Administrative Appeals Tribunal

DECISION AND REASONS FOR DECISION

Division:	GENERAL DIVISION
File Number(s):	**2023/7889**
Re:	**Eddy SARPOR**
	APPLICANT
And	**Minister for Immigration, Citizenship and Multicultural Affairs**
	RESPONDENT

DECISION

Tribunal:	**The Hon. John Pascoe AC CVO, Deputy President**
Date:	**12 January 2024**
Place:	**Sydney**

The correct and preferable decision is that the reviewable decision of 19 October 2023, not to revoke the cancellation of the Applicant's visa is set aside, and in substitution it is decided that the cancellation of the Applicant's visa is revoked.

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

The Hon. John Pascoe AC CVO, Deputy President

CATCHWORDS

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where Applicant does not pass the character test – whether there is 'another reason' to revoke the cancellation – consideration of Direction No. 99 – protection of the Australian community –links to the Australian community – the best interests of minor children in Australia – expectations of the Australian community – legal consequences of the decision - impediments to removal – reviewable decision set aside

LEGISLATION

Migration Act 1958 (Cth) s 499, 501

CASES

FYBR v Minister for Home Affairs [2019] FCAFC 185

Plaintiff M1 v Minister for Home Affairs [2022] HCA 17

Mukiza and Minister for Home Affairs [2019] AATA 4445, and

Mukiza and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] AATA 1448

SECONDARY MATERIALS

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

REASONS FOR DECISION

The Hon. John Pascoe AC CVO, Deputy President

12 January 2024

BACKGROUND

1. I note the Respondent's Statement of Facts, Issues and Contentions contains a helpful factual summary of this application, much of which is replicated below.

2. The Applicant is a 35 year old citizen of Liberia. He first arrived in Australia in March 2012 at the age of approximately 24.

3. The Applicant's recorded convictions begin in 2020 as follows:

Date	Offence(s)	Sentence
23 September 2022	1. Film person in private act without consent, 3 counts; 2. Install device, adapt building to observe or film other, 1 counts;	1. Imprisonment (aggregate): 18 months
19 July 2022	1. Carry out sexual act with another without consent, 3 counts; 2. Wilful and obscene exposure in/near public place/school, 2 counts;	1. Intensive correction order: 15 months 2. Community Service work: 80 hours 3. Undertake rehabilitation (drug and alcohol), and attend accredited Clinical Psychologist
16 August 2021	1. Fail to comply with reporting obligations	1. Community Correction Order: 12 Months
25 November 2020	1. Carry out sexual act with another without consent; 2. Fail to appear in accordance with bail acknowledgement; 3. Wilful and obscene exposure in/near public place/school	1. Conditional Release Order: 2 years 2. Attend psychiatrist and/or psychologist as directed
11 November 2020	1. Cth – Unlawfully trespass on premises in Territory 2. Destroy/Damage property not exceeding $1000 in value	1. Convicted and released without passing sentence 2. Good behaviour order: 12 months

4. The Applicant filed an appeal of his conviction of 23 September 2022 but withdrew that appeal.

5. On 8 November 2022, the Applicant's visa was mandatorily cancelled under s 501(3A) of the Act and he was invited to make representations about revocation of this cancellation.

6. On 21 November 2022, the Applicant made representations seeking revocation and provided further evidence.

7. On 11 May 2023, the Department of Immigration (the Department) notified the Applicant of further information received and the commencement of a new Ministerial Direction, and invited the Applicant to comment. The Applicant provided further submissions on 2 & 5 June 2023.

8. On 19 October 2023, a delegate of the Respondent decided not to revoke the cancellation decision, and the Applicant was notified on 20 October 2023.

9. On 26 October 2023, the Applicant applied to the Administrative Appeals Tribunal for review of the non-revocation decision.

LAW

10. The relevant legislation and policy is outlined below.

11. The character test is defined in s 501(6) of the *Migration Act*. A person will not pass the character test if they have a 'substantial criminal record' pursuant to s 501(6)(a), and includes where a person has been sentenced to a term of imprisonment of 12 months or more, or where a person has been sentenced to two or more terms of imprisonment, where the total of those terms is 12 months or more.

12. Section 499 of the *Migration Act* provides that the Minister may give written directions to a person who has functions or powers under that Act. The directions must be about the performance of those functions or the exercise of those powers. Delegates of the Minister, and Tribunal members that conduct merits review of the reviewable character decisions, must comply with directions made under s 499 of the *Migration Act.*

13. In exercising the discretion under s 501(1) of the Act, the Tribunal must comply with Direction No. 99 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA (Direction 99).

