanon on several occasions, including at the Tribunal hearing on 18 April 2023 (transcript/11).

251. A psychological assessment report dated 21 December 2017 by clinical psychologist Yvette Aiello reported that the Applicant had attempted suicide on at least two occasions and was "*experiencing heightened distress at the possibility of being returned to Lebanon*". She recommended "*ongoing monitoring of his suicidality"* (R1/733).

252. A report dated 2 October 2020 by Mr Watson-Munro noted a diagnosis of PTSD and that the Applicant had attempted to self-harm (R1/1058-1059):

> *I note from your letter of instruction that Mr Barghachoun was approached by staff at the Villawood Immigration Detention Centre at around 4.30am on 29 September 2020 and was advised that he would be transferred to the Christmas Island Detention Centre at 9.30am that day.*
>
> *As my primary report details, Mr Barghachoun is suffering a range of psychological problems and his psychological state is fragile. In particular, he has been diagnosed with Post Traumatic Stress Disorder (PTSD) and has previously attempted suicide.*
>
> *Against the background of the advice that he was given on 29 September 2020, I note that Mr Barghachoun ingested a razor blade, in an attempt to self-harm.*

253. In a more recent report dated 9 December 2022, Dr Kwok stated that the Applicant experienced "*chronic stress from war-exposure*" which led to chronic symptoms and depression as a comorbidity due to a lack of treatment. Dr Kwok opined that the Applicant meets the diagnostic criteria for PTSD. She recommended that the Applicant required targeted intervention by an interdisciplinary team consisting of a general practitioner,

psychiatrist and psychologist with training in PTSD. Although Dr Kwok did not think the Applicant met the criteria for a substance use disorders, she recommended drug and alcohol counselling for the purpose of relapse prevention (A3, paras [54], [64]-[65], [73]). At the hearing the Applicant stated that he was on antidepressant medication (transcript/18).

254. At the hearing the Applicant also stated that medical staff thought he had prostate cancer and that he had recently had an ultrasound (transcript/18). I requested that updated medical reports be provided. The records produced on 27 April 2023 record that Applicant has had issues with his urinary tract (discomfort, pain, or burning when urinating and increased urinary frequency) which he first reported to a general practitioner in December 2017. He reported symptoms in 2018, 2020 and 2022 and was given medication in 2018 and 2022 (email from Detention Health dated 20 April 2023). There is no evidence that prostate cancer was suspected. A medical appointment note dated 25 October 2022 records that the Applicant reported some left knee pain, for which an x-ray was requested, blurring in his distance vision, for which he was referred to an optometrist and minor issues with chewing because he was missing a few front lower teeth, and that he had been referred to a dentist.

255. It is unclear whether the Applicant's physical health issues would be impediments if he was removed to Lebanon because these medical records indicate that further tests were being undertaken.

256. However, what is consistently clear from numerous medical reports concerning the Applicant is that he has significant and longstanding mental health issues that require coordinated and specific treatment intervention. Those mental health issues are likely to detrimentally impact upon his ability to establish himself and maintain basic living standards if he was returned to Lebanon to the extent that I am concerned that the Applicant will not be able to subsist if returned there. The medical evidence also indicates that the Applicant's statement that he will commit suicide if returned should be taken seriously.

257. The Applicant came to Australia when he was a 13-year-old child. He has therefore not lived in Lebanon for approximately 40 years. He stated that he speaks Arabic (transcript/14) but with an Australian accent, considers himself Australian, is not familiar with local customs, considers himself a Muslim Australian and has little real connection with the Muslim faith. As I have discussed in the section above concerning the legal consequences of the decision, he is concerned that he will be targeted as a westerner or foreigner if returned to

Lebanon (R1/1295-1296). After such a long time in Australia, I find that there are likely to be significant language and cultural barriers if the Applicant was returned to Lebanon.

258. The Applicant has some extended family members in Lebanon but is not in contact with them. His immediate family members, including his wife, stepchildren, adult children, siblings, nieces and nephews and great nieces and nephews, all reside in Australia. He is therefore unlikely to have any social support if returned to Lebanon.

259. The DFAT Country Information Report Lebanon (26 June 2023), indicates a poor economic overview for Lebanon. It states that, "*Lebanon is experiencing severe economic depression",* "*there is little in the way of social welfare",* and that *"high levels of unemployment stem from the wider economic crisis"*. Additionally, the DFAT Report also indicates that the Lebanese health "*system has been badly affected by the recent economic crisis"* and that "*mental health services are scarce*" (page 9).

260. Although the Applicant is a qualified crane operator and mechanic and has employment experience, he is likely to struggle to find employment if returned to Lebanon, especially in Lebanon's poor economic environment where there is a high unemployment rate. He has no work history in Lebanon, has significant mental health issues, and there are also likely to be cultural, and possibly language, barriers that will impede him from finding employment.

261. The Applicant's separation from his wife, children, stepchildren, and family in Australia are also likely to cause him significant emotional hardship. This is likely to exacerbate his mental health issues, and the medical evidence that I have referred to above supports this finding. The scarce availability of mental health services in Lebanon will be a significant impediment, especially given the extent and duration of the Applicant's mental health issues and his risk of suicide.

262. In summary, there are substantial cultural barriers, and the Applicant is likely to have limited or no access to social, medical, and economic supports if he is returned to Lebanon.

263. I find that there are significant and insurmountable impediments to the Applicant being able to establish himself and maintain basic living standards if he was returned to Lebanon. Consequently, this consideration weighs strongly in favour of revocation of the Cancellation Decision.

Impact on victims (paras 9(1)(c) and 9.3 of Direction No 99)

264. Paragraph 9.3(1) of Direction No 99 provides that:

> *(1) Decision-makers must consider the impact of the section 501 or 501CA decision on members of the Australian community, including victims of the non-citizen's criminal behaviour, and the family members of the victim or victims, where information in this regard is available and the non-citizen being considered for visa refusal or cancellation, or who has sought revocation of the mandatory cancellation of their visa, has been afforded procedural fairness.*

265. There is no information before me regarding the effect of a decision to revoke or not to revoke the Cancellation Decision on the Australian community (other than as discussed above under the protection of the Australian community and the expectations of the Australian community primary considerations). I do not have any information before me concerning the impact of my decision on the truck-driver victim or any other victims of the Applicant's offending.

266. Consequently, I give this other consideration neutral weight.

Impact on Australian business interests (paras 9(1)(d) and 9.4 of Direction No 99)

267. Paragraph 9.4(1) of Direction No 99 states that decision-makers should consider the impact of a decision whereby the Applicant is not allowed to remain in Australia on any business interests. It provides:

> *(1) Decision-makers must consider any impact on Australian business interests if the non-citizen is not allowed to enter or remain in Australia, noting that an employment link would generally only be given weight where the decision under section 501 or 501CA would significantly compromise the delivery of a major project, or delivery of an important service in Australia.*

268. This consideration does not arise on the material before me and is therefore not relevant.

THE WEIGHING EXERCISE

269. The Applicant does not pass the character test under s 501 of the Migration Act.

270. I have therefore considered whether there is another reason to revoke the Cancellation Decision, having regard to the primary and other relevant considerations in Direction No 99.

271. For the reasons set out above, I made the following findings about the relevant primary considerations in Direction No 99. These were:

(a) The protection of the Australian community from criminal or other serious conduct primary consideration weighed moderately to strongly against the revocation of the Cancellation Decision.

(b) The strength, nature and duration of the Applicant's ties to Australia weighed strongly in favour of the revocation of the Cancellation Decision.

(c) The best interests of the Applicant's minor stepchildren, weighed strongly, and the best interests of the Applicant's minor great nieces and nephews weighed slightly, in favour of the revocation of the Cancellation Decision.

(d) The expectations of the Australian community weighed moderately against the revocation of the Cancellation Decision.

272. I made the following findings with respect to the other considerations that were relevant. These were:

(a) I gave neutral weight to the other consideration of the legal consequences of the decision.

(b) The extent of impediments if removed other consideration weighed strongly in favour of the revocation of the Cancellation Decision.

(c) The impact on victims other consideration was also given neutral weight.

273. Overall, I find that the primary considerations of the best interests of minor children (which weighed strongly with respect to the Applicant's stepchildren, and slightly with respect to the Applicant's 18 minor great nieces and nephews in favour of revocation of the Cancellation Decision), together with the strength, nature, and duration of the Applicant's ties to Australia (which weighed strongly in favour of revocation of the Cancellation Decision), and the extent of impediments if removed other consideration (which also weighed strongly in favour of revocation of the Cancellation Decision), outweigh the considerations that weighed against the revocation of the Cancellation Decision. These considerations were the protection of the Australian community which weighed moderately

to strongly, and the expectations of the Australian community which weighed moderately, against the revocation of the Cancellation Decision.

274. I therefore find that there is another reason why the Cancellation Decision should be revoked. Therefore, the correct or preferable decision is to set aside the Reviewable Decision and substitute a new decision that the Cancellation Decision is revoked.

DECISION

275. The Reviewable Decision, being the decision of a delegate of the Respondent dated 12 May 2022, is set aside and substituted with a decision that the cancellation of the Applicant's Visa is revoked under s 501CA(4)(b)(ii) of the Migration Act.

I certify that the preceding 275 (two hundred and seventy-five) paragraphs are a true copy of the reasons for the decision herein of Senior Member Dr M Evans-Bonner

.....[Sgd].....

Associate

Dated: 31 July 2023

Date of hearing:	**18 and 19 April 2023**
Representative for the Applicant:	**Dr J D Donnelly, Latham Chambers**
Representative for the Respondent:	**Ms C Taggart, Francis Burt Chambers, instructed by Ms C Mumford, The Australian Government Solicitor**