



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD855/2023

LESLEY PILLAY

Applicant

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

Respondent

ORDER

JUDGE: JUSTICE RANGIAH

DATE OF ORDER: 28 September 2023

WHERE MADE: Brisbane

THE COURT ORDERS BY CONSENT THAT:

1. The decision of the second respondent dated 14 July 2023 affirming the decision by a delegate of the first respondent dated 20 April 2023 not to revoke the cancellation of the applicant's visa be set aside.
2. The matter be remitted to the second respondent for redetermination according to law.
3. The first respondent pay the applicant's costs as agreed or assessed.

THE COURT NOTES THAT:

The first respondent concedes that the decision of the second respondent (**Tribunal**) dated 14 July 2023 affirming the decision by a delegate of the first respondent dated 20 April 2023 not to revoke the mandatory cancellation of the applicant's visa under s 501CA(4) of the *Migration Act 1958* (**Act**) is affected by jurisdictional error for the following reason.

When deciding whether there was "another reason" why the visa cancellation should be revoked under s 501CA(4)(b)(ii), the Tribunal was required to consider the best interests of minor children in Australia: s 499(2A) of the Act; paragraph 8.4(1) of Ministerial Direction no. 99.



In his written submissions to the Tribunal, the applicant submitted that it was in the best interests of his minor cousins and niece that he remain in Australia. The first respondent concedes that the Tribunal failed to consider the best interests of the applicant's minor cousins and niece. The first respondent concedes that error was material in circumstances where the Tribunal found that the primary consideration of the best interests of minor children in Australia weighed heavily against revocation.

Date that entry is stamped: 28 September 2023

Sia Lagos
Registrar



Schedule

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Second Respondent ADMINISTRATIVE APPEALS TRIBUNAL