14. On 23 January 2023 the Minister made Direction 99 pursuant to s 499 of the Act to guide decision-makers in the exercise of the discretion in s 501. The Direction came into effect on 3 March 2023.

15. Paragraph 5.2 of the Direction sets out the following principles relevant to the exercise of the discretion:

> *1) Australia has a sovereign right to determine whether non-citizens who are of character concern are allowed to enter and/or remain in Australia. Being able to come to or remain in Australia is a privilege Australia confers on non-citizens in the expectation that they are, and have been, law-abiding, will respect important institutions, such as Australia's law enforcement framework, and will not cause or threaten harm to individuals or the Australian community.*
>
> *2) Non-citizens who engage or have engaged in criminal or other serious conduct should expect to be denied the privilege of coming to, or to forfeit the privilege of staying in, Australia.*
>
> *3) The Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they engaged in conduct, in Australia or elsewhere, that raises serious character concerns. This expectation of the Australian community applies regardless of whether the non-citizen poses a measureable 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.

16. Section 6 of the Direction provides that, informed by the principles in paragraph 5.2 of the Direction, a decision-maker must take into account the considerations identified in section 8 and 9, where relevant to the decision.

17. Section 8 of the Direction provides that the five primary considerations are:

    (a) Protection of the Australian community from criminal or other serious conduct (Primary Consideration 1);

    (b) Whether the conduct engaged in constituted family violence (Primary Consideration 2);

    (c) The strength, nature and duration of ties to Australia (Primary Consideration 3);

    (d) The best interests of minor children in Australia (Primary Consideration 4); and

    (e) Expectations of the Australian community (Primary Consideration 5).

18. Section 9 of the Directions provides that the four other considerations which must be taken into account where relevant are:

    (a) Legal consequences of the decision;

    (b) Extent of impediments if removed;

    (c) Impact on victims; and

    (d) Impact on Australian business interests.

ISSUE

19. As it is accepted by both parties that the Applicant does not pass the character test as defined in section 501(7)(c) of the Act, the issue for determination is whether there is 'another reason' why the decision to refuse the Applicant's visa should be overturned.

EVIDENCE

Oral Evidence of the Applicant

20. The Applicant affirmed his statement of 19 November 2023. He said he was born in Liberia and lived there until he was 6 or 7 years old.

21. He said he escaped the country during the civil war, and that his mother, who had been a government employee, was captured, raped and murdered in front of him.

22. He gave evidence that, after his escape from the country, he was reunited with his half sisters, and had lived in refugee camps in the Ivory Coast and in Guinea, until they were sponsored by their father to come to Australia.

23. The Applicant said his immediate family in Australia is made up of 6 half siblings, his step mother and his father, as well as 10 nieces and nephews. He said that his relatives were all citizens.

24. The Applicant said that in relation to the children of his half-sister, Comfort, that he had a close and unique relationship. The Applicant's evidence was that he used to take care of them. He said that they speak often on the phone.

25. In relation to his other half-sister, Nataye, the Applicant said that he also has a close relationship with them, that he speaks to them 3-4 days every week and used to take care of her 4 children.

26. In relation to his half-sister Amelia, the Applicant acknowledged that he doesn't speak to these children as much, because their mother is very busy with her work.

27. The Applicant estimated that he had worked as a labourer in Australia for 9 or 10 years before he was imprisoned.

28. In relation to his offences, the Applicant acknowledged that they were very serious and that he was ashamed of himself. He said that there was no excuse for his conduct, and that he hoped that the people he had hurt would be able to forgive him and know that he is sorry.

29. When he was questioned about the reasons the Applicant committed these offences, he said that during that time he was dealing with the breakdown of his marriage, and his past trauma and depression, but that there was no concrete reason for committing these crimes. The Applicant gave evidence that he was abusing alcohol and marijuana, and that he wasn't 'thinking straight'.

30. When it was put to him that the purchase and installation of a camera indicated that these were planned offences, the Applicant said that at that time there were too many things in his head, and that he was not being a normal person, or doing things a normal person would do.

31. The Applicant for the most part agreed with all the facts of his offending, but repeated that he had no concrete reason for why he had acted in this way, and that when he smoked marijuana he had sexual thoughts and had little control of himself.

32. He said in relation to his substance abuse, that he would smoke 2-3 grams of marijuana daily and drink excessive amounts of spirits every day after work. He said he was trying to self-medicate for his PTSD, but that it was the wrong approach. He said he had been abusing substances in this way for approximately 5 years. His evidence was that he was abusing alcohol and marijuana after work, and that it did not prevent him holding a job

33. In relation to his marriage breakdown, he said that the relationship had soured in 2019, and the relationship formally ended in 2020. He said that his ex-wife had began a relationship with another man, during their marriage, because of his substance abuse. He said his substance use substantially increased following the breakdown of this relationship.

34. In relation to the Applicant's rehabilitation the Applicant had completed the following:

    (a) Smart Recovery;

(b) Rush;

(c) Sexual harassment compliance;

(d) Intervention hub;

(e) STARTTS;

(f) Circuit Breaker;

35. The Applicant said that these courses had helped him to develop critical thinking skills and maintain better emotional regulations and social problems. He had also taken several courses to address his substance abuse. The Applicant noted he had taken several of these courses of his own volition, such as the Circuit Breaker, and Sexual harassment compliance.

36. When it was put to the Applicant that the sexual harassment course he had completed was in relation to sexual harassment in the workplace and not relevant to his offences, he said that he accepted that his offending did not occur in the workplace but that his offending was still sexual harassment and it was relevant.

37. He had also attended 5 sessions with a psychologist following his first conviction, but that he had relapsed into substance abuse and was unable to continue attending.

38. The Applicant said that his experience in prison was very challenging as it was classed as a high risk prison. His evidence was that he commonly witnessed violence between inmates and that three attempts had been made to stab him during his incarceration. He said despite this environment, he had decided to try and improve himself, and sought training courses and psychological help.

39. If he was released into the community, the Applicant gave evidence that he would like to establish a career in a trade related to solar energy, and that he had already completed an online course in this subject.

40. His immediate intentions if he was released was to move to Melbourne to live with his father so that he would have support both financially and mentally. The Applicant said that if he was unable to relocate to Victoria he would stay in NSW with his brother or sister.

41. When questioned how there would be space for the Applicant to live with his father and stepmother in their 3 bedroom house, as his sister, her partner and their 4 children already lived with him, the Applicant said that his understanding was that his sister was looking to move out soon.

42. The Applicant also stated that he would seek to further his psychological treatment through a local doctor on his relocation to Melbourne.

43. It was also put to the Applicant that as a result of his convictions, he was subject to parole conditions and conditions related to being on the child sex register. The Applicant stated that he had spoken to his parole officer about both his obligations in relation to parole and as a registered child sex offender, and that he had filed the paperwork for his transfer from New South Wales to Victoria 6 months ago, with an estimated 6 month processing time. He also said that if he was not allowed to relocate to Melbourne he could stay with his brother in rented accommodation if necessary.

44. The Applicant was concerned about his safety if returned to Liberia. He gave evidence that he had left Liberia at age 6 or 7 and had lived in refugee camps until he had come to Australia, he did not know anyone in Liberia. Further, the Applicant was worried that he would not be able to continue his mental health treatment if he was returned to Liberia, and was not confident that he would find employment. He said if he was to be returned it would be very challenging and he wouldn't know where to start.

45. The Applicant also expressed fears for his person, stating that the people who had killed his mother would want to hurt him if he returned, and also that he would be at risk from 'witch doctors' as he would be considered Australian. The Applicant maintained this position when it was put to him that these events occurred 30 years ago when he was a small child.

46. The Applicant, on the topic of relations who remain in Africa, gave evidence that he has three children, and a half sister who live in Guinea. He said all of the children were born after he had left Africa and he has limited contact with them.

47. When questioned in relation to the possibility of living in Guinea with his half sister, the Applicant said that his sister does not have a steady income, that Guinea also does not

have a good health system or employment situation and that he would still be in fear of his mother's murderers.

Oral Evidence of Lambeh Sarpor

48. The witness affirmed his statement of 19 November 2023, he was the half-brother of the Applicant.

49. The witness said that he was distressed at the thought of the Applicant being returned to Liberia. He said that the possibility is distressing and the family is facing trauma because of it.

50. The witness gave evidence that he speaks to the Applicant throughout the week, and visits the Applicant in Villawood.

51. The witness said that the Applicant was a strong emotional and physical support for him and his young family.

52. The witness gave evidence that he had driven up from Melbourne to give evidence, as he was in the process of moving there so his family could join him in Australia.

53. The witness's family was currently in Ghana, had never visited Australia, and had never met the Applicant.

54. The witness was aware of the Applicant's offences, and that the Applicant was on the child protection register.

Oral evidence of Comfort Sarpor

55. The witness affirmed her statement of 19 November 2023, she was the half sister of the Applicant.

56. The witness described her relationship with the Applicant as 'tight', and that they are always communicating. She said the Applicant had a good relationship with her children from the moment they were born and that they have bonded with the Applicant as an Uncle.

57. The witness said that the Applicant and her husband used to work together and that they got along well.

58. The witness gave evidence that her family lives in the Central West region of NSW.

59. The witness said that she would feel very bad if the Applicant was returned to Liberia. Her evidence was that it's not a good place, but for the Applicant it was the place where he had lost his mother. The witness also said that he would have no social connections there and his family was in Australia.

60. When questioned about the Applicant's criminal offending, the witness said that she did not know about it at the time, and that she was shocked when she became aware of it.

61. She said that she had known him as an honest, caring person who had bonded well with the family.

Evidence of Junior Quiah

62. The witness affirmed their statement, which was before the Tribunal. He was the Applicant's brother in law.

63. The witness gave evidence that he had known the Applicant since around 2015, and that they had worked together for about 6-7 months. He had known the Applicant as a good person and brother in law.

64. The witness was aware of the Applicant's criminal record but had only found out about it some weeks previous.

65. The witness described him as calm and well spoken, and that he had a good relationship with his children.

66. In relation to the children, the witness said that they speak on the phone and by video and that the children want to see him.

67. The witness said that he found the prospect of the Applicant being removed to Liberia stressful and that it would be devastating. The witness said that the Applicant's family is here and he had lost his mother in Liberia.

DECISION

PRIMARY CONSIDERATION 1: PROTECTION OF THE AUSTRALIAN COMMUNITY

68. In considering this primary consideration, I have had regard to paragraph 8.1 of Direction 99.

69. There are two aspects of this consideration:

(a) the nature and seriousness of the conduct of the non-citizen; and

(b) the risk to the Australian community should the non-citizen re-offend.

The Nature and Seriousness of the Applicant's Conduct

70. Looked at individually and certainly, collectively, the Applicant's crimes must be regarded as extremely serious. There are a series of offences, from 14 September 2019 until April 2022, against females, all of whom were vulnerable and on two occasions involved a minor.

71. In this regard, I note that September 2019 the Applicant was seen masturbating in his car in view of a teenage girl while she was helping unload the groceries. Further, at the hearing the Applicant admitted that he had followed the young girl previously and masturbated in front of her, for which he was not charged.

72. It is also important to note that the Applicant failed to comply with his obligations as a registered child sex offender on at least one occasion. Given that the child sex register, and related restrictions were put in place for the protection of children and the community, failure to comply with obligations must always be viewed as extremely serious.

73. The offences for which the Applicant's visa was cancelled involved the Applicant, in one instance, installing a camera in his bathroom at home in order to film, on two occasions, the victim using the toilet. The second offence involved the Applicant following a woman into

the bathroom and attempting to film her using the toilet by holding his phone under the dividing wall.

74. The Applicant showed little or no self-control in relation all of his offending conduct, and continued to offend despite previous convictions, warnings and restrictions placed on him by the Courts.

75. As was conceded by the Applicant's counsel, the Applicant's conduct must be seen as entirely unacceptable, very damaging to vulnerable women, and extremely serious.

The Risk to the Australian Community should the Applicant reoffend

76. There can be no doubt that if the Applicant were to reoffend, there is significant harm to the community.

77. There were a number of psychological assessments made as to the risk the Applicant posed to the community. The most recent was a report of July 2022, which assessed the Applicant as being at an 'above average' risk of reoffending. I note that some of the factors which contributed to this assessment included the Applicant's age and his previous convictions.

78. I accept the Applicant's argument that the assessment did not take into account a number of protective factors including the Applicant's family support, the impact of being imprisoned and detained in immigration detention, and the fact that, after these assessments had been made, the Applicant completed a number of courses which were designed to assist him in dealing with various aspects of his criminal behaviour.

79. The courses the Applicant completed include the following:

    (a) RUSH (Real Understanding of Self Help);

    (b) Drug and Alcohol Abuse 101;

    (c) Sexual Harassment Compliance;

    (d) Intervention Hub – Thinking Skills program;

    (e) SMART Recovery program;

80. I accept that the Applicant showed some insight in applying for and completing these courses. I also accept that at the hearing the Applicant showed a level of insight and significant remorse in relation to his offending.

81. I also give some weight to the argument of the Respondent that none of the courses completed by the Applicant dealt specifically with sexual offences. I note however, that the Applicant's term of imprisonment was deemed by the authorities as too short for him to be enrolled in the sexual offenders course. The Applicant did, however, complete the courses that were available to him in prison, and sought out further courses in immigration detention.

82. The Respondent argued that the failure of the Applicant to complete a sex offenders course meant that he must be regarded as being at higher risk to the community. I give this argument some weight, given that the Applicant showed a complete inability to regulate his sexual impulses and desire for sexual gratification.

83. I also take into account that the Applicant lived in Australia for approximately 7 years without offending, and that his offending started only after the breakdown of his marriage and was accompanied by significant drug and alcohol consumption. He was also without family support at the time the offences were committed.

84. It is important to note the remarks of the sentencing magistrate who found a link between the Applicant's mental health and the Applicant's criminal offending, which was taken into account by his Honour. The Court did not find that the Applicant's substance abuse was a significant contributing factor.

85. I note also a psychological assessment of July 2022 indicates that among the cohort of sex offenders he was at high risk of reoffending and that he was at high risk of offending generally.

86. Whilst noting the remarks of the sentencing magistrate it is, in my opinion, appropriate for the Tribunal in assessing risk of reoffending, to take into account all of the steps the Applicant has taken to address both his mental health, and his substance abuse.

87. The Tribunal's attention was brought to two cases previously heard in the Tribunal, namely *Mukiza and Minister for Home Affairs* [2019] AATA 4445, and *Mukiza and Minister for*

Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] AATA 1448, to support an argument that the link between the Applicant's mental health and his offending reduced his moral culpability and therefore this first consideration should be given less weight.

88. Every case before the Tribunal turns on its own facts, and in those cases the facts and evidence before the Tribunal are significantly different to those in this case. In particular, I note that while there were some similarities, the Applicant in those cases also suffered a serious psychiatric illness, and the offences of that Applicant were considered by the Tribunal in the first instance to be 'largely personal to the Applicant rather than offending which involved and affected other people at large'. The Tribunal is not faced with similar circumstances in this matter. Rather, in this case the Applicant's offending caused harm to other people, including a minor. Accordingly, I give this argument no weight.

89. Whilst I do not accept the argument that the Applicant is of low risk of reoffending, I am of the view that the level of risk should be assessed as being at the high end of moderate to high, given the Applicant's efforts to efforts to address his mental health issues and substance abuse, which must be weighed against the lack of an up to date psychological assessment, and the fact that the Applicant has not undergone specific counselling to deal with his sexual offending.

90. In making this assessment I also take into account the Applicant's evidence that he is going to continue treatment if he is released from detention, and I accept that he has a genuine desire to do so.

91. Overall, I give this first consideration very heavy weight in favour of affirming of the reviewable decision.

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

92. The Applicant arrived in Australia in early 2012.

93. His stepmother, father, and his siblings reside in Australia. He has a sister who lives in Africa, but it appears that he has limited contact with her.

94. The Tribunal heard evidence from the Applicant's younger brother Lambeh, his sister Comfort, and his brother in Law, Junior. There was also a letter from the Applicant's father in his support, although the Applicant's father was not available for cross examination.

95. I accept the evidence that the Applicant's presence in Australia is important to the ongoing welfare of his immediate and extended family, especially given the Applicant's background and that of his family.

96. The Applicant's sister, Comfort gave evidence that it would be traumatic for the whole family, if the Applicant were to be removed from Australia. Her evidence was supported by her husband, the Applicant's brother in law.

97. The Applicant's brother drove from Melbourne to Sydney to give evidence on the Applicant's behalf and told the Tribunal that the family would be very distressed if the Applicant were to be removed from Australia to Liberia. I accept his evidence as to the strength of the ties between him and his brother.

98. There is no doubt, on the evidence available to the Tribunal, that removal of the Applicant from the lives of his family would have a significant effect on their wellbeing. The Applicant's counsel also raised with the Tribunal, that if the Applicant were to be deported, he would not be allowed to return to Australia, and it was therefore unