



Administrative
Appeals Tribunal

DECISION AND
REASONS FOR DECISION

Division: GENERAL DIVISION

File Number(s): **2023/4708**

Re: **Singh**

APPLICANT

And **Minister for Immigration, Citizenship, Migrant Services and
Multicultural Affairs**

RESPONDENT

DECISION

Tribunal: **Member D. Cosgrave**

Date: **19 September 2023**

Place: **Brisbane**

Pursuant to section 43 of the *Administrative Appeals Tribunal Act 1975* (Cth), the Tribunal **affirms** the decision made by the delegate of the Respondent dated 27 June 2023 to not revoke the **cancellation** of Mr Singh's visa.



Catchwords

MIGRATION – Mandatory visa cancellation – Indian citizen – Class WC Subclass 030 Bridging C visa – failure to pass good character test – criminal record – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – delegate’s decision not to revoke is affirmed.

Legislation

Acts Interpretation Act 1901 (Cth)

Administrative Appeals Tribunal Act 1975 (Cth)

Family Law Act 1975 (Cth)

Migration Act 1958 (Cth)

Migration Amendment (Character and General Visa Cancellation) Act 2014 (Cth)

Migration Regulations 1994 (Cth)

Cases

Bale v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2020] FCA 646

Bartlett and Minister for Immigration and Border Protection, [2017] AATA 1561

Bettencourt v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] FCAFC 172

BOE21 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FCAFC 99

Bushell v Repatriation Commission (1992) 175 CLR 408

Coker v Minister for Immigration and Border Protection (2017) 160 ALD 588

Demir V Minister For Immigration, Citizenship And Multicultural Affairs [2023] FCA 870

Dzik v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] FCAFC 78

EPL20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] FCAFC 173

Fehoko v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FCA 1471

Frugtniet v Australian Securities and Investments Commission (2019) 266 CLR 250

FYBR v Minister for Home Affairs (2019) 272 FCR 454

FYBR v Minister for Home Affairs and Anor [2020] HCA Trans 56

Gaspar v Minister for Immigration and Border Protection (2016) 153 ALD 338

GJJF and Minister for Home Affairs (Migration) [2019] AATA 930 (17 May 2019)
Holloway v Minister For Immigration, Citizenship And Multicultural Affairs [2022] FCA 1126
Ibrahim v Minister for Home Affairs (2019) 270 FCR 12
Jagroop v Minister for Immigration and Border Protection (2016) 241 FCR 461
Kayo Rerekura and Minister for Home Affairs (Migration) [2019] AATA 153
Khalil v Minister for Home Affairs (2019) 271 FCR 326
Matthews v Minister for Home Affairs [2020] FCAFC 146
Minister for Immigration and Ethnic Affairs v Baker (1997) 73 FCR 187
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v ERY19 [2021] FCAFC 133
Minister for Immigration and Ethnic Affairs v Guo [1997] HCA 22; (1997) 191 CLR 559
Minister for Immigration and Border Protection v Sabharwal [2018] FCAFC 160
Murphy v Minister for Home Affairs [2018] FCA 1924
Nathanson v Minister for Home Affairs [2022] HCA 26
Sabharwal v Minister for Immigration and Border Protection [2018] FCA 10
Shi v Migration Agents Registration Authority (2008) 235 CLR 286
Sillars v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] FCAFC 174
Suleiman v Minister for Immigration and Border Protection (2018) 74 AAR 545
Tanielu v Minister for Immigration and Border Protection (2014) 225 FCR 424
Tohi v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] FCAFC 125
Roberts and Minister for Home Affairs (Migration) [2018] AATA 3970
Viane v Minister for Immigration and Border Protection (2018) 263 FCR 531

Secondary Materials

Direction No. 99 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA (3 March 2023)
Explanatory Memorandum to the Migration Amendment (Character and General Visa Cancellation) Act 2014

REASONS FOR DECISION

Member D. Cosgrave

19 October 2023

INTRODUCTION

1. Mr Singh seeks review of the Respondent's delegate's 27 June 2023 decision not to revoke the mandatory cancellation of his Class WC Subclass 030 Bridging C visa (**the visa**).¹
2. The hearing was held by audio visual link in Brisbane on 4 and 5 September 2023 with the assistance of an interpreter. Dr Donnelly of counsel, instructed by Zarifi Lawyers, represented Mr Singh. Ms Ho of Clayton Utz Lawyers represented the Respondent.
3. On 19 September 2023, the Tribunal met its 84-day statutory obligation² by providing a short form decision in which it affirmed the decision under review.³ The Tribunal now gives its reasons for its decision.
4. Unless the context indicates otherwise, passages quoted in bold font have been emphasised by the Tribunal.

FACTS

5. Mr Singh is a 29-year-old Indian citizen who first arrived in Australia on 29 June 2018.⁴ He subsequently departed Australia on 2 January 2020 and returned to Australia on 11 February 2020.⁵

¹ G documents, G2, page 3. G documents are so named because they are provided under s 501G of the *Migration Act 1958* (Cth). They consist of documents in the possession or control of the Respondent relevant to the making of a reviewable decision. They usually accompany the Minister's written notice regarding a visa cancellation, refusal, or non-revocation.

² Pursuant s 500(6L) of the *Migration Act 1958* (Cth).

³ *Khalil v Minister for Home Affairs* (2019) 271 FCR 326 [41]–[48].

⁴ Exhibit 1:G2, page 244

⁵ Exhibit 1:G2, page 244

6. On 14 December 2022, Mr Singh's visa was cancelled under s 501(3A) of the *Migration Act 1958* (Cth) (**the Act**)⁶ because he did not pass the character test given his "substantial criminal record".⁷
7. On 9 January 2023, Mr Singh applied for revocation of the decision to cancel his visa, accompanied by a Personal Circumstances Form with submissions and evidence.⁸
8. On 27 June 2023, a delegate of the Minister made a decision under s 501CA(4) of the Act not to revoke the decision to cancel Mr Singh 's visa.⁹
9. On 29 June 2023, Mr Singh applied to the Tribunal for review of the delegate's 27 June 2023 decision.¹⁰

OFFENDING HISTORY

10. Mr Singh has pled guilty to and been convicted of over 200 offences.¹¹
11. His offending can be categorised as follows:
 - (a) stealing
 - (b) fraud
 - (c) unauthorised dealing with shop goods
 - (d) possessing dangerous drugs
 - (e) contravening domestic violence orders
 - (f) possessing dangerous drugs
 - (g) traffic offences
 - (h) unlawful use of motor vehicles

⁶ Exhibit 1: G1, page 12

⁷ As defined in ss 501(6)(a) and 501(7)(c) of the Act.

⁸ Exhibit 1: G2, page 197

⁹ Exhibit 1: G2, page 149

¹⁰ Exhibit 1: G1, page 5

¹¹ Exhibit 8: Supplementary Materials Bundle, SM2, page 75 and G2, page 184. See also observation by Magistrate Clohessy on 17 November 2022 at G1, page 47, line 8.

12. Mr Singh was sentenced on 13 April 2021 to a term of imprisonment of 16 months which was suspended for 18 months. He was subsequently sentenced on 17 November 2022 to a period of 12 months imprisonment.
13. Mr Singh does not dispute that he fails the **character test** defined in s 501(6) of the Act.¹²¹³

LEGISLATIVE FRAMEWORK

14. Section 25(1)(a) of the *Administrative Appeals Tribunal Act 1975* (Cth) (“**the AAT Act**”) and Section 500 of the Act are the sources of the Tribunal’s jurisdiction in this matter.
15. Section 501(3A) of the Act, read with sections 501(6) and 501(7), oblige the Minister to cancel a person’s visa if the Minister is satisfied the person does not pass the **character test** because they are serving a full-time sentence of imprisonment.
16. The **character test** is defined in s 501(6) of the Act. A person fails the test if they have a ‘*substantial criminal record*’ defined by s 501(7) of the Act.
17. Section 501(7)(c) of the Act defines a ‘*substantial criminal record*’ as including the situation where a person is sentenced to a term of imprisonment of 12 months or more.
18. Under Section 501CA(3) of the Act, the Minister is obliged to give notice of a cancellation decision as soon as practicable after it is made, and to invite the affected person to make representations about revocation.
19. Section 501CA(4) of the Act confers a power upon the Minister to revoke the original decision if:
 - (a) the person whose visa has been cancelled makes representations in accordance with the invitation; and
 - (b) the Minister is satisfied that the person passes the character test, or there is another reason why the original decision should be revoked.

¹² Exhibit 1: G1, page 22, [8] and Applicant’s Statement of Facts, Issues and Contentions (**SFIC**), [3]

¹³ See also Transcript, page 7, line 40 - page 8, line 3

MATTERS FOR CONSIDERATION

The character test

20. Mr Singh's visa was cancelled on the basis that he had failed the character test. He had been sentenced to a term of imprisonment of more than 12 months and was serving that sentence on a full-time basis in a custodial institution, for an offence against a law of the Commonwealth, a State or Territory (Sections 501(6)(a) and 501(7)(c) of the Act).
21. Consequently, s 501CA(4)(b)(i) of the Act does not provide a basis to revoke the cancellation decision.
22. The remaining issue for the Tribunal to consider under Section 501CA(4)(b)(ii) of the Act is whether the Tribunal is satisfied of there being another reason to revoke the cancellation decision.¹⁴ The Tribunal "*stands in the shoes of the original decision-maker*" but with regard for the situation as at the time of its consideration.¹⁵

Is there another reason why Mr Singh's visa cancellation should be revoked?

23. The Full Court of the Federal Court in *Bettencourt v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCAFC 172 at [27], approving the reasoning in *Viane*,¹⁶ identified the following principles as being relevant to the statutory task conferred by Section 501CA(4):

"If representations are made to the Minister, a statutory obligation arises on the part of the Minister to form a state of satisfaction as to whether the person passes the character test or there is 'another reason' why the original decision should be revoked.

The state of satisfaction must be formed by reference to the representations such that a failure to consider the representations as a whole would be a failure to consider a mandatory relevant consideration.

¹⁴ *Tohi v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCAFC 125, [3]-[5] (Katzmann J); [24] (Derrington J) [103] (O'Bryan J).

¹⁵ *Nathanson v Minister for Home Affairs* [2022] HCA 26 ("**Nathanson**"); *Frugtniet v Australian Securities and Investments Commission* (2019) 266 CLR 250 at 271 [51]; *Shi v Migration Agents Registration Authority* (2008) 235 CLR 286 at 299 [40], 315 [100], 324-325 [134]; *Bushell v Repatriation Commission* (1992) 175 CLR 408, 425 (Brennan J); *Dzik v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCAFC 78, [10]-[11] (Logan, Perry, and Beach JJ).

¹⁶ *Viane v Minister for Immigration and Border Protection* (2018) 263 FCR 531, [64] (Colvin J).

The individual matters raised in the representations are not each mandatory relevant considerations and therefore do not need to be brought to account in the making of the decision such that they must form part of the considerations that give rise to the required state of satisfaction.

However, a state of satisfaction that is formed without considering a substantial or significant and clearly expressed claim made in the representations that there is a particular reason why the visa cancellation decision should be revoked is not a state of satisfaction of the kind required by the statute.

Further, there must be a real and genuine consideration of each such substantial or significant and clearly expressed claim.

If the state of satisfaction is formed that there is 'another reason' why the original decision cancelling the visa should be revoked then the Minister must revoke the cancellation...."

24. When the Tribunal assesses and considers the factors weighing for and against setting aside a visa cancellation. Section 499(2A) of the Act requires it to comply with *Direction 99 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA (the Direction)*.¹⁷

The Direction

25. The Direction contains mandatory and aspirational considerations guiding the exercise of statutory power under the Act.¹⁸
26. The following principles in paragraph 5.2 of the Direction inform the decision-making process:¹⁹

- 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.*

¹⁷ See *Gaspar v Minister for Immigration and Border Protection* [2016] FCA 1166 at para [38].

¹⁸ *BOE21 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 99, at [22], citing with approval *Matthews v Minister for Home Affairs* [2020] FCAFC 146, at [45].

¹⁹ Paragraph 5.2 of the Direction.

- 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 measurable 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 cancellation 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 risk of causing physical harm to the Australian community.*
27. Paragraph 6 of the Direction provides that, informed by the above principles, a decision-maker must consider the Primary and Other considerations described in Paragraphs 8 and 9 of the Direction where relevant to their decision making.
28. Paragraph 7(1) of the Direction provides that appropriate weight should be given to 'information and evidence from independent and authoritative sources.
29. Paragraphs 7(2)-(3) of the Direction state that '*Primary considerations should generally be given greater weight than the other considerations,*' and '*One or more primary considerations may outweigh other primary considerations.*'
30. Paragraph 8 of the Direction provides the following 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; and
 5. expectations of the Australian community.
31. Paragraph 9 of the Direction identifies the following non-exhaustive list of other considerations to be considered where relevant:
- a. legal consequences of the decision;
 - b. extent of impediments if removed;
 - c. impact on victims; and
 - d. impact on Australian business interests.
32. The Tribunal is not precluded from finding that a consideration specified under Paragraph 9 of the Direction has equivalent or greater weight than a consideration specified under Paragraph 8 of the Direction. This depends on the specific circumstances of each case.²⁰ The weighing process is determined by decision-makers exercising the relevant power under the Act.²¹

EVIDENCE

33. The following is an overview of the evidence tendered or adduced before the Tribunal. The evidence referred to below includes documentary evidence collated for the purposes of section 501G of the Act, documents tendered by the Respondent and the Applicant and testimony given by Mr Singh, his wife Ms Manpreet Kaur, his friend Mr Surinder Singh, Ms Tina Chatterjee and Dr Emily Kwok.

DOCUMENTARY EVIDENCE

34. The Tribunal received written evidence during the hearing, which is **attached** to this Decision and **marked** 'Annexure A'. The following documents were tendered into evidence and considered by the Tribunal:

²⁰ *Suleiman v Minister for Immigration and Border Protection* (2018) 74 AAR 545, at [23] and [28] (Colvin J); *FHHM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 19.

²¹ *Jagroop v Minister for Immigration and Border Protection* (2016) 241 FCR 461, at [57].

- (a) G Documents²²
- (b) The Applicant's statement of facts, issues and contentions (**SFIC**)²³
- (c) The Applicant's tender bundle, incorporating statements from Mr Singh, Manpreet Kaur, Jitendra Singh, Narinder Singh, Surinder Singh (of the Punjabi Police) and Surinder Singh (General Secretary of the Brisbane Sikh gurdwara).²⁴
- (d) The Respondent's SFIC²⁵
- (e) A Bridging Grant Visa Notification²⁶
- (f) The Respondent's Supplementary Materials Bundle dated 24 August 2023.²⁷
- (g) The Applicant's Supplementary Tender Bundle dated 30 August 2023²⁸
- (h) Dr Emily Kwok's dated 30 August 2023 report²⁹

ORAL TESTIMONY

35. The witnesses who gave evidence during the hearing were:

- (a) Mr Singh.
- (b) Ms Tina Chatterjee, psychologist.
- (c) Manpreet Kaur, Mr Singh's wife.
- (d) Surinder Singh (General Secretary, Brisbane Gurdwara).
- (e) Dr Emily Kwok.

²² Exhibit 1: G-Documents G1 to G12

²³ Exhibit 2: Applicant's Statement of Facts, Issues and Contentions

²⁴ Exhibit 3: Applicant's Tender Bundle

²⁵ Exhibit 4: Applicant's Supplementary Bundle

²⁶ Exhibit 7: Bridging Visa Grant Notification – Agyapal Singh

²⁷ Exhibit 6: Respondent's Statement of Facts, Issues and Contentions

²⁸ Exhibit 4: Applicant's Supplementary Bundle

²⁹ Exhibit 5: Doctor Emily Kwok Report

MR SINGH'S EVIDENCE

36. Relevant aspects of Mr Singh's evidence are summarised below. Mr Singh relied upon an interpreter.

Examination-in-chief

37. Dr Donnelly took Mr Singh through his 7 August 2023 statement. Mr Singh gave the following answers in relation to the issues noted below.³⁰

Family Background

INTERPRETER: Yes, I was very close to my brother. My dad was in police service and my mum also in police service. My dad died in a car accident. I spent 20 years together with my brother. We went to school together. We went to (indistinct) together and I was very close to him. When he died, I was in stress and depression.³¹

And

DR DONNELLY: And how long were you married to your ex-wife for?

INTERPRETER: We got married in 2015 and got divorced in 2021, so six years.³²

CRIMINAL HISTORY³³

INTERPRETER: Please, holly holly. Yes, my criminal history is really bad. I have so many charges only violence charges and others. Yes, I accept that.

DR DONNELLY: And you say that you accept your criminal history, and you say it's really bad. What makes you say it's really bad?

INTERPRETER: Yes, I did, under the influence of drugs, I did (indistinct) people, I hurt so many other people. Yes, I really - it's a bad criminal history.³⁴

Use of drugs

DR DONNELLY: All right. And before I move on to another topic, Mr Singh, just to, sort of, summarise in your words. So you said that your offending was linked to drugs or you'd been under the influence of drugs, I think, were your precise words. Can you just explain to the tribunal as you understand it how you came to take drugs?

.....

³⁰ Transcript, from page 6, line 27

³¹ Transcript, page 8, lines 17-21

³² Transcript, page 8, lines 44-47

³³ Transcript, page 7, line 40 – page 8, line 4

³⁴ Transcript, page 7, line 40 – page 8, line 3

INTERPRETER: When I came back from India on 11 February 2020, I asked my wife to move out because I don't want to live with her, and the house was under my name, and during lockdown there was no job available, and everything was locked down. So I was living in (indistinct words) care home. I put ad on Facebook (indistinct words) on rent, then I came across a contact with two boys named Sabjeet Singh and Sumit Bans because my two rooms were available to give rent, and I gave these two rooms to them. I was not aware about these guys to take drugs, and I was not talking to anybody. I was not sharing my feeling to anybody. I always kept silent. They noticed everything. In this way I came contact with drugs through those boys.³⁵

Concerns about returning to India³⁶

DR DONNELLY: Now, I just want to ask you some questions about India. Do you have any concerns about going back to India?

INTERPRETER: First of all, I'm scared from my ex-wife (indistinct) because we have relatives, so I'm scared. Second thing, I am scared about the accident (indistinct words) in India is really very high as my father or brother died in accident. So I am really scared about that. ...³⁷

And

DR DONNELLY: All right. Now, I just want to spend a little bit more time on this issue about the - you say you're scared of the cousin, I think, who engaged in the relationship with your ex-wife. What precisely are you scared about?

INTERPRETER: He is drug addicted (indistinct words) so he can do anything bad to me. That's why I am scared. And I have a son back in India as well, and I have a property under my name, so they might be - do a case against me to get the property, and as I told you, my brother has been died in accident. We were only two children for our parents. Now I am left by myself, and I don't want to live far from my daughter. I want to give her good education so she can settle in a better way in future. My family - they wanted me to do a government job in India, but I came to Australia, so now my dream is that, to give good education to my daughter so she can get a government job here in Australia.³⁸

Cross-examination

38. Ms Ho conducted a thorough cross-examination of Mr Singh addressing the following aspects of Mr Singh's application. Mr Singh gave the following answers in relation to the issues noted below.

³⁵ Transcript, page 9, lines 21-41

³⁶ Transcript, page 22, line 41 – page 23, line 24

³⁷ Transcript, page 22, lines 41-45

³⁸ Transcript, page 23, lines 10-24

Domestic Violence

MS HO: Okay. Okay. Thank you, Mr Singh. I might just go back to your offending, and come back to that - the help that you got from your wife at a later time. I do want to ask you some questions about the DVO - the domestic violence order - that was issued against you. So the materials - and I'm looking at the supplementary bundle, at page 88 - or starting at page 88. That's a copy of a domestic violence order that was made against you on 12 November 2020. Are you aware of that domestic violence order?

INTERPRETER: Yes. Yes, I know.

MS HO: Okay. And you're aware that the terms of that domestic violence order prevented you from contacting, or attempting to contact, or asking someone else to contact, the aggrieved: so the - and that's the person who the domestic violence order was made for. Do you agree with that?

INTERPRETER: Initially, I was not aware about the protection order that was against me. On 29 September I got a call from my ex-partner because she wanted to talk to her son, and her son was reluctant to make a direct call to her. On 30 September she gave me a call - missed call, I didn't (indistinct) her phone, and I already (indistinct words) to the tribunal. And my wife asked me, 'Why she is calling you', then I explained to her, she's calling me (indistinct) and I didn't try to attempt - I didn't attempt to phone her. I received a calls from her, and that time I was not aware about her complaint and protection order.

MS HO: Thank you, Mr Singh, so I do want to point out to you though, that in the materials, and I'm looking at G2 191, you did enter a plea of guilty to contravention of domestic violence order, and the facts of that are set out in the sentencing remarks from the Magistrate's court. And they indicate that you did contact - you agree that you contacted your wife or made attempts to contact her, and that is in contravention of the terms of the domestic violence order.

INTERPRETER: Yes, I know I breached a condition, I agree with that. Then I completed domestic violence course, then I came to know about we are not allowed to contact the person, and we are not allowed to contact the person through someone else. I agree these conditions - that time I was not aware about that but now I have knowledge.

MS HO: Okay. So now, would you agree that if you were ordered by a court not to do something, you should follow that order?

INTERPRETER: Yes.³⁹

And

MS HO: Okay, so I'm going to go to page - I'm going to go to page 94 and 95 of the supplementary materials. What that is, is an application for a domestic violence order, and the person who made the application indicates that you had hit the victim, and you were aggressive towards her including during intimacy, do you agree with that?

INTERPRETER: I am not agreed to this statement. I swear on my god, I never hit any lady in my life. When I came to know about her extramarital affairs, straight

³⁹ Transcript, page 31, line 16 – page 32, line 10

away I asked her to move out from the house. I don't know why she put these allegation on me, you can check with family. I'm not agreed to that. I got a call from her on 30 September 2021 and on 1 October she made application against me, and she filed charges. If she is scared from me, then why is she calling me. I didn't do any wrong behaviour with her.

MS HO: Mr Singh, when you say that you got a call from her on 30 September 2021, and then 1 October she made an application against you, is it fair to say that at around that time you became aware of the application against you - the application for a DVO.

INTERPRETER: I was aware about the divorce, but I was not aware of the DVO application. I been to the golden city, but I was not aware about these charges that she filed on me.

MS HO: Mr Singh, I just have one more question, do you accept that - sorry, in relation to the DVO, sorry - do you accept that contacting the victim, including texting her on several occasions and sending her a video of you drinking weed killer, or purporting to, that kind of communication is threatening?

INTERPRETER: Can you say this again?

MS HO: Sorry, do you accept that contacting the victim on several occasions, including sending a video in which you purport to drink weed killer is threatening behaviour?

INTERPRETER: Yes.⁴⁰

Mr Singh's Family Relationships in India

MS HO: When you went back to India in 2020, did you stay with your mother?

INTERPRETER: Yes.

MS HO: All right. And what about your son? Do you have any contact with your son who lives in India?

INTERPRETER: Yes.

MS HO: I'm sorry, you do have contact with your son?

INTERPRETER: Yes.

MS HO: How often do you talk to him?

INTERPRETER: Two or three times in a week.

MS HO: I just wanted to ask also about your family in law. In the G documents you've listed that your family in law are your close family. So that's your wife's mother and father, as well as your wife's siblings, so her sister and her brother. Do any of those family members live in India?

INTERPRETER: My mother-in-law and father-in-law - they are here onto this visa, and my sister-in-law is here in Australia as well, and three or four months ago my brother-in-law been to Italy.

MS HO: Sorry, what was that?

⁴⁰ Transcript, page 32, line 26 – page 33, line 14

INTERPRETER: So there is no one in India.

MS HO: No one in India, okay. But your parents in law, they'll return to India, is that correct?

INTERPRETER: Yes. Yes, because their visa is going to expire.⁴¹

And

MEMBER: Thank you, Ms Ho. I've got some questions for Mr Singh. Madam Translator. Mr Singh, in the personal circumstances form you filled in on 9 February 2023, this year, you wrote that your cousin had blackmailed both your mother and yourself. What did you mean by that? And can you give us an example?

INTERPRETER: They want to take my property. They did up case against me, and they want - I keep taking drugs, and they can take my property. They can snatch my property.

MEMBER: How is that? How can they take your property, if you - - -

INTERPRETER: Property is under my name, and they made a case to take my child custody. If they got the custody, then half of my property will go to my son. So that's why they are - they want, if I get an accident, or if I continue with the drugs, I'll die - then my property will go to my son. And they also did a case against us. So my mum - she is - they are harassing my mum, and they are not attending the court hearing, and taking the dates against (indistinct) again.

MEMBER: Thank you. In your lawyer's statement of facts, issues and contentions, you - it's said that you are aware that your cousin has links to individuals with criminal backgrounds in India. How are you aware of that?

INTERPRETER: He is living from 15 or 20 kilometres far from my place, and he also takes drugs, and he has involvement in gangsters and smugglers.⁴²

Nature of Mr Singh's offending in Australia

MS HO: Okay. Thank you, Mr Singh. So I just have a couple of questions in relation to your offending. In the supplementary materials the police have essentially summarised some of your offending before April 2021. Essentially, they've described a pattern of conduct. It describes that on several occasions - being over 150 at least - you attended a store with a receipt that wasn't yours for products that weren't yours. You then went into the store, you obtained those products from the store and then proceeded to go to the counter and ask for a refund for those items so that you would essentially get cash - or money on your bank card or a cash refund. Do you remember those incidents?

INTERPRETER: Yes.

MS HO: Yes, okay. And so would you agree that there is - that that kind of conduct is deceptive?

INTERPRETER: Yes. Yes, and I feel really sorry for that.

⁴¹ Transcript, page 25, line 41 – page 26, line 32

⁴² Transcript, page 36, line 35 – page 37, line 25

MS HO: There's over 150 of them. You have to agree that they're very repetitive.

INTERPRETER: Yes.

MS HO: And then, also in terms of the impact on businesses, it's not just a financial impact, but it is also an impact in terms of resources required of the businesses to respond to that kind of conduct.

INTERPRETER: Yes.

MS HO: All right. And, Mr Singh, sorry, you were then sentenced by the Brisbane Magistrates' Court. So you went to the court in April 2021, and you received a suspended term of imprisonment for 16 months. And you also served some pre-sentence custody time. That's correct?

INTERPRETER: Yes.

MS HO: All right. Okay, so after that time - after you've been to the court, Mr Singh, you continued to offend, and there are a number of incidents that are recorded in the materials before the tribunal about you continuing to commit fraud offences in particular. That's right?

INTERPRETER: Yes.

MS HO: Some of them are quite deceptive. Would you agree that going to a phone store and changing a price tag on a phone, and replacing the phone with a phone that you had used and was in your pocket, and essentially taking a new phone - that's very deceptive conduct?

INTERPRETER: Yes. I did it once.

MS HO: Mr Singh, why did you continue to offend after you had been to the court before, after the court has sentenced you?

INTERPRETER: Yes, after the sentence, I did this offence, because that time, there was no support, no work, and I was not aware about any sort of education. Like, drug is not the only thing to get relief from all sort of stress, but that time, I don't have any support from my family, but now, I have learned everything, how we can stay away from bad drugs, and I have all education. From - with the help of that education, I can keep myself - stay away from these sort of offences.

MS HO: I just wanted to go into that a little bit more. When you say that you had no support from your family - can you tell the tribunal when you first met your now wife.

INTERPRETER: I came into contact with my wife in 2020, through my friend, where we got married on 26 October 2021.

MS HO: Okay. Mr Singh, so the evidence in front of the tribunal indicates that you continued to offend after you met your wife, and you had support - and you had your wife around, who was a - who I understand is a support person to you. Can you explain that to the tribunal?

INTERPRETER: That time, I didn't have any education how I can escape from this drug addiction.

MS HO: Okay. And just in terms of when you say that you didn't have any education about breaking out of a drug addiction cycle, how did you come to know about courses - or how to get out of drug addiction?

INTERPRETER: So when I went to jail, I came to know about these courses. I applied for the course, and I fill the form, but I couldn't get the date, because the

waiting period was so long. Then, in detention centre, on 25 December, when I came here, I came to know about other online courses. I saw so many videos related to the rehab education. Then I came to know, if I want to quit the drug addiction, then I have to do these sort of course.

MS HO: Okay, and that was the - that's the second time you went to jail; is that right?

INTERPRETER: Yes.

MS HO: Okay. And I just wanted to confirm - so when - so is it the case that when you first went to jail, you didn't know about those courses at all; no one told you about those courses?

INTERPRETER: No, because of lack of English skills, I didn't know about these in my first time jail. The second time, yes, there was some Indian people. I came contact with them, and then I came to know about these courses.⁴³

And

MEMBER: Thank you. Now, Ms Ho took you to a long string of fraudulent offending by you, which involved taking in receipts and returning items. Do you agree that that was a fairly organised set of crimes?

INTERPRETER: I did these offence under the influence of drugs.

MEMBER: There were 98 of them in the police records. Were you under the influence of drugs on all 98?

INTERPRETER: Yes⁴⁴

Rehabilitation

MS HO: Thank you, Mr Singh. And I do want to ask you, why should the tribunal believe you when you say that because you have your wife, you are able to talk to her now - and you have also told the tribunal, in your written evidence, that, because you also have your daughter around, you won't offend in the future - why should the tribunal believe you, when you had that in the past? Sorry, Mr Singh; can you press the button again. Yes.

INTERPRETER: Member, initially, I was not aware about how I can quit the drug, how I can stop myself for doing these sort of thing. But now I have a knowledge, I have - I done drug-related course, and SMART Recovery classes, I learnt so many things, and I will continue these courses in my life. And there is also a organisation, Live - Live Life - Lived Well, who can offer mental health courses. I don't want to lose my chance. I know my wife and my daughter - they are suffering a lot because of this, and my daughter is not getting the upbringing as much as good she can take, so I don't want to lose this opportunity, and I want to give a good life to my wife and daughter. I will continue these sort of course. I check with the people who are in their recovery period from last 10 years. I - I am in contact with them. They said, we need a drug counsellor. I'll keep in touch with all these sort of facilities in my life

⁴³ Transcript, page 27, line 39 – page 29, line 45

⁴⁴ Transcript, page 37, line 16 – line 25

*when I come out, and I'll do the (indistinct) I will go to the Sikh temple, and I will keep away myself from drugs.*⁴⁵

Ms Chatterjee's evidence

39. Ms Chatterjee affirmed her 26 August 2023 report.⁴⁶
40. In cross-examination Ms Chatterjee gave the following answers in relation to the issues noted below:

MS HO: When did Mr Singh first come to you for an appointment?

MS CHATTERJEE: Let me just double check the date. But the first time I spoke to him was on 29 June 2023.

MS HO: And who organised that appointment?

MS CHATTERJEE: That was his wife.

MS HO: And since then my understanding is that you've had seven one hour sessions, the last one being on 25 August; is that still correct?

MS CHATTERJEE: Yes.

MS HO: All right. And those sessions they have been by Telehealth; is that right?

MS CHATTERJEE: Yes, it has been.

MS HO: So by video?

MS CHATTERJEE: We've tried the video on the first time, but I mean it was very difficult because the internet connection wasn't great, so we changed to a phone call instead.

MS HO: Thank you for that. Do you offer Telehealth to persons who are located overseas by any chance?

MS CHATTERJEE: I can, but I haven't personally, not yet, no, I haven't.

MS HO: Thank you. And from those sessions that you completed with Mr Singh what would be your diagnosis of Mr Singh at present?

MS CHATTERJEE: I don't think he has a mental illness at the moment. I think he's mentally doing quite well compared to of course, you know, the incidents that have happened in the past. So I wouldn't have given him a diagnosis of such at the time.

MS HO: Even though you don't consider that Mr Singh has a diagnosis, a mental illness at present, and there's no diagnosis as such?

MS CHATTERJEE: Yes.

MS HO: - - - do you have any views as to his future treatment, or whether that is required?

⁴⁵ Transcript, page 35, lines 1 -21

⁴⁶ Exhibit 4: Applicant's Supplementary Bundle pages 1 -3.

MS CHATTERJEE: As I mentioned in the report it will be based on how he's doing. So, you know, I am going to check in on him every two to four weeks. But, you know, if at any point he does feel that he's going downhill, that he's not (indistinct), he's not well, in a good mental health space, then we will increase the frequency of the sessions.

MS HO: Is it correct to say that at present whilst Mr Singh doesn't have a diagnosis your view is that it would be appropriate for him to continue psychology?

MS CHATTERJEE: Yes, just to keep him - to have someone to talk to in case he does feel - like if he feels depressed in any way, or feeling stressed. But if at any point he does feel better then we can stop and review him when he needs to go back again.

MS HO: And just in terms of Mr Singh's treatment and the nature of the sessions how would you say those sessions have gone so far?

MS CHATTERJEE: I think they've gone quite well. I've given him exercises to do while he's in the centre, and he's been filling them out. Every strategy I've given him he's been doing, so I think it's gone quite well.

MS HO: And so because those sessions have gone quite well and he's been participating in activities what would you say about Mr Singh's ability to address stress?

MS CHATTERJEE: In terms of?

MS HO: In terms of having for example strategies to address stresses, family stress for example?

MS CHATTERJEE: Yes. Well, we've talked about ways he can relieve the stress. You know, he's talked about, you know, he finds exercise quite helpful. So anything like that will just relieve him - and of course talking about it as well is very important and he's aware of that. So I've encouraged him to talk to his wife a lot more, to talk to me when needed, just to help sure that, you know, he never gets to that point again where he does, you know, overstress and resort to other sources such as the drugs that he was using in the past.

MS HO: So is it your view that Mr Singh is able to appropriately address stress if it was to come up again?

MS CHATTERJEE: Yes, I do.

MS HO: And I am just wondering what you talked about in terms of drug use during the session?

MS CHATTERJEE: Well, we talked about just - of course in the initial session it's all about getting to know him. So he gave me a bit of background information about what had happened and what led up to the drug use. The drug use itself I asked him, you know, on several occasions that if he were to go back into the community again what would be, I guess, his trigger to go back to that, and one thing he mentioned was the people that he was living with at the time. So we talked about of course not having any relationship with those kind of people, and he said on several occasions that he'd never used drugs before. So it's purely based on of course, you know, the mental state that he was in at the time as well as, you know, having the external people like, you know, those roommates that were encouraging him to do it. And if at any point - like we talked about, you know, if he does feel the urge, you know, to contact me or we can get into - I think he's got a drug counsellor, a drug

and alcohol counsellor as well just to keep those people in contact if he has those urges come up again.

MS HO: And it's your view that Mr Singh will be able to, if he was released in the community, he would be able to rely on those external sources of support, the drug counsellor for example, to refrain from drug use?

MS CHATTERJEE: Yes, I do.⁴⁷

Ms Manpreet Kaur's evidence

41. Ms Kaur affirmed her 7 August 2023 affidavit.⁴⁸
42. In examination-in-chief Ms Kaur gave the following answers in relation to the issues noted below:

DR DONNELLY: All right. I am just going to move onto another topic now, Mrs Kaur. In paragraph 36 of your statement you say that you're the sole or only breadwinner at the moment, and you start work at 5.30 in the morning and you finish at 8 o'clock at night. Does that remain the case?

INTERPRETER: Yes.

DR DONNELLY: Excuse me for saying this that seems like very long hours. How would you describe your health situation at the moment? It's okay, take your time, Mrs Kaur?

INTERPRETER: Sorry.

INTERPRETER: I am left with no option. Our house is under construction and I have a lot of debt on me, and I have to pay a fee for Agyapal, and I have a little baby as well. So the last one year we have (indistinct), and I have a health-wise (indistinct words). I have a problem with a migration issue and stress. I've been to hospital four to five times because of stress and migraine, in Logan Hospital. On 4th of 8 I had an accident, I had a neck injury and I am in pain still, but I cannot go to the (indistinct) because of my child, they don't allow child in. And I am facing a lot being alone.

DR DONNELLY: You gave evidence previously that you were getting up and working at 5.30 in the morning and coming back late at night. What's happening with the child during that time?

INTERPRETER: My mum is here, she's on (indistinct), looking after my daughter. Since she born I didn't spend too much time with my daughter. I was busy in my work. I feel really bad for her. When I came home she looks - she looks and she (indistinct) around me and ask me to play, but I am too tired and I can't give much time to her, and I really feel bad.

⁴⁷ Transcript, page 16, line 40 - page 18, line 29

⁴⁸ Exhibit 3: Applicant's Tender Bundle pages 8 to 16.

DR DONNELLY: Can you take your daughter to work with you?

INTERPRETER: In bond cleaning I can take my daughter with me, because there is vacant house and I can take her, but sometimes we are not allowed to take kids with us, so sometimes not.

DR DONNELLY: All right. You mentioned that your parents - sorry, your mother is looking after your daughter. Is that something that is going to continue into the future, or what are the circumstances in relation to your mother?

INTERPRETER: They are here for three months. They are looking for the return tickets, and they will come - they will go back in India after three or four months.

DR DONNELLY: Now, you've spoken about your daughter. What kind of relationship as best you can comment on does your daughter have with your husband?

INTERPRETER: They both have a really strong bond with each other. My daughter learned her first word, that is 'Papa'. Agyapal is always able to call and always in contact with my daughter.

DR DONNELLY: Sorry to ask you this question, Mrs Kaur, but I have to. If your husband has to go back to India how would that make you feel?

INTERPRETER: We don't think our life without him. I have a lot of debt on me. If he will have to go back to India after that our life will be worse.

DR DONNELLY: When you say that our life will be worse is that in the context of Australia or India; could you just clarify that, please.

INTERPRETER: In Australia if he will go back to India.

DR DONNELLY: So you're not planning to go to India?

*INTERPRETER: No.*⁴⁹

43. Cross-examination of Ms Kaur in relation to the issues noted below.⁵⁰

MS HO: In terms of your business I understand that you have a cleaning business. Could you please explain what your role is in that business?

INTERPRETER: I have a contract with BCA company, I have a contract with (indistinct) work in Logan Village, and 26, or more than 26 Chemist Warehouse cleaning. I work as a subcontractor.

MS HO: Do you own the business or do you work for somebody else?

INTERPRETER: Somebody give her a contract.

MS HO: Okay. So you are a subcontractor for a cleaning business; is that right?

INTERPRETER: Yes.

MS HO: In the work that you do the company that you work for has the contracts with Chemist Warehouse and Logan Village and another business, but you don't carry out every single cleaning job; is that right?

⁴⁹ Transcript, page 43, line 34– page 45, line 6

⁵⁰ Transcript, page 45, line 46 – page 46, line 26.

INTERPRETER: I have a subcontract for Chemist Warehouse, and contract for Logan Village (indistinct), and BCA company.

MS HO: Sorry, just to understand your role as well, are you doing the cleaning yourself or do you get other people, employees to clean for you?

INTERPRETER: I have two people who work for me on a permanent basis, and two people on temporary basis if my daughter needs me, or if I get sick.⁵¹

Surinder Singh's evidence

44. Mr Surinder Singh relied on his 4 July 2023 and 25 July 2023 statements.⁵²

DR DONNELLY: Thank you, Member. Good afternoon, Mr Singh. You can hear me okay?

MR SURINDER SINGH: Yes.

DR DONNELLY: I understand you prepared two statements: one is dated 4 July 2023 and another one is what passes to be 25 July 2023 in relation to these proceedings. Is that correct?

MR SURINDER SINGH: Yes, yes.

DR DONNELLY: What's your relationship with Mr Agyapal Singh?

MR SURINDER SINGH: Like, I know him through a friend. I didn't know him much, but - I didn't know him before - he used to come to the temple and then met through a friend. And then I saw him going to - coming to the temple and saying 'hello' and 'hi'. So I saw him, you know, we do some general talks in the temple. It was quite - before, like, 2019, and then, yes, I saw him, made relationship, build - develop as his friend, and I saw him, you know, doing the temple - plenty of work in the temple.

DR DONNELLY: When you say you saw him 'doing work in the temple', can you give us some examples of what he was doing in the temple?

MR SURINDER SINGH: Like, you know, after a period, we (indistinct) and I saw him doing laundry and doing some cleaning, cleaning dishes, helping people to make - preparing the food.

DR DONNELLY: How many - - -?

MR SURINDER SINGH: So it's, like, volunteer things.

DR DONNELLY: Volunteer things?

MR SURINDER SINGH: Yes.

DR DONNELLY: How many times would you say - are you able to give a number how many times you saw him engage in these voluntary activities?

⁵¹ Transcript, page 45, line 46 – page 46, line 26

⁵² Exhibit 3: Applicant's Tender Bundle, pages 19 and 20.

MR SURINDER SINGH: No, I don't - I don't have any numbers, but, you know, I saw him, like, you know, he comes, maybe, this month he come, like, twice, next he come, like, once. On Sundays mostly even if they're busy, so yes, I saw her - I saw him doing volunteer work I'll say 50, if you want a number.

DR DONNELLY: Thank you. You say that, despite his current situation - this is in your more recent situation - you still believe that he's a valuable member of the Australian Sikh community?

MR SURINDER SINGH: Yes.

DR DONNELLY: What makes you say that?

MR SURINDER SINGH: Like, I think he been to detention for a bit of 9- 10 months, from that and he went to jail, and he told me about, after he come to the jail, like after he were to leave from detention, he talk with me quite frequently and then he explained his situation. Like, he told me he had those criminal charges and his visa got cancelled and he's applying to get his visa back. And then, yes, that's - you know, since, I see the positive changes, like, you know, he express himself out there. He talk more freely. Like, he was talking freely before, but I didn't - I didn't notice any sort of, you know, drug addiction signs, you know, before. But now, he talk more (indistinct) but he talk over the phone, he talk more frequent, you know. He ask us a question, you know, to practice religion, you know. I feel - I feel like he personally change, you know, his behind is changing outside. And I saw some positive - like, I didn't saw it, but, you know, I feel like it's somebody expressing the things, you know. I think it's doing something good for him. And he explained that, you know, he practiced religion. Even he's in a detention, he's practicing for like once a day or twice a day; I'm not really sure how many times he does. And, yes, so that's the positive changes, and yes, he's - he got a family here, wife, daughter, so - father, uncle, aunties. So if he got released in the community, I think will be, you know, beneficial for us, you know. I think he's a good member of Sikh community. He made some mistakes in the past, but I think he's changed himself a lot. So yes, I saw those - I can, you know, feeling those sort of changes in me, because - in him, because he's changed. You know, we talk frequently, asking things, how's his family going I always ask him and he spoke to me. Yes, so he want to - hopefully he will continue those things when he got released from situation, detention.⁵³

45. Cross-examination of Mr Surinder Singh in relation to the issues noted below:

MS HO: Thank you, Mr Singh. My name's Gabrielle. I am a lawyer for the minister, and I just have a few questions for you today. I just wanted to ask you about what you know about Mr Singh's offending. Could you please tell the tribunal what you know about Mr Singh's criminal history?

MR SURINDER SINGH: He been to - he been to jail. He had a drug charges. He has some sort of - I don't have his criminal history with me. Like, he had drug charges, I think; he has some sort of stealing charges. I think speeding, some sort of speeding charge. There was like three of them, yes, couple of drugs and - yes, something like that. And he miss a court while his - and his wife were about (indistinct). I did read his (indistinct). I didn't read his criminal history, so.

⁵³ Transcript, page 52, line 1 – page 53, line 15

MS HO: Okay?

MR SURINDER SINGH: I believe those are the - those are the charges.

MS HO: So you haven't read his criminal history? Is that right?

MR SURINDER SINGH: Yes, I haven't read it. Like, you know, he got few drug charges, missing the court, speeding. I didn't, because - I didn't even ask him. He provide me that.

MS HO: So you haven't asked him about that, sorry?

MR SURINDER SINGH: No. Yes, I didn't ask him, you know, 'Please provide me all the charges,' you know, 'what happened.' I didn't know all of them, but I - he got drug charges, yes. Drug charges, missing the court, and speeding.

MS HO: Yes. Did Mr Singh tell you about how many charges he has - had in the past?

MR SURINDER SINGH: I didn't ask him, yes. He didn't - he told me he's got fewer than five, six, something like that. Maybe me told me. I don't remember, like, yes.

MS HO: Sorry, I just missed that last bit. Did you say, when you said he told you - maybe he told you in the past - - -?

MR SURINDER SINGH: Yes.

MS HO: - - - but you didn't ask how many charges. You said maybe six, was it?

MR SURINDER SINGH: Five, six, yes, altogether, I think. Something like that. Yes, honestly I didn't - I didn't review his criminal history, but he told me, like, you know, he have - (indistinct) are true. Yes, that's all I pretty much know: drugs, speedings, and court.

MS HO: Mr Singh, are you aware that Mr Singh - sorry, the applicant's criminal history includes over 100 separate offences - or 100 separate charges, sorry?

MR SURINDER SINGH: So he's got over 100 charges of them?

MS HO: That's right?

MR SURINDER SINGH: Okay. I mean, I didn't know that. I didn't know about that he got 100 charges, but I know he got speeding and drugs, those charges.⁵⁴

46. In re-examination, Mr Surinder Singh gave the following evidence in relation to the issues noted below:

DR DONNELLY: So my learned friend has just informed you about the number of criminal offences? -

MR SURINDER SINGH: Yes.

DR DONNELLY: So you have that knowledge now?

MR SURINDER SINGH: Yes.

DR DONNELLY: Does that change your evidence?

⁵⁴ Transcript, page 53, line 36 – page 54, line 29

MR SURINDER SINGH: No.

DR DONNELLY: Sorry, I'm going to have to get you to repeat that, because that's an important question?

MR SURINDER SINGH: No. I don't want to change my evidence.

DR DONNELLY: When you say, 'I don't want to change my evidence,' what does that mean to you?

MR SURINDER SINGH: That means I - you know, he - because he explained me about his charges. I didn't know how many altogether, but at least he was honest with me for all those charges, and he's changing himself. Yes, and he continue those things, you know. He's a part of (indistinct), so he will continue all the stuff.⁵⁵

Dr Kwok's evidence

47. Dr Kwok relied on her 30 August 2023 report.⁵⁶

48. In examination-in-chief Dr Kwok gave the following evidence in relation to the issues noted below:

DR DONNELLY: Thank you. Sorry, Dr Kwok. I'll ask that again because there was some really bad feedback, and I apologise for that. I had asked you, paragraph 61, first bullet point, that you opine that Mr Singh had no current subsisting mental health condition, and you said, 'That's correct.' And then I asked you, if that being the case, why do you recommend ongoing mental health treatment with a psychologist and drug counsellor? And your evidence, as I understand it, was to the effect that - for relapse prevention purposes, stressors, and it would be helpful for him to engage with ongoing treatment. Is that correct?

DR KWOK: That is correct.

DR DONNELLY: I just want to ask you about that. You say 'relapse prevention'. Is that relapse prevention whether he's in Australia or in India?

DR KWOK: His psychologist is in Australia, so it would be for relapse prevention in Australia. It may be helpful for him to have a psychologist in India; however, I don't know whether he will be able to access one in India.

DR DONNELLY: All right. You say in your fifth bullet point that Mr Singh was suffering from adjustment disorder and substance use disorder. And so does the applicant still suffer from any of those medical conditions?

DR KWOK: At the time of my assessment, he was not presenting with any indication that he is still suffering from these conditions.

⁵⁵ Transcript, page 55, lines 20 - 35

⁵⁶ Exhibit 5: Doctor Emily Kwok Report

DR DONNELLY: You come to the conclusion that Mr Singh is a low risk of reoffending including domestic violence offences. Can I ask you just to elaborate on that risk assessment?

DR KWOK: Yes. As previously indicated, at the time of offending, the applicant was suffering from substance use disorder and also adjustment disorder, and he did indicate that he had committed crimes in order to support his drug habit. He currently does not have or he is in remission for substance use disorder, and so that naturally reduces his risk of needing to commit crimes to support a drug habit as he does not have a habit. He is also in a stable marriage, compared with the time of offending when he was going through a separation and divorce proceeding, and so he does have a stable support within his marriage. He is now accessing professional help, and he did indicate that he has formed other associations through the online recovery groups that he attends. And so in comparison to the time of offending, he does have more support and also less emotional distress, less emotional psychological symptoms as well, and that reduces his risk.

DR DONNELLY: Thank you. And you say that he's in remission. Just for my benefit - I know I ask you this question in every hearing, but it's a different hearing - Dr Kwok, 'remission', what does that mean psychologically? What's the period before you form the view that someone's in remission?

DR KWOK: Yes. So he is, by definition, what we class as 'sustained remission'; and that is, for a period of at least 12 months, he has not met the criteria of a substance use disorder, and that is based on his self-report that he has not used drugs since July 2022.⁵⁷

49. When cross-examined, Dr Kwok provided the following answers in relation to the issues noted below:

MS HO: When you mention that there was the protective factor of the fact that the applicant had the support of his wife and he was in a stable marriage, there's evidence before the tribunal that the applicant continued to offend despite the fact that he's been married since October 2021. So he offended after that time. Does that change your opinion as to the protective factor of being in a stable marriage?

DR KWOK: I have questioned the applicant about this at the interview, and his response, and my understanding, was that he had initially hidden his drug use from his wife. And so, at the initial stages, he was still using drugs, and it was unknown to his wife and so she was unable, because she did not know, she was unable to provide support during the initial stages. And it was only after he had - or after she had discovered his drug use that she had recommended for him to seek professional help. Unfortunately, he was incarcerated before he was able to attend his first appointment in the community. And so that was his explanation for that. As I understand was that his reflection process also continued from prison and into detention centre, and so his insight into his problems developed over time through incarceration and detention.⁵⁸

And

⁵⁷ Transcript, page 60, line 1 – page 61, line 30

⁵⁸ Transcript, page 62, lines 21 – 37.

MS HO: In your evidence, you say that it's - it would be an issue for the applicant if he was returned to India because of lack of mental health services or availability of mental health services in India. Why do you say that that is an issue if it's your view that the applicant, at present, doesn't have a mental health condition or any illness?

DR KWOK: I believe my - what I have written in the report was, the question would be, if he does present with stressors from returning to India and being separated to his family, and if the stressors does result in depressive symptoms or an adjustment disorder, whether he can then access help. And so it was hypothetical.

MS HO: So it's your view that - I mean, I think it's - and you can please me know if you think that's incorrect, but it's fairly common to experience stress or stressors in some form in the - at various points in time. It's your view that the applicant requires assistance for dealing with his stress? Is that right, if it was to come up again?

DR KWOK: Yes. It is common for an individual to experience stressors. For the applicant, he does have a history of developing a mental disorder; more specifically, depressive symptoms or an adjustment disorder. So his history of that diagnosis does make him more vulnerable than, say, common - more vulnerable than most individuals.

MS HO: I do want to ask about the applicant's drug use and your view on that - sorry, his substance use disorder. It's quite clear that the applicant - so the majority of the time that, as you say, that the applicant's been in remission, he has been in an environment where his access to drugs is limited. He's been incarcerated and he's now in immigration detention. Does that change your view as to whether or not the applicant is successfully in remission from substance use disorder so much as he is not in an environment where he's able to access drugs more freely?

DR KWOK: By definition of the diagnostic manual, no, it does not. And also, the other situation is that - hence why I recommended that he continue the counselling in the community as well, even though - even though his offences started, initially started, as a result of situational stressors that are no longer existent for him. And if he does return to the community - by that I mean when he returns to the community, he's no longer dealing with a broken-down marriage; he is no longer going through a period of just losing his brother and going through that initial grief. And so he's returning to an environment that is very different to the environment that triggered him to start drug use in the first place. So, no, I won't say that his risk would be - would increase if he is released from detention at this time.⁵⁹

And

MEMBER: Dr Kwok, Member Cosgrave here. I just have a few questions. At paragraph 22 of your report, you note that the applicant reported that he began to use illicit drugs after he returned from India in 2020. The date of his return is 11 February 2020. My question goes to a behavioural point, and you're the expert here on this. The police investigating his fraud offences first observed him committing a fraud offence on 17 April 2020, approximately just over two months after he returned. How common would it be for someone to go from effectively zero drug use, if we take the applicant at his word, to committing organised fraud offences two months later to support that?

⁵⁹ Transcript, page 62, line 46 – page 63, line 36

DR KWOK: Thinking out loud here is that, if it was - because that period of time was also during the COVID lockdown as well. And so, generally speaking, it may be uncommon, but depending on how severe the substance use at that time as well. I would say that his substance use disorder would have become very severe very quickly, because, if they were in a period of lockdown, then he would have continual access to it. As I recall, he was using four to five times a week right from the - from the start. And so if we look at the severity of his substance use, then I would say there would be a relationship to how quickly that his criminal - his criminal behaviours would also develop as well. However, this is just based on reasoning of the environment that he was in, the very rapid development in intensity of - the severity of his disorder, and drawing that relationship with this element of his criminal behaviours.

MEMBER: Thank you. He was charged with 98 counts of fraud ranging from April 2020 through to August 2020, if I'm reading correctly. When I questioned the applicant on it yesterday, he stated that he was under the influence of drugs on each of those 98 occasions. Is that plausible in your view?

DR KWOK: I think it would be plausible if he was saying that he was using drugs during that entire period. I won't be able to speculate whether he was actually under the influence for each of those 98 charges.

MEMBER: Well, he gave the specific answer that he was under the influence on each of those 98?

DR KWOK: Won't be - sorry, I won't be able to speculate that. I can only state, based on what he reported, it would be plausible that he was using drugs heavily during that entire period. But whether he was under the influence at each specific time, I would not know.⁶⁰

50. In re-examination, Dr Kwok gave the following answers in relation to the issues noted below:

DR DONNELLY: Dr Kwok, you said that it was plausible that he was heavily - or using drugs heavily at the time. This is during that period of the fraud offences. You also said that he had - you diagnosed him at that time of having, independent of the substance use disorder, of having adjustment disorder. When did that, would you say, that formed? Was that sort of at the before the start of April or was it later on 2020?

DR KWOK: The adjustment disorder would have come within the three-month period of him returning back from India. If he returned in February, then the adjustment disorder would have presented sometimes between the February and the May period.⁶¹

THE TRIBUNAL'S ASSESSMENT OF THE WITNESSES

⁶⁰ Transcript, page 63, line 40 – page 64, line 28

⁶¹ Transcript, page 64, line 39- line 47

51. The Tribunal observed Mr Singh as he gave evidence and considers that his credibility is qualified.
52. While evincing a level of openness regarding his offending, rehabilitation and relationships with his wife and daughter, he sought to qualify or dispute elements of his domestic offending. There is an anomaly between his claim in cross-examination that he was not aware of his former wife's protection order application⁶² and the documentary evidence that he was served with a copy of the protection order at 3:55 pm on 28 September 2021.⁶³
53. He was open about his drug addiction and his rehabilitation efforts, acknowledging the important role played by his wife in getting him to understand his addiction and seek treatment.
54. The Tribunal has other specific concerns regarding aspects of Mr Singh's evidence.
55. In particular, the Tribunal found that Mr Singh would give long answers or short answers depending on how it suited him and what he wanted to communicate. For example, answers such as his assertion that he was always on drugs when he committed a large number of what appear to be relatively organised fraud offences between April and September 2020 are concerning. This was especially troubling when compared to the Queensland Police Service court brief's reference to the suggestion that Mr Singh was involved in a syndicate that benefited from monetary refunds.⁶⁴
56. The Tribunal found Ms Kaur to be a credible witness.
57. While the Tribunal found Mr Surinder Singh to generally be a credible witness, some of his answers under cross-examination regarding whether being told about the full extent of Mr Singh's offending altered his evidence test his overall credibility.
58. Ms Chatterjee and Dr Kwok both provided insightful expert testimony based on the reports and the Tribunal thanks them for their assistance in this matter.

⁶² Transcript, page 32, lines 45-46

⁶³ Exhibit 8: Respondent's Supplementary Materials 3, page 88

⁶⁴ Exhibit 8: Respondent's Supplementary Materials 3, page 85

PRIMARY CONSIDERATIONS

PRIMARY CONSIDERATION 1: PROTECTION OF THE AUSTRALIAN COMMUNITY FROM CRIMINAL OR OTHER SERIOUS CONDUCT

59. When considering this Primary Consideration 1, paragraph 8.1 of the Direction requires decision-makers to keep in mind that the Australian Government is committed to protecting the Australian community from harm because of criminal activity or other serious conduct by non-citizens.
60. Decision-makers should have particular regard to the principle that entering or remaining in Australia is a privilege that this country confers on non-citizens with the expectation that they are, and have been, law abiding, that they will respect important institutions and that they will not cause or threaten harm to individuals or the Australian community.
61. In determining the weight applicable to Primary Consideration 1, paragraph 8.1(2) of the Direction requires decision-makers to consider:
- 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.

TRIBUNAL'S CONSIDERATION: THE NATURE AND SERIOUSNESS OF MR SINGH'S CONDUCT

Paragraph 8.1.1(1)

62. This paragraph states that, 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, or an offence against section 197 A 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 reoffended 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.*

63. The Tribunal has considered both parties' respective submissions about Paragraph 8.1.1 of the Direction.

64. In essence:

- (a) Dr Donnelly conceded that the overall nature of Mr Singh's offending is serious. In assessing the likelihood that he will reoffend in the future, Dr Donnelly avers that Mr Singh's substance abuse issues have been a significant contributing factor, that

he has made demonstrable efforts to rehabilitate himself, has also evidenced remorse and that at the time of his offending he suffered from depression, mental anguish and financial hardships. Dr Donnelly argues that Mr Singh presents a very low risk of reoffending on the basis of his limited criminal history and considering his situation and his rehabilitation efforts.

- (b) Ms Ho submits that Mr Singh's offending conduct to date is very serious, with reference in particular to his domestic violence offences and the fact that he continued to offend after receiving a suspended sentence of 16 months. Ms Ho further contends that if Mr Singh offended in future there would be substantial physical, psychological and financial harm to the Australian community to the extent that any material risk that Mr Singh may reoffending future should be considered unacceptable.

Paragraphs 8.1.1(1)(a)(i), 8.1.1(1)(a)(ii) and 8.1.1(1)(a)(iii)

65. These paragraphs require the Tribunal, when considering this matter, to have regard to, and acknowledge that, violent and/or sexual crimes, crimes of a violent nature against women and acts of family violence are viewed very seriously.
66. The Tribunal concludes, having considered the evidence, that Mr Singh's criminal and other conduct do not constitute sexual crimes nor crimes of a violent nature against women or children.
67. The Tribunal has engaged in preparatory analysis before considering whether Mr Singh has committed acts of family violence.
68. Paragraph 4(1) of the Direction defines family violence to mean "*violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful*". The definition of "family violence" in paragraph 4(1) refers to specific conduct perpetrated upon "a member of the person's family".
69. Neither "family" or "family member" are defined in the Direction. Section 46 of the Acts Interpretation Act 1901 (Cth) (**AIA**) provides, in substance, that unless a contrary intention

appears, expressions in an instrument have the same meaning as in the Act or instrument which enables or authorises them.

70. Section 5F of the Act relevantly provides that “a person is the spouse of another person (whether of the same sex or a different sex) if, under subsection (2), the 2 persons are in a married relationship. The definition does not specifically include a former spouse, which is relevant here as Mr Singh’s offending in this regard covers a period from when he and his former wife were married and after they had divorced.
71. The Act itself does not address family violence. The provisions in the Act relating to family units are concerned with establishing who is a member of a person’s family at a particular point in time for migration purposes. For example, being a member of the “same family unit” of the primary applicant for the purpose of an application for a protection visa.
72. This is different to what the Direction’s family violence provisions in the Direction are aimed at.
73. It is well known that abuse within a spousal or de facto relationship does not necessarily stop once the relationship comes to an end, and that it sometimes escalates or occurs for the first time after the relationship ends.
74. Accordingly, excluding violence that occurs in the context of a previous spousal or de facto relationship because there was no existing relationship at the time the violence occurred, would partially defeat the purpose of the family violence provisions in the Direction. The Tribunal does not accept that this could be the Direction’s intention.
75. The Tribunal notes that the definition of “family violence” in the Family Law Act 1975 (Cth) (FLA) is identical to the definition of “family violence” in paragraph 4(1) of the Direction. This is unlikely to be a coincidence. The FLA defines what a family member is for the purpose of family violence as defined in the FLA Act. Section 4(1AB) of the FLA provides as follows:

“For the purposes of:

...

(aa) section 4AB;

a person (the first person) is a member of the family of another person (the second person) if:

...

(d) the first person is or has been married to, or in a de facto relationship with, the second person;

76. The FLA definitions of family member and spouse are expressed to apply for the purposes of the FLA Act. The Tribunal has no mandate to apply them when applying and considering the Direction. However, given they work together with the definition of “family violence” that is found in the FLA and which is also the definition used in the Direction, the Tribunal considers it is reasonable to have regard to the FLA definitions.
77. In terms of the evidence before the Tribunal, there are three main strands.
78. The first arises from Mr Singh’s former wife’s 12 November 2020 Application for a Protection Order.⁶⁵ His former wife specifically alleges that:
- a) Mr Singh slapped his former wife as he 'always tried' to be too aggressively intimate with the victim. If she denied the Applicant's advances, he would hit her with his legs;
 - b) Mr Singh mentally, emotionally and physically 'harassed' her.
 - c) Mr Singh sent her emotional text messages and videos of him pretending to drink weed killer. He has also attempted to call her from unknown phone numbers;
 - d) Mr Singh monitored the victim's location. On several occasions, he attended her workplace and followed her; and
 - e) Mr Singh entered her vehicle and forcefully attempted to be intimate with her.⁶⁶
79. The second is Dr Donnelly’s understandable contention that these allegations were not tested and the former wife not called to give evidence.

⁶⁵ Exhibit 8: Respondent’s Supplementary Materials 3, pages 92 -99

⁶⁶ Exhibit 8: Respondent’s Supplementary Materials 3, pages 92 -99

80. The third strand is Mr Singh's 17 November 2022 guilty plea and subsequent conviction for breaching the protection order that his former wife obtained after he contacted his former wife by phone and text message whilst the order was in place.
81. The Tribunal has considered the evidence and assessed the three strands identified above.
82. The Tribunal considers that Mr Singh's actions towards his former wife for which he was convicted constitute 'acts of family violence'.
83. The Tribunal considers that this paragraph carries very strong weight in favour of affirming the delegate's decision not to revoke the cancellation of Mr Singh's visa.

Paragraph 8.1.1(1)(b)(i)

84. This paragraph is not relevant. The Tribunal did not see any evidence that Mr Singh has committed any offences involving causing a person to enter into or to otherwise become a party to a forced marriage. There is no reference in the material to any formal conviction to such offending nor is there any reference to such conduct in an independent and/or authoritative police narrative or similar document.

Paragraph 8.1.1(1)(b)(ii)

85. This paragraph is not relevant. The Tribunal did not see any evidence that Mr Singh has committed crimes against vulnerable members of the community. There is no reference in the material to any formal conviction to such offending nor is there any reference to such conduct in an independent and/or authoritative police narrative or similar document.

Paragraph 8.1.1(1)(b)(iii)

86. This paragraph refers to conduct forming "...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". The Tribunal finds that this paragraph is not relevant to its assessment of the nature and seriousness of Mr Singh's conduct.

Paragraph 8.1.1(1)(b)(iv)

87. This paragraph is not relevant as the evidence does not disclose any criminal conduct by Mr Singh while in immigration detention.

Paragraph 8.1.1(1)(c)

88. In applying this paragraph, the Tribunal is precluded from considering sentences imposed on Mr Singh for:

- (a) any violent offending that he may have committed against women or children (Paragraph 8.1.1(a)(i)),
- (b) acts of family violence (Paragraph 8.1.1(a)(ii)); and
- (c) any sentence he received relating to conduct whereby he caused a person to enter into (or to become a party to) a forced marriage (Paragraph 8.1.1(b)(i)).

89. Mr Singh received a suspended 16 month sentence on 13 April 2021. More relevant to this paragraph, however, was his conviction and subsequent sentencing on 17 November 2022. He was sentenced to a 12 month term of imprisonment for the offence of *unlawful use of motor vehicle* and 6 counts of *fraud – dishonestly obtaining property from another*. He was also sentenced to concurrent periods of 6 months for the offence of *stealing by clerks and servants*, 2 counts of *receiving tainted property* and *stealing*, a 3 month concurrent term of imprisonment for the offence of *possessing dangerous drugs*, a 1 month concurrent term of imprisonment for the offences of *contravention of domestic violence order, driving without a license to merit points, offence of driving et cetera while relevant drug is present in blood or saliva, holder of learner, probationary or provisional licence and driving of motor vehicle without a driver licence*, and to separate cumulative 1 month terms of imprisonment for the offences of *failure to appear in accordance with an undertaking*. He was also found to have been convicted of an offence punishable by imprisonment during the operational period of his previously suspended sentence.⁶⁷

⁶⁷ Exhibit 1: G1, pages 4- 51 and Exhibit 8: Respondent's Supplementary Materials SM 4, pages 130-131

90. The Tribunal considers that this paragraph carries weight in favour of affirming the delegate's decision to not to revoke the cancellation of Mr Singh's visa.

Paragraph 8.1.1(1)(d)

91. This paragraph addresses two specific aspects of a non-citizen's offending: its frequency and/or whether there is any trend of increasing seriousness.

Frequency

92. Mr Singh's criminal history⁶⁸ makes clear the relatively high and sustained frequency of Mr Singh's offending, especially his fraud offences between April and September 2020 and his driving offences.⁶⁹

Trend of increasing seriousness

93. The Tribunal considers that Mr Singh's criminal and other misconduct can be viewed with equal seriousness throughout the period in question, rather than demonstrating a trend of increasing seriousness.

Paragraph 8.1.1(1)(e)

94. This paragraph addresses the cumulative effect(s) of Mr Singh's repeated offending.
95. The effects of Mr Singh's offending have also imposed significant costs – financial, emotional, psychological and social - on his wife and his former spouse.
96. Lastly, Mr Singh's criminal conduct has imposed significant costs on the policing, judicial and jail systems in terms of money and resources expended.
97. It is clear from aggregating these perspectives that the cumulative effect of Mr Singh's repeated offending is substantial, significant in many of the lives of those affected and likely to persist in the long-term.

⁶⁸ Exhibit 1:G2, pages 172-176

⁶⁹ Exhibit 8: Respondent's Supplementary Materials 2

Paragraph 8.1.1(1)(f)

98. This paragraph is concerned with whether Mr Singh has provided false or misleading information to the Respondent Minister's Department, including by not disclosing criminal offending.
99. In the absence of evidence from Mr Singh or the Respondent that enlivens this paragraph, it is not relevant to any assessment of the nature and seriousness of Mr Singh's conduct.

Paragraph 8.1.1(1)(g)

100. This paragraph involves the issue of whether Mr Singh has re-offended since being formally warned about the consequences of further offending in terms of his visa status.
101. In the absence of evidence from Mr Singh or the Respondent that enlivens this paragraph, it is not relevant to any assessment of the nature and seriousness of Mr Singh's conduct.

Paragraph 8.1.1(1)(h)

102. This paragraph requires the Tribunal to have regard, where the offence or conduct was committed in another country, to whether that offence or conduct is classified as an offence in Australia.
103. There is no reference in either party's oral or written submissions propounding or mentioning this component of the Direction. The Tribunal finds that this paragraph of the Direction is not relevant to any assessment of the nature and seriousness of Mr Singh's conduct.

Tribunal's finding: The nature and seriousness of Mr Singh's conduct.

104. The Tribunal has sought above to apply and consider each of the relevant sub-paragraphs appearing in paragraph 8.1.1(1) of the Direction.
105. With reference to the relevant and applicable paragraphs referred above, the Tribunal finds that while aspects of Mr Singh's offending may be seen as relatively minor in isolation. The nature of the totality of his repeated and cumulative unlawful conduct, encompassing fraud,

theft, speeding and breaching orders, in Australia should be characterised as particularly serious.

Tribunal consideration: Risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct.

106. This aspect of the Direction requires the Tribunal to assess the risk Mr Singh poses to the Australian community if he reoffends, taking into consideration the nature of any harm and its probability.

Paragraph 8.1.2(1)

107. This paragraph states:

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.

Paragraph 8.1.2(2)

108. This paragraph provides that, in considering the risk to the Australian community, a decision-maker must have regard to the following factors on a cumulative basis:

- 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 the most recent offence; and*
 - (c) where consideration is being given to whether to refuse to grant a visa to the non-citizen – whether the risk of harm may be affected by the duration and purpose of the non-citizen's intended stay, the type of visa being applied for, and whether there are strong or compassionate reasons for granting a short stay visa.**

109. In assessing the risk to the Australian community, the Tribunal has first considered the evidence and then the Applicant's and Respondent's submissions in relation to paragraph 8.1.2.

110. Summarising the Respondent's arguments:⁷⁰

- (a) While accepting that Mr Singh is remorseful for his misconduct and criminal offending, the Respondent questions the extent of his rehabilitation and the effectiveness of the protective factors such as his wife and child in dealing with stresses such as family circumstances and mental health issues.
- (b) For these reasons the Respondent contends that Mr Singh's risk of reoffending remains unacceptably high.

111. Summarising Dr Donnelly's arguments:⁷¹

- (a) In considering Mr Singh's past conduct as a factor in assessing the likelihood of his reoffending in future, the Tribunal should have regard to the unfortunate circumstances and timing of the breakdown of his relationship with his first wife, his brother's death and Mr Singh's subsequent drug addiction.
- (b) Going forward his protective factors include his wife and child as well as the lessons he has drawn from his rehabilitation efforts.
- (c) For these reasons Dr Donnelly argues that Mr Singh is a very low risk of reoffending, given a limited criminal history, understanding of the predicament of his situation and the deterrent factor, should the Tribunal set aside the delegate's decision, of a future visa cancellation being a possibility if he offends again.

Tribunal's Consideration: The nature of the harm to individuals or the Australian community were Mr Singh to engage in further criminal or other serious conduct.

112. The Tribunal considers that the evidence before it demonstrates that the nature of the harm to both individuals and the Australian community arising from Mr Singh's past criminal conduct is both significant and substantial.

⁷⁰ Exhibit 6: Respondent's Statement of Facts, Issues and Contentions, [44]-[60]

⁷¹ Exhibit 2: Applicant's Statement of Facts, Issues and Contentions, [39]-[58]

113. On 13 April 2021 Mr Singh was convicted of several offences and given a suspended 16 month sentence with the condition that he was not to reoffend for 18 months.
114. On 17 November 2022 he was convicted of additional offences and sentenced to 17 months imprisonment.
115. These offences included 98 charges of fraud which from a review of the police charge sheets appears to have been both frequent and well organised.
116. If Mr Singh was to reoffend in this manner the consequences for affected individuals or the Australian community would be serious.
117. If Mr Singh was to again commit an act of domestic violence the consequences for affected individuals or would be very serious.
118. Mr Singh was found guilty of numerous traffic offences, including disobeying the speed limit, unlicensed driving due to accumulation of demerit points and driving whilst a drug was present in his system and unlawful use of a motor vehicles. This supports concluding that his offending is serious and put the safety of the community at risk.⁷²
119. In the absence of any significant evidence indicating otherwise, it is reasonable to assess that the nature of the resulting harm would be the same or worse if Mr Singh engaged in further criminal or serious conduct in the future.
120. The nature of the resulting harm arising from a repeat of any of the aspects or categories of Mr Singh's criminal conduct would likely encompass a broad range of physical, psychological, financial, and societal consequences.

⁷² Per *Bartlett and Minister for Immigration and Border Protection*, [2017] AATA 1561, at [44] - [45].

Tribunal’s Finding: The nature of the harm to individuals or the Australian community were Mr Singh to engage in further criminal or other serious conduct.

121. The Tribunal finds that further future criminal conduct of the categories Mr Singh has previously engaged in would result in serious and material physical, psychological and financial harm to the Australian community.

Tribunal’s Consideration: the likelihood of the non-citizen engaging in further criminal or other serious conduct.

122. The Tribunal has holistically considered the totality of the evidence addressing the likelihood of Mr Singh engaging in further criminal or serious conduct.
123. The issues surrounding the consideration of risk under s.501(6)(d) of the Act, from which paragraphs 8.1.2(1) and (2) are drawn, have been extensively considered by the Tribunal and superior courts.⁷³
124. The Full Court of the Federal Court in *Minister for Immigration and Ethnic Affairs v Baker* (1997) 73 FCR 187, 194 stated that the reference to ‘criminal conduct’ is:

“...not concerned with whether the conduct has had some temporal result, such as the incurring of a conviction, but with the light that the conduct throws on the actor’s character. Of course, in the absence of a prosecution and conviction, satisfaction that criminal conduct has occurred will not be attained on slight material.”

125. The clear legislative intention is that the threshold is whether there is ‘a’ risk.⁷⁴ The *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth) specifically removed the word ‘significant’ from s 501(6)(d) leaving it as ‘a’ risk.⁷⁵ On this occasion the Explanatory Memorandum to the *Migration Amendment (Character and General Visa Cancellation) Act 2014* stated (at [46]):

“The purpose of this amendment is to clarify the threshold of risk that a decision maker can accept before making a finding that the person does not pass the

⁷³ See, for example, *Rahman and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration)* [2020] AATA 888 (20 April 2020); *QKVH and Minister for Home Affairs* [2020] AATA 4431 (**QKVH 2020**); *Tanielu v Minister for Immigration and Border Protection* (2014) 225 FCR 424; *GJJF and Minister for Home Affairs (Migration)* [2019] AATA 930 (17 May 2019); *Kayo Rerekura and Minister for Home Affairs (Migration)* [2019] AATA 153.

⁷⁴ See the discussion in *GJJF and Minister for Home Affairs (Migration)* [2019] AATA 930 (17 May 2019) at [48]–[52].

⁷⁵ See the discussion in *Roberts and Minister for Home Affairs (Migration)* [2018] AATA 3970 at [27].

character test in relation to paragraph 501(6)(d) of the Migration Act. The intention is that the level of risk required is more than a minimal or trivial likelihood of risk, without requiring the decision-maker to prove that it amounts to a significant risk.”

126. In *Minister for Immigration and Border Protection v Sabharwal* [2018] FCAFC 160 (**Sabharwal (FC)**), the Full Court of the Federal Court (Perram, Murphy and Lee JJ) stated at [2]:

“... Section 501(6)(d)(i) provides that a person does not pass the character test if “in the event the person were allowed to enter or to remain in Australia, there is a risk that the person would ... engage in criminal conduct in Australia”. The section requires an evaluative judgment by the decision-maker, in the present case the Minister personally, as to whether the decision-maker is satisfied that there is such “a risk.” Then, if the decision-maker is so satisfied, the decision-maker has a discretion to refuse to grant a visa to the person.”

127. In *Sabharwal (FC)* the Full Court noted that the Minister said he ‘could not rule out the possibility of further offending by Mr Sabharwal.’⁷⁶ The Full Court, citing Justice Moshinsky’s decision in *Coker v Minister for Immigration and Border Protection* (2017) 160 ALD 588, 608 [62], found that the Minister’s statement was, in substance, also a finding that there was a risk of Sabharwal re-offending.

128. In *Minister for Immigration and Ethnic Affairs v Guo* [1997] HCA 22; (1997) 191 CLR 559 (**Guo**) Chief Justice Brennan, Justices Dawson, Toohey, Gaudron, McHugh and Gummow of the High Court observed as follows (at 574-575):⁷⁷

*“The course of the future is not predictable, but the degree of probability that an event will occur is often, perhaps usually, assessable. Past events are not a certain guide to the future, but in many areas of life proof that events have occurred often provides a reliable basis for determining the probability – high or low – of their recurrence. **The extent to which past events are a guide to the future depends on the degree of probability that they have occurred, the regularity with which and the conditions under which they have or probably have occurred and the likelihood that the introduction of new or other events may distort the cycle of regularity.** In many cases, when the past has been evaluated, the probability that an event will occur may border on certainty. In other cases, the probability that an event will occur may be so low that, for practical purposes, it can be safely disregarded. In between these extremes, there are varying degrees of probability as to whether an event will or will not occur. But unless a person or tribunal attempts to determine what is likely to occur in the future in relation to a relevant field of inquiry, that person or tribunal has no rational basis for determining the chance of an event in that field occurring in the future.”*

⁷⁶ *Minister for Immigration and Border Protection v Sabharwal* [2018] FCAFC 160, [58] (“**Sabharwal (FC)**”).

⁷⁷ *QKVH and the Minister for Home Affairs (“QKVH 2020”)* [2020] AATA 4431 (2 November 2020) at [5].

(Added emphasis.)

129. Justice Mortimer explored the notion of risk and its nexus to future possibilities in *Murphy v Minister for Home Affairs* [2018] FCA 1924, [37], where Her Honour noted:⁷⁸

“That is, part of the Tribunal’s task was to decide not only whether the Applicant might engage in further offending conduct if he were permitted to stay, but what level of risk any such conduct might pose to the Australian community, the possible level of violence of the conduct being at least one measure (but not the only measure) of how serious the risk was, or whether the risk should be “tolerated”.”

130. Consequently, by applying the reasoning in **Sabharwal FC** and **Guo** to this matter, the Tribunal’s task is to make an assessment of whether there is “a risk” or a likelihood of Mr Singh engaging in further future criminal or serious conduct.

131. The Tribunal has the benefit of the Queensland Corrective Services’ assessment that Mr Singh poses a moderate risk of further general offending.⁷⁹

132. A consideration of the risk or likelihood of Mr Singh engaging in further criminal or serious conduct should encompass the factors that facilitate the risk or, conversely, hinder or retard the risk. Doing this enables the Tribunal, in making its assessment, to consider Justice Mortimer’s question as to “*whether the risk should be “tolerated”*”.

133. The Tribunal acknowledges the protective risk management factors such as Mr Singh's rehabilitation efforts and his wife and child.

134. However, while acknowledging these, the Tribunal must also recognise and qualify these factors.

135. The Respondent correctly points out that Mr Singh's rehabilitation efforts are relatively recent. However, Mr Singh continued to offend during his wife's pregnancy.

136. Mr Singh's drug addiction is clearly a driver in his offending. Without allocating specific weight to any one contributing factor, the Tribunal acknowledges that the breakup of his first

⁷⁸ *Murphy v Minister for Home Affairs* [2018] FCA 1924, [37].

⁷⁹ Exhibit 8: Respondent’s Supplementary Materials SM 4, page 130

marriage, his brother's death and the 2020 COVID lockdown all likely contributed to his use of drugs and consequently to his subsequent offending.

137. The general stresses these contributing factors imposed on Mr Singh can occur again.
138. If they do occur, then the risk is that Mr Singh will revert to drugs and then potentially reoffend.
139. There is no certainty as to whether Mr Singh would continue with his rehabilitation efforts if allowed to stay in the country, although the Tribunal acknowledges Ms Kaur's positive influence in this respect.
140. While the dynamic risk factor protection offered by his wife and child is significant in terms of reducing Mr Singh's risk of re-offending, albeit qualified as noted above at [135], Ms Kaur gave evidence to the effect that she is already under a degree of financial stress.⁸⁰ It is reasonable, when considering the likelihood of Mr Singh reoffending, to consider also what would happen if that financial stress crystallised for Ms Kaur and what this would do to the protection she offers Mr Singh, let alone what the financial stress would do to him directly.
141. Mr Singh also engaged in a sustained period of high frequency offending between April and September 2020. In the context of the contributing factors considered above, a few offences would be understandable. The sheer number of Mr Singh's offences is less understandable. If drug use can drive Mr Singh to this frequency of offending, then the risk is significant.
142. The Tribunal is concerned at the disparities between Mr Singh's apparent rapid descent into drug-taking from February 2020, his subsequent offending frequency and the degree of preparation required to execute the type of fraud that predominated in his offending until September 2020.
143. The fact that he committed so many fraud charges between April and September 2020 also supports an assessment of a high likelihood that he will engage in further criminal or other serious conduct if allowed to remain in the community with only his immediate family and his initial level of rehabilitation and psychological counselling as protective factors.

⁸⁰ Transcript, page 43, lines 45-46

Tribunal's finding: Risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct.

144. The Tribunal finds that the risk to the Australian community should Mr Singh commit further offences or engage in other serious conduct both exists and is significant and material.

Conclusion: Primary consideration 1: Protection of the Australian community

145. This consideration weighs very heavily in favour of affirming the delegate's decision to not revoke the cancellation of Mr Singh's visa.

PRIMARY CONSIDERATION 2: FAMILY VIOLENCE COMMITTED BY THE NON-CITIZEN.

146. Paragraph 8.2 of the Direction states:

- 1 *The Government has serious concerns about conferring on non-citizens who engage in **family violence** the privilege of entering or remaining in Australia. The Government's concerns in this regard are proportionate to the seriousness of the family violence engaged in by the non-citizen (see paragraph (3) below).*
- 2 *This consideration is relevant in circumstances where:*
 - (a) *a non-citizen has been convicted of an offence, found guilty of an offence, or had charges proven howsoever described, that involve family violence; and/or*
 - (b) *there is information or evidence from independent and authoritative sources indicating that the non-citizen is, or has been, involved in the perpetration of family violence, and the non-citizen being considered under section 501 or section 501CA has been afforded procedural fairness.*
- 3 *In considering the seriousness of the family violence engaged in by the non-citizen, the following factors must be considered where relevant:*
 - (a) *the frequency of the non-citizen's conduct and/or whether there is any trend of increasing seriousness;*
 - (b) *the cumulative effect of repeated acts of family violence;*
 - (c) *rehabilitation achieved at time of decision since the person's last known act of family violence, including:*
 - (i) *the extent to which the person accepts responsibility for their family violence related conduct;*
 - (ii) *the extent to which the non-citizen understands the impact of their behaviour on the abused and witness of that abuse (particularly children);*
 - (iii) *efforts to address factors which contributed to their conduct; and*

- (d) *Whether the non-citizen has re-offended since being formally warned, or since otherwise being made aware by a Court, law enforcement or other authority, about the consequences of further acts of family violence, noting that the absence of a warning should not be considered to be in the non-citizen's favour. This includes warnings about the noncitizen's migration status, should the non-citizen engage in further acts of family violence.*

147. Paragraph 4 of the Direction defines family violence as:

*... violent, threatening or other behaviour by a person that coerces or controls **a member of the person's family** (the **family member**), or causes the family member to be fearful. Examples of behaviour that may constitute family violence include:*

- (a) *an assault; or*
- (b) *a sexual assault or other sexually abusive behaviour; or*
- (c) *stalking; or*
- (d) *repeated derogatory taunts; or*
- (e) *intentionally damaging or destroying property; or*
- (f) *intentionally causing death or injury to an animal; or*
- (g) *unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or*
- (h) *unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or*
- (i) *preventing the family member from making or keeping connections with his or her family, friends or culture; or*
- (j) *unlawfully depriving the family member, or any member of the family member's family, or his or her liberty.*

148. The Tribunal has assessed at paragraphs [74] – [89] above that, from the evidence before it, Mr Singh committed acts of family violence against his former wife and that his former wife should be included within the definition of 'family' as a family member.

149. Mr Singh was found guilty of a domestic violence offence⁸¹, making consideration of paragraph 8.2 relevant.

⁸¹ Exhibit 1: G2, page 174 and Exhibit 8: SM3, pages 91-99 and paragraph 8.2 of the Direction

Tribunal's Consideration

150. When considering paragraph 8.2, the Direction states that the Tribunal must consider the elements of paragraph 8.2(3) where relevant.
151. The facts are in contention in terms of the frequency and seriousness of Mr Singh's family violence offending.
152. While he was convicted of breaching the domestic violence order, he rejected specific instances of conduct that Ms Ho put to him in cross-examination before agreeing that such conduct equated to threatening behaviour.⁸² Ms Ho's question appear based on the application for a protection order made by Mr Singh's former wife.⁸³
153. Mr Singh was convicted because he contacted his former wife in breach of the protection. He claims he never knew of the order but, as noted above, agreed that the behaviour he displayed can be seen as threatening.
154. Acknowledging Dr Donnelly's submission that much of Mr Singh's former wife's evidence was not tested, the Tribunal will focus on the conviction of breaching the domestic violence order.
155. Her Honour Clohessy's 17 November 2022 sentencing remarks indicate that Mr Singh called his former wife and asked "Have you filed a complaint against me?". The victim terminated the call immediately. Mr Singh then sent 6 text messages to the victim regarding their son in the proceeding days.
156. While Mr Singh and Ms Kaur gave oral evidence regarding his general rehabilitation, supported by documentary evidence, and his general remorse, these did not focus on family violence.
157. There is little before the Tribunal as to the extent to which Mr Singh accepts responsibility for his family violence-related conduct except for his recognition that his behaviour was

⁸² Transcript, page 32, line 19 – page 33, line 14

⁸³ Exhibit 8: Respondent's Supplementary Materials, SM3, pages 91-99

threatening. Neither is there evidence as to the extent to which Mr Singh understands the impact of his behaviour on his former wife nor his efforts to address factors which contributed to his conduct.

158. Dr Donnelly’s closing submission suggested that the Tribunal need not separately consider this primary consideration.
159. Dr Donnelly cited Justice Perram’s decision in *Bale v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs*⁸⁴ in support of his argument that a decision-maker is not usually required to take a matter into account repetitiously.⁸⁵
160. Justice Kennett’s decision in *Demir v Minister for Immigration, Citizenship and Multicultural Affairs*⁸⁶ offers a different perspective on this argument. At [25] Justice Kennett found:

*The applicant relies on the reference by the Tribunal to “three primary considerations” in its reasons at [102] (set out above at [14]) **to submit that the Tribunal was diverted from the proper performance of its task by the number of considerations that weighed against revocation, having failed to appreciate that one of these considerations (family violence) overlapped significantly with the others.** That reading takes insufficient account of the fact that the Tribunal is a human, rather than an algorithmic, decision-maker. The “weight” that the Tribunal gave to the three primary considerations was described (at [102]) as something that it had “decided” in the “the circumstances of this case”. This is properly understood as reflecting the Tribunal’s ultimate conclusion as to what was the correct decision in the light of the matters it was required to consider; not a mechanistic weighing of three considerations pointing in one direction against two pointing in the other. **The conclusion is not rendered irrational, in any presently relevant sense, by reason of the relevant considerations having been identified and enumerated by reference to the Direction. If the Tribunal was prompted to give more attention than it would otherwise have done to the fact that the applicant’s offending involved family violence, that simply reflects the Direction having had an influence of the kind envisaged in Jagroop.** (emphasis added)*

161. The Tribunal consequently considers, given that family violence is not only a component of Primary Consideration 1 but is the subject matter of Primary Consideration 2, that it reasonable to again consider family violence, this time in the context of Primary Consideration 2.

⁸⁴ *Bale v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 646

⁸⁵ *Op.cit.*, [26]

⁸⁶ *Demir V Minister For Immigration, Citizenship And Multicultural Affairs* [2023] FCA 870

Tribunal's Finding: Family Violence Committed By The Non-Citizen.

162. The Tribunal finds that Mr Singh contravened a domestic violence order. The order had been served on him on 28 September 2021.⁸⁷ Mr Singh denied being aware of the order in cross-examination.⁸⁸ He subsequently breached and displayed threatening behaviour and conduct to his former wife.

Conclusion: Primary consideration 2: Family Violence committed by the Non-Citizen

163. This consideration weighs in favour of affirming the delegate's decision to not revoke the cancellation of Mr Singh's visa.

PRIMARY CONSIDERATION 3: THE STRENGTH, NATURE AND DURATION OF TIES TO AUSTRALIA.

164. Paragraph 8.3 of the Direction provides:

- 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.*
- 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 a 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.*
- 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:*
 - (i) *considerable weight should be given to the fact that a noncitizen has been ordinarily resident in Australia during and since their formative years, regardless of when their offending commenced and the level of that offending; and*
 - (ii) *more weight should be given to the time the non-citizen has resided in Australia where the non-citizen has contributed positively to the Australian community during that time; and*

⁸⁷ Exhibit 8: Respondent's Supplementary Materials 1, page 2

⁸⁸ Transcript, page 32, lines 45-46

(iii) 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 noncitizen began offending soon after arriving in Australia.

165. Taking each sub-paragraph in paragraph 8.3 in turn to categorise the evidence before the Tribunal:

Paragraph 8.3 (1)

166. Mr Singh's immediate family in Australia consists of his wife, Ms Kaur, and his infant daughter. Both are either Australian citizens, permanent residents or an individual who has the right to live indefinitely in Australia. Both Mr Singh and Ms Kaur provided both documentary and oral evidence that Mr Singh's removal to India would have a significant adverse impact on Ms Kaur and their infant daughter.

Paragraph 8.3 (2)

167. Mr Singh's infant daughter is an Australian citizen.

Paragraph 8.3 (3)

168. Mr Singh's work colleagues, Jitendra Singh and Narinder Singh, and Mr Surinder Singh of the Brisbane Gurdwara all provided written statements and Mr Surinder Singh gave oral evidence as to Mr Singh's activities and character. Jitendra Singh states that he is a permanent resident.

Paragraph 8.3 (4)

169. Mr Singh was born in 1994 and first arrived in Australia in June 2018. Consequently, he did not spend his formative years in Australia. He began offending in 2020. In terms of the strength, nature and duration of any other ties that Mr Singh has to the Australian community, the Tribunal has Mr Surinder Singh's evidence as to Mr Singh's voluntary work at the Brisbane Gurdwara between 2018 and 2020.

170. Dr Donnelly submits that Mr Singh's removal to India would adversely affect his ability to care for his child, cause financial and practical hardship to his wife and that he would miss celebrating Indian and seek festivals with them. Overall, his wife and child would be

impacted financially socially and emotionally as they would live in Australia without him. Ms Kaur appears to suffer from mental health issues because of the stress of the detention and possible removal of Mr Singh. Mr Narinder Singh considers Mr Singh to be a good person and an active member of the community as well as a family man. Dr Donnelly also refers to Mr Singh's employment and his voluntary work at the Brisbane gurdwara. Dr Donnelly contends that this primary consideration weighs in favour of revocation of the mandatory cancellation decision.

171. The Respondent acknowledges that Mr Singh's removal would have an adverse impact on his wife and infant daughter and that his voluntary work at the Brisbane gurdwara has been a positive contribution to the Australian community. The Respondent also correctly qualifies the Mr Singh's Australian employment history by pointing out that he stole from his employer whilst working as a cleaner.⁸⁹ The Respondent further contends that this consideration weighs moderately in favour of revoking the cancellation of the Mr Singh's visa, qualified as it is by the negative impact he had on his workplace as a result of his stealing whilst employed as a cleaner and because he commenced offending within two years of his arrival.
172. The Respondent also contends that less weight should be given to this primary consideration because Mr Singh did not reside in Australia during his formative years and began offending shortly after his arrival in Australia.
173. The Tribunal notes Ms Kaur's oral testimony that she has 2 permanent staff and 2 casual staff working for her, with the casual staff being engaged if Ms Kaur needs to look after his child.

Tribunal's Consideration

174. The Tribunal considers that Mr Singh's removal will have a significant adverse impact on both his wife and his daughter and that he has made tangible, if qualified, positive contributions to the Australian community in the period between arriving in 2018 and his subsequent imprisonment in detention from late 2020 onwards.

⁸⁹ Exhibit 1: G2, page 181

175. The Tribunal also considers that his act of theft whilst employed as a cleaner in the subsequent large number of fraud and other offences that he committed and pled guilty to qualifies its analysis and assessment of this primary consideration.

Conclusion: Primary consideration 3: The Strength, Nature and Duration of Ties to Australia.

176. This consideration carries a substantive but not determinative degree of weight towards setting aside the delegate's decision to not revoke the cancellation of Mr Singh's visa.

PRIMARY CONSIDERATION 4: BEST INTERESTS OF MINOR CHILDREN IN AUSTRALIA AFFECTED BY THE DECISION.

177. Paragraph 8.4 of the Direction requires decision-makers to determine, where relevant, if revocation is in the best interests of any minor children in Australia.
178. This provision applies only if the child is, or would be, under 18 years old at the time when the application is decided.
179. If there are two or more relevant children, the best interests of each child affected by the decision whether to revoke cancellation of a visa should be given individual consideration, to the extent that their interests may differ.⁹⁰
180. In considering the best interests of the child, the Direction requires the following factors at paragraph 8.4(4) to 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;*

⁹⁰ The Direction, para 8.3(3).

- (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.*

181. The Direction requires that the Tribunal determine whether non-revocation under section 501CA is, or is not, in the best interests of each child in Australia who will be affected by the decision.

182. The initial point of the Tribunal's analysis of the primary consideration is described by Justices Tamberlin, Keifel (as she then was) and Emmett in *Sebastian v Minister for Immigration and Multicultural and Indigenous Affairs* at [14]:⁹¹

"The starting point adopted by the Tribunal is one which reflects an assumption generally held by members of the Australian community, namely that in most cases a child's interests are best served by remaining with their parents. That view is a reflection of the various matters to which Allsop J referred to in Perez, relating to the various aspects of a child's development. It seems to us that there would be no rational basis for denying the Tribunal the adoption of that assumption, at least initially. As the community would recognise, there may be factors which are to be weighed against that assumption..."

183. The evidence and submissions before the Tribunal identify that Mr Singh and Ms Kaur's infant child is the subject minor child for the assessment of this primary consideration.

184. Dr Donnelly contends that, despite having only had two months living with his daughter, Mr Singh has a close loving relationship with her. He avers that it is in his infant child's best interests to set aside the mandatory cancellation decision.

185. Ms Ho contends that this consideration weighs in favour of setting aside the mandatory cancellation decision.

⁹¹ *Sebastian v Minister For Immigration And Multicultural And Indigenous Affairs* [2005] FCAFC 31 (14 March 2005)

Tribunal's Consideration

186. The Direction requires the Tribunal to treat the best interests of these minor children as a primary consideration.
187. The Tribunal will frame its consideration in terms of paragraph 8.4(4).

Paragraph 8.4(4)(a)

188. The nature and duration of the relationship between Mr Singh and his daughter has been obviously short. The relationship is parental, there was a necessarily brief existing relationship and the appears to be limited meaningful contact whilst Mr Singh is in detention.

Paragraph 8.4(4)(b)

189. There is little evidence before the Tribunal to allow it to assess what positive role, if any, Mr Singh can play in future in respect of his daughter.

Paragraph 8.4(4)(c)

190. There is no evidence before the Tribunal to allow it to assess the impact of Mr Singh's prior conduct and any likely future conduct and whether that conduct has, or will have, a negative impact on his daughter.

Paragraph 8.4(4)(d)

191. Based on both parties' submissions, it is likely that a physical separation between Mr Singh and his daughter would have a negative effect, especially in emotional, psychological and financial terms, on his child.

Paragraph 8.4(4)(e)

192. Based on the evidence before it, the Tribunal considers that Ms Kaur currently fulfils a parental role in relation to his child.

Paragraph 8.4(4)(f)

193. There is no evidence of the child's views, given her age, before the Tribunal.

Paragraph 8.4(4)(g)

194. Ms Kaur gave evidence that Mr Singh has not exposed his daughter to family violence and nor has he abused or neglected her in any way. There was no evidence contesting this.

Paragraph 8.4(4)(h)

195. There is no evidence before the Tribunal that his child has suffered or experienced physical or emotional trauma arising from Mr Singh's conduct.

Tribunal's findings: Best interests of minor children in Australia affected by the decision.

196. The Tribunal finds, on balance, that setting aside the delegate's decision is in his child's best interests.
197. The Tribunal observes that Mr Singh and his daughter currently use video conferencing or calling as one channel of communication while he is in immigration detention and that this would be available if he is returned to India.

Conclusion: Primary consideration 4: Best interests of minor children in Australia affected by the decision.

198. This consideration carries substantial weight in favour of setting aside the delegate's decision to cancel Mr Singh's visa.

PRIMARY CONSIDERATION 5: EXPECTATIONS OF THE AUSTRALIAN COMMUNITY

199. Paragraph 8.5(1) of the Direction provides:

"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."

200. In addition to the guidance provided by paragraph 8.5(1) of the Direction, paragraph 8.5(2) of the Direction directs that a 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 in question are such that the Australian community would expect that the person should not be granted or continue to hold a visa.

201. 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 because of conduct in Australia or elsewhere, of the following kinds:

- (a) *acts of family violence;*
- (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;*
- (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;*
- (f) *worker exploitation.*

202. Paragraph 8.5(3) of the Direction provides that the above expectations apply, regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.

203. As with Paragraph 8.5(4) of the Direction, this consideration is ‘*about the expectations of the Australian community as a whole*’, and decision makers are to proceed based on the Government’s views as articulated in the Direction, without independently assessing the community’s expectations.

204. Clause 8.5(4) of the Direction correlates with the reasoning of the Full Court of the Australian Federal Court (**FCAFC**) in *FYBR v Minister for Home Affairs* (2019) 272 FCR 454 (“**FYBR**”).

205. Notwithstanding the different pathways in judicial reasoning, the plurality of the Court in *FYBR* held that “*Expectations of the Australian community*” is a deeming provision with

normative principles, ascribing to the community an expectation aligning with that of the executive government.⁹²

206. The reasoning in *FYBR* establishes that the ‘deemed community expectation’ will in most cases call for cancellation, but ‘the question of whether it is appropriate to act in accordance with the deemed community expectation is in all cases left for the decision-maker to determine’.⁹³

207. The Tribunal notes the High Court of Australia refused an application for special leave to appeal from the orders in *FYBR*, holding at [301]–[303] that ‘there is no reason to doubt the correctness of the decision of the majority of the Full Court of the Federal Court’.⁹⁴

208. Observing the norm stipulated in paragraph 8.5(1), the Tribunal now considers the guidance provided by paragraphs 5.2(2) to (6) of the Direction:

- 1 *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.*
- 2 *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 risk of causing physical harm to the Australian community.*
- 3 *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 noncitizens who have been participating in, and contributing to, the Australian community only for a short period of time.*
- 4 *With respect to decisions to refuse, cancel, and revoke cancellations of a visa, However, Australia will generally may 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.*
- 5 *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*

⁹² *FYBR* (2019) 272 FCR 454 (“**FYBR**”), at 471–2 [66] (Charlesworth J), and 476 [91] (Stewart J).

⁹³ *Ibid* at 473 [75]– [76] (Charlesworth J).

⁹⁴ *FYBR v Minister for Home Affairs and Anor* [2020] HCA Trans 56.

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) 8.4(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 risk of causing physical harm to the Australian community.

209. The next question is whether there are any factors which modify the Australian community's expectations.

210. This question is informed by the principles in paragraphs 5.2(4) to (6) of the Direction. In summary these are:

- (a) *Australia has a low tolerance of any criminal or other serious conduct by visa applicants or those holding a limited stay visa.*
- (b) *The Australian community has a low tolerance of criminal or other serious conduct by non-citizens who have been participating in, and contributing to, the Australian community for only a short period of time.*
- (c) *In relation to decisions to refuse, cancel and revoke cancellations of visas, 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.*
- (d) *The level of this tolerance will rise with the length of time a non-citizen has spent in the Australian community, particularly in their formative years.*
- (e) *the nature of a 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 a visa outcome that is not adverse to the non-citizen.*
- (f) *In particular, the inherent nature of certain types of conduct mentioned in paragraph 8.5(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 risk of causing physical harm to the Australian community.*

211. Paragraph 8.5(3) provides that the Australian community's expectations apply regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community. The Direction further explains at Paragraph 8.5(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."

212. Sub-paragraph 5.2(4) uses the term '*limited stay visa*' which is not defined in the Act. The Act does however create a taxonomy of visas. Relevantly for present purposes, Section 30 of the Act contemplates both (1) '*permanent*' visas, which permit a right to remain, '*indefinitely*'; and (2) '*temporary visas*', which provide a conditional right to remain. '*Limited stay*', as used in the Direction, seems to be a reference to non-permanent or '*temporary*' visas.

Tribunal's Consideration

213. Mr Singh held a Class WC Subclass 030 Bridging C visa. This is not a permanent visa allowing the visa holder to remain in Australia indefinitely.⁹⁵

214. This implies that sub-paragraph 5.2(4)'s lower tolerance does not apply.

215. Mr Singh has lived in Australia since he was 24 and began offending 2 years later. Mr Singh has made some contributions to the Australian community as a worker and as a volunteer.

216. Australia may 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. Mr Singh has not done so.

217. The Tribunal has also found Mr Singh's offending conduct to be particularly serious.

218. The Tribunal also observes the requirements of paragraph 8.4(3) of the Direction which dictate that the expectations of the Australian community apply regardless of whether a non-citizen poses a measurable risk of causing physical harm to the Australian community. The Tribunal has found above that Mr Singh poses a significant and material risk of re-offending.

219. The Tribunal is satisfied that Mr Singh has breached the Australian community's expectations by his criminal offending which involved serious breaches of Australian laws. Therefore, the Australian community, '*as a norm*' expects the Australian Government not to allow him to remain in Australia.

⁹⁵ *Migration Regulations 1994* (Cth), reg 200.511.

Conclusion: Primary consideration 5: Expectations of the Australian community

220. This consideration carries significant weight in favour of affirming the delegate's decision to not revoke the cancellation of Mr Singh's visa.

OTHER CONSIDERATIONS

221. The Tribunal now considers each of the four sub-paragraphs (a), (b), (c) and (d) set out in Other Considerations listed in paragraph 9 of the Direction.

Other Consideration (a): Legal consequences of the decision

222. Paragraph 9.1 of the Direction directs a decision-maker to consider the following:

(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 noncitizen.

(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.

9.1.1 Non-citizens covered by a protection finding

(1) Where a protection finding (as defined in section 197C of the Act) has been made for a non-citizen in the course of considering a protection visa application made by the non-citizen, this indicates that non-refoulement obligations are engaged in relation to the non-citizen.

(2) Section 197C(3) ensures that, except in the limited circumstances specified in section 197C(3)(c), section 198 does not require or authorise the removal of an unlawful non-citizen to a country in respect of which a protection finding has been made for the non-citizen in the course of considering their application for a protection visa. This means the non-citizen cannot be removed to that country in breach of non-refoulement obligations, even if an adverse visa decision under section 501 or 501CA is made for the non-citizen and they become, or remain, an unlawful non-

citizen as a result. Instead, the non-citizen must remain in immigration detention as required by section 189 unless and until they are granted another visa or they can be removed to a country other than the country by reference to which the protection finding was made.

(3) Decision-makers should also be mindful that where the refusal, cancellation or non-revocation decision concerns a protection visa, the person will be prevented by section 48A of the Act from making a further application for a protection visa while they are in the migration zone (unless the Minister determines that section 48A does not apply to them - see sections 48A and 48B of the Act). Further, as a result of a refusal or cancellation decision under section 501 or a non-revocation decision under section 501CA, the person will Page 12 of 24 Direction No. 99 - Migration Act 1958 - Direction under section 499 Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA be prevented from applying for any other class of visa except a Bridging R (Class WR) visa (see section 501E of the Act and regulation 2.12AA of the Regulations.

9.1.2 Non-citizens not covered by a protection finding

(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.

(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.

(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 noncitizen makes a valid application for a protection visa, the non-citizen would not be liable to be removed while their application is being determined.

223. In addressing Paragraph 9.1 (relevantly, Sub-Paragraphs 9.1(1), 9.1.2(1) and 9.1.2(3)), the following points are relevant to the Tribunal's consideration on this element of the Direction:
- (a) The Applicant's SFIC makes two points in relation to this consideration. The first is that Mr Singh faced a risk of harm if he returned to India⁹⁶. The second point was to emphasise that another legal consequence of removal would be that Mr Singh will generally be permanently excluded from ever returning to Australia⁹⁷.
 - (b) Dr Donnelly subsequently conceded in his 5 September 2023 closing submission that the risk of harm claim was unlikely to invoke Australia's non-refoulement obligations.⁹⁸
 - (c) The Respondent averred in its SFIC that the preferable approach is to simply defer the consideration of the Applicant's claims as to Australia's non-refoulement obligations.
 - (d) In her closing submission, Ms Ho agreed with Dr Donnelly's concession in his 5 September 2023 closing submission that the risk of harm claim was unlikely to invoke Australia's non-refoulement obligations.⁹⁹

Tribunal Finding: Other Consideration (a): Legal consequences of the decision.

224. The Tribunal considers that this Other Consideration (a) carries a neutral weight.

Other Consideration (b): Extent of impediments if removed.

225. Clause 9.2(1) of the Direction 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.*

⁹⁶ Exhibit 2: Applicant's Statement of Facts, Issues and Contentions, [120]

⁹⁷ Exhibit 2: Applicant's Statement of Facts, Issues and Contentions, [122]

⁹⁸ Transcript, page 72, lines 11-29

⁹⁹ Transcript, page 79, lines 31-34

The Applicant's written submissions

226. Mr Singh's SFIC¹⁰⁰ frames the issues attendant to this consideration in paragraphs [132] to [145].
- (a) As the Tribunal apprehends them, Mr Singh's main arguments around this consideration go to cultural barriers and the interaction between Mr Singh's history of drug abuse and mental health issues on one hand and the social, medical and economic support that Mr Singh could access if he is returned to India.
 - (b) In terms of cultural barriers, Mr Singh's SFIC asserts that Mr Singh will face considerable hardships if returned to India. The SFIC contends that he will be heartbroken and devastated if separated from his immediate family as his wife and child will remain in Australia. Mention is also made of the disharmonious environment of Mr Singh's extended family, founded on his former wife's marriage to his cousin.
 - (c) The SFIC further asserts that as a matter of ordinary human experience, Mr Singh's Australian criminal history could realistically impact his Indian employment prospects in India.
 - (d) The SFIC submits that Mr Singh would not, if returned to India, be immediately eligible to access Indian welfare services.¹⁰¹
 - (e) The SFIC then concludes that these hardships could realistically cause Mr Singh to relapse into drug addiction.

It then turns to consider the state of the Indian mental healthcare system¹⁰² but does not link this consideration with its argument that the hardships that Mr Singh may have to contend with in India could realistically lead him to relapse into drug addiction.

The Respondent's written submissions

227. The Respondent contends:¹⁰³
- (a) Given that Mr Singh resided in India until he was 23 years of age, it is unlikely that there would be any language or cultural factors that would impede his re-settling in India.
 - (b) Mr Singh does not have any existing serious health concerns. He states that he has some mental health concerns including depression however there is no evidence before the Tribunal that he must have ongoing treatment. Should he require medical treatment, he will have the same access to health services and treatment in India as other Indian citizens.

¹⁰⁰ Exhibit 2: Applicant's Statement of Facts, Issues and Contentions pages 17 -23.

¹⁰¹ Ibid,[137]

¹⁰² Ibid, [139]-[144]

¹⁰³ Exhibit 6: Respondent's Statement of Facts, Issues and Contentions, [106].

- (c) Whilst it may be the case that unemployment benefits in India are only payable to individuals who have lost their jobs through no fault of their own. Mr Singh will have the same access to unemployment benefits as other citizens.
 - (d) Mr Singh has not provided any supporting evidence regarding his contention that his employment prospects will be impacted due to his criminal history in Australia. For example, country information regarding any requirements to disclose overseas criminal histories to prospective employers.
 - (e) His mother resides in India and will be able to assist Mr Singh with reintegrating into the Indian community.
 - (f) Mr Singh has transferrable skills as a cleaner and truckdriver. He should be able to make some financial contribution toward his wife and daughter.
228. The Respondent acknowledges that Mr Singh is likely to face emotional hardship if removed to India.
229. While not minimising this hardship, the Respondent contends that such hardship must be viewed within the context of Direction 99, which directs decision-makers principally towards more tangible hardships rather than to emotional hardships which are likely to be common amongst most, if not all, individuals to whom Direction 99 applies.

Tribunal's Consideration

230. This aspect of the Direction requires the Tribunal to assess and consider the extent of any impediments that Mr Singh, if removed from Australia to India, will face in establishing himself and maintaining basic living standards taking the specific factors below into account.

Sub-paragraph 9.2(1)(a) – the non-citizen's age and health

231. Mr Singh is 28 years old.
232. In considering his health, the Tribunal has the benefit of Dr Kwok's 30 August report and Ms Chatterjee's 26 August 2023 report.
233. Dr Kwok's report notes Mr Singh's statement that he does not have any major health issues.¹⁰⁴

¹⁰⁴ Exhibit 5: Doctor Emily Kwok Report, [28]

234. Dr Kwok's report states that there is a relationship between Mr Singh's mental condition and his substance abuse.¹⁰⁵ His mental health symptoms progressively discontinued with his cessation of drug use. Dr Kwok advises that Mr Singh does not currently suffer from a mental condition or illness.¹⁰⁶

235. She qualifies this by stating in the next paragraph of her report that:¹⁰⁷

"Mr Singh does not currently have a mental condition or illness. The consideration will be whether professional help and treatment is available if Mr Singh presents with psychological symptoms in India as a result of his separation from his wife and daughter, and possible poor adjustment in India."

236. Dr Kwok subsequently concludes:¹⁰⁸

"Mental health services remain inadequate in India and it will be extremely difficult for Mr Singh to access treatment there in the event that he is not permitted to remain in Australia."

237. On 29 November 2022, the Queensland Corrective Services' records state:¹⁰⁹

Prisoner Singh presented with a euthymic mood self-reporting to be feeling "good" regarding his transfer to BTCC. Affect was considered congruent and broadly reactive affect. He denied recent or current depressive symptomology, and nil overt clinical indicators of such were observed during the interview. Nil evidence of formal thought disorder was observed, and no issues were noted with his memory or concentration. There was no psychomotor agitation noted at the time of the interview. He was alert and orientated to time, place and person and was not observed to be responding to perceptual disturbances during the current interview. Prisoner Singh reported no current suicidal ideation or thoughts of self-harm. Prisoner Singh identified no current psychiatric history and stated that he is not currently managed under a psychopharmacological regime. Prisoner Singh denied any concerns with his appetite and stated that his sleep patterns were adequate. Prisoner Singh did not report having a cognitive impairment and did not present with evidence of such. The prisoner denied current withdrawal symptoms and nil evidence of such were observed. There was nil indication of intoxication at the time of the interview.

238. The Tribunal concludes, after looking holistically at the available evidence of Mr Singh's general state of health in the past and currently, that he is healthy and does not appear to

¹⁰⁵ Ibid, [47]

¹⁰⁶ Ibid, [48]

¹⁰⁷ Ibid, [50]

¹⁰⁸ Ibid, [61], point 4

¹⁰⁹ Exhibit 8: SM4, page 121

suffer from any chronic physical or mental health issue that would currently impede his ability to re-settle and maintain basic living standards in India.

239. Acknowledging the Federal Court's decision in *Holloway v Minister for Immigration, Citizenship and Multicultural Affairs*¹¹⁰, the Tribunal considers that Mr Singh faces a risk that the stresses and emotional hardships that the Tribunal acknowledges throughout its consideration of impediments he will likely face if removed to India may cause him to consider resuming consuming drugs. Balanced against this risk are the protective factors he has developed in relation to his drug use – his insight into his addiction issues, his acceptance of this problem and his ownership of the problem as well as the lessons from the rehabilitation and psychological therapy he has subsequently experienced. Mr Singh now has tools at his disposal to manage this risk.

Sub-paragraph 9.2(1)(b) – any substantial language or cultural barriers

240. The Tribunal considers that Mr Singh, based on his oral testimony and the fact that he lived in India until he was 23 and has subsequently travelled back there, would face few, if any linguistic difficulties if he returned to India.
241. The Tribunal also considers that Mr Singh is unlikely to face significant cultural issues for the same reason. The Tribunal acknowledges the Applicant's SFIC's contentions of emotional distress but observes that these are more personal than cultural.
242. Given the evidence of Mr Singh's work history in Australia, his knowledge of Indian languages, his family network and his relative youth. The Tribunal considers that he would be able to overcome any cultural barriers that arise. Especially given the relatively short period (from 30 June 2018) in which he has been in Australia.
243. Noting that they are more personal factors than cultural ones. The Tribunal also notes that there was no evidence put before it to support claims that Mr Singh would face intra-family disputes or that knowledge of his Australian criminal record would be known broadly and with negative effect amongst potential Indian employers. His Australian employment experiences would also appear to be transferrable to the Indian employment market.

¹¹⁰ *Holloway v Minister for Immigration, Citizenship and Multicultural Affairs* [2022] FCA 1126

Sub-paragraph 9.2(1)(c) - any social, medical and/or economic support available to them in that country

244. The Tribunal considers that the rules relating to access to India's welfare system may prove problematic for Mr Singh in the short-term.
245. Dr Donnelly submitted that Mr Singh's criminal record may adversely affect his employment prospects in India. The Tribunal considers that addressing this issue lies in Mr Singh's hands, as it is up to him what he may disclose of his criminal history or whether he applies for roles that would require checking his Australian criminal history.
246. Balanced against these factors are his family network, his relative youth and his work experience as it translates to India.¹¹¹
247. Addressing the potential for Mr Singh's mental health to become an impediment. The Tribunal again acknowledges the Federal Court's decision in *Holloway v Minister for Immigration, Citizenship and Multicultural Affairs*.¹¹²
248. The Tribunal must consider both Mr Singh's health as broadly construed, and any social, medical and/or economic support available to him in India if he is returned there. To quote from Justice Colvin's decision in *Holloway*:¹¹³

"Used in the phrase 'age and health', the word health would ordinarily be understood to mean any aspect of a person's physical wellbeing and would include the overall state of a person's fitness and condition, including underlying health issues and ongoing effects of any past injury. Within ordinary parlance, a person's status as having a history of substance abuse, especially where there was evidence from which it may be concluded that there was a real risk of relapse into misuse of substances to such an extent that it would be an impediment to a person being able to establish and maintain basic living standards, is aspect of that person's overall health."

and

*"The error by the Tribunal was to confine the term 'health' to only include currently manifested health issues and difficulties."*¹¹⁴

and

¹¹¹ Exhibit 1: G8, page 359 relatively productive life

¹¹² *Holloway v Minister for Immigration, Citizenship and Multicultural Affairs* [2022] FCA 1126

¹¹³ Op.cit. [12]

¹¹⁴ Ibid, [13]

“Of course, there may be reasons why an underlying condition which is being managed or which is in remission or for which there is effective treatment may not be likely to manifest as an impediment.”¹¹⁵

249. The Tribunal acknowledges Mr Singh’s apprehension about the possibility of conflict between himself, his cousin and his former wife if he is returned to India. However, there was not enough evidence before the Tribunal to support this apprehension or that events have not moved on since the break-up of his first marriage and the factors that precipitated this. Nor is there any credible evidence that Mr Singh’s cousin, having apparently achieved his goal and married Mr Singh’s former wife, presently has any substantial reason to pursue an animus against Mr Singh.

Tribunal’s analysis and consideration

250. The Tribunal has considered above the extent of any impediments that Mr Singh, if removed from Australia to India, will face in establishing himself and maintaining basic living standards, considering the specific factors set out in paragraph 9.2(1).

251. In particular the Tribunal has analysed the interplay between Mr Singh’s health, broadly considered in light of the evidence and **Holloway**, and the available care and conditions to which he is likely to be exposed if removed to India. The Tribunal considers that, if Mr Singh experiences a repetition of the mental health issues he faced in Australia, then, in addition to the new risk management tools and insights he has developed, treatment is available to him in India as would be available for any other Indian citizen.

Tribunal finding: Other Consideration (b) Extent of impediments if removed.

252. Having regard to the analysis referable to each of the three sub-paragraph components of this other consideration (b), the Tribunal finds that Mr Singh would face a level of emotional, practical, financial and medical hardship if he was returned to India.

253. This hardship would be aggravated by the separation from his wife and daughter in Australia and the likely short-term difficulties he would face in re-establishing himself in India, ameliorated by his family network there.

¹¹⁵ Ibid, [15]

254. While there are risks that these difficulties and hardship may affect Mr Singh's mental health or result in him abusing substances, the Tribunal considers that his relative youth, cultural propinquity to India and support from his family in India are other dynamic protective risk management factors that mitigate and manage these risks.
255. These risk management factors also counter the high-level evidence offered by Mr Singh about the state of the Indian mental health system. The Tribunal notes that the body of the paper cited in Mr Singh's SFIC¹¹⁶ indicates that while the system is worse in rural areas relative to urban areas (and it appears from the G Documents that Mr Singh's family reside in urban areas), community-based mental health services are gaining prominence and that mental health care is being integrated into the provision of primary healthcare.
256. This consideration carries some weight in favour of affirming the delegate's decision under review.

Other Consideration (c): Impact on victims

257. Clause 9.3(1) of the Direction states:

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.

Tribunal finding: Other Consideration (c): Impact on victims.

258. There is no evidence before the Tribunal as to the impact that a decision to set aside the delegate's decision might have upon any of the victims of the Applicant's offending.
259. Based on the abovementioned statements, the Tribunal finds that this Other Consideration (c) carries neutral weight.

¹¹⁶ Exhibit 2: Applicant's Statement of Facts, Issues and Contentions, footnotes 12-15, DOI: [10.7759/cureus.42559](https://www.doi.gov.au/10.7759/cureus.42559) "A Comprehensive Analysis of Mental Health Problems in India and the Role of Mental Asylums"

Other consideration (d) Impact on Australian business interests if Mr Singh cannot remain here.

260. Paragraph 9.4 (1) compels an assessment of Mr Singh's employment links to Australia with reference to any impact his removal may have on, "*Australian business interests*", qualified by the words 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*'.
261. The Applicant's SFIC contends that¹¹⁷:
- (a) Mr Singh's wife, Manpreet Kaur, has a cleaning business. Her recent accident has compromised her ability to work. If Mr Singh is returned to the Australian community, he will work for free for the cleaning business while he seeks work rights. This will ensure the cleaning business can survive while Ms Kaur engages in rehabilitation.
 - (b) If Mr Singh is not released, there is a real prospect that the impugned cleaning business will need to be closed.
 - (c) Ms Kaur's business has cleaning contracts and provides important cleaning services in Australia.
262. The Respondent in its SFIC notes that Mr Singh is not permitted to work under condition 8101 of his Subclass 030 Bridging C visa.¹¹⁸ For the purposes of that condition, 'work' is defined as 'an activity that, in Australia, normally attracts remuneration'. The Respondent submits that Mr Singh's proposal to work for free for his wife's cleaning business is not permitted under his current visa.
263. The Respondent submits that the circumstances described are not sufficient to attract the operation of paragraph 9.4, observing that there is no evidence to suggest that the availability of cleaning services in Australia will be materially compromised if Mr Singh's visa is not re-instated. Accordingly, the Respondent contends that this consideration should be given no weight.
264. There is no evidence before the Tribunal that the Mr Singh's removal from Australia will compromise the delivery of a major project or an important service in Australia.

¹¹⁷ Exhibit 2: Applicant's Statement of Facts, Issues and Contentions, [147] – [148]

¹¹⁸ Exhibit 6: Respondent's Statement of Facts, Issues and Contentions, [113]

265. While the Tribunal respects and acknowledges the importance and ongoing success of Ms Kaur's business to Ms Kaur, it does not consider that the business rises to the level of a major project or an important service.

Tribunal finding: Other Consideration (d): the impact on Australian business interests if Mr Singh cannot remain here.

266. The Tribunal finds that Other Consideration (d) carries neutral weight.

FINDINGS: OTHER CONSIDERATIONS

267. The Tribunal now summarises the respective weights it has allocated to each of the Other Considerations (specified in the Direction) relevant to the present matter:

Other Consideration (a) – legal consequences of the decision:

- This consideration has neutral weight.

Other Consideration (b) - extent of impediments if removed:

- This consideration carries some weight in favour of affirming the delegate's decision under review.

Other Consideration (c) - impact on victims:

- This consideration has neutral weight.

Other Consideration (d) – Impacts on Australian business interests:

- This consideration has neutral weight.

ADDITIONAL CONSIDERATIONS

268. The Direction does not limit the other considerations to those listed in the Direction (paragraph 9(1) of the Direction).¹¹⁹

269. There are no additional considerations before the Tribunal in this matter.

¹¹⁹ Per *Fehoko v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 1471.

CONCLUSION

270. Because of the combined effects of ss 501(6)(a) and 501(7)(c) of the Act, Mr Singh does not pass the character test.

271. In determining whether there is '*another reason*' to revoke the cancellation decision, the Tribunal has applied the Direction to this matter's specific circumstances.

272. The Tribunal find as follows:

Primary Consideration 1 - protection of the Australian community from criminal or other serious conduct:

- This consideration weighs very heavily in favour of affirming the delegate's decision to not revoke the cancellation of Mr Singh's visa.

Primary Consideration 2 - whether the conduct engaged in constituted family violence:

- This consideration weighs in favour of affirming the delegate's decision to not revoke the cancellation of Mr Singh's visa.

Primary Consideration 3 - the strength, nature and duration of ties to Australia:

- This consideration carries a substantive but not determinative degree of weight towards setting aside the delegate's decision to not revoke the cancellation of Mr Singh's visa.

Primary Consideration 4 - best interests of minor children in Australia affected by the decision:

- This consideration carries substantial weight in favour of setting aside the delegate's decision to cancel Mr Singh's visa.

Primary Consideration 5 – expectations of the Australian Community:

- This consideration carries significant weight in favour of affirming the delegate's decision to not revoke the cancellation of Mr Singh's visa.

273. The Tribunal has also set out above the weight attributable to the other considerations and the additional consideration.

274. A comprehensive, holistic and integrated view of the primary considerations and the other considerations leads this Tribunal to a finding that it is not satisfied of there being another reason to revoke the cancellation of the Applicant's visa. Accordingly, the Tribunal makes a finding of affirming the delegate's decision to not revoke the cancellation of Mr Singh's visa.

DECISION

275. Pursuant to section 43 of the *Administrative Appeals Tribunal Act 1975* (Cth), the Tribunal **affirms** the decision made by the delegate of the Respondent dated 27 June 2023 to not revoke the cancellation of Mr Singh's visa.

I certify that the preceding two hundred and seventy five paragraphs (275) paragraphs are a true copy of the reasons for the decision herein of Member D. Cosgrave

.....[SGD].....

Associate

Dated: 19 October 2023

Date of hearing: **4 & 5 September 2023**

Counsel for the Applicant: **Dr Donnelly of counsel, instructed by Zarifi Lawyers**

Counsel for the Respondent: **Ms Ho of Clayton Utz Lawyers**

ANNEXURE A – EXHIBIT REGISTER

EXHIBIT	DESCRIPTION OF EVIDENCE	PARTY	DATE OF DOCUMENT	DATE RECEIVED
1	<p>G Documents (G1-G12)</p> <p>G1. Application for review</p> <p>G2. Notification of reviewable decision</p> <p>G3. Relevant legislation and policy</p> <p>G4. Decision Record</p> <p>G5. R's email to A's previous solicitor</p> <p>G6. Confirmation of receipt of revocation</p> <p>G7. A's email to R attaching evidence</p> <p>G8. A's Email attaching natural justice letter and Personal Circumstances Form</p> <p>G9. A's email asking where to send documents</p> <p>G10. A's email confirming where to send documents</p> <p>G11. A's Email attaching psychologist's report</p> <p>G12. Visa Record</p>	R	Various	11.07.2023
APPLICANT'S DOCUMENTS				
2	Applicant's SFIC	A	07.08.2023	07.08.2023
3	<p>Applicant's Tender Bundle</p> <p>1. Statement – Agyapal Singh</p> <p>2. Statement – Manpreet Kaur</p> <p>3. Statement – Jitendra Singh</p> <p>4. Statement – Narinder Singh</p> <p>5. Statement – Surinder Singh (Punjabi Police)</p> <p>6. Statement – Surinder Singh (Sikh Temple)</p> <p>7. Detention visit photos</p> <p>8. Applicant's Police Clearance Certificate India</p>	A	Various	07.08.2023

EXHIBIT	DESCRIPTION OF EVIDENCE	PARTY	DATE OF DOCUMENT	DATE RECEIVED
	9. Death Certificate – Kuljit Singh 10. Course Completion Certificates 11. Smart Recovery Attendance Confirmation 12. Tenancy Agreement of Applicant			
4	Applicant's Supplementary Bundle 1. Treating Psychologist Report (Ms Chatterjee) 2. IHMS Records – Smart Recovery Program Attendee 3. Letter from Applicant's GP 4. Photographs of Applicant's ex-partner with Applicant's cousin 5. Divorce order 6. Screenshot of missed calls and text messages of Applicant's ex-wife and Applicant 7. Medical Certificate of Applicant's Partner 8. X-Ray referrals for Applicant's Partner 9. Photos of Applicant's family home 10. DFAT Country Information India 11. Breaking the Stigma: Addressing Mental Health in India 12. India fails to address growing mental health problem 13. Stigma and discrimination as a barrier to mental health service utilisation in India 14. Stigma and Mental Health Problems in India Context 15. Why is mental health stigmatised in India 16. Magnitude of drug dependence in India 17. Public perception towards drug use 18. 64% youths in Gurdaspur district doing drugs 19. Confined in 3 illegal rehab centres, 71 rescued in raids	A	Various	30.08.2023

EXHIBIT	DESCRIPTION OF EVIDENCE	PARTY	DATE OF DOCUMENT	DATE RECEIVED
	20. India has the lowest divorce rate in the world: 5 reasons why it's not a good thing 21. Facing divorce stigma in South Asian communities			
5	Doctor Emily Kwok Report	A	30.08.2023	30.08.2023
RESPONDENT'S DOCUMENTS				
6	Respondent's SFIC	R	24.08.2023	24.08.2023
7	Bridging Visa Grant Notification – Agyapal Singh	R	18.11.2022	24.08.2023
8	Respondent's Supplementary Materials Bundle SM1: Materials produced under summons by Beenleigh Magistrates Court SM2: Materials produced under summons by Brisbane Magistrates Court SM3: Materials produced under summons by Queensland Police Service SM4: Materials produced under summons by Queensland Corrective Services	R	Various	24.08.2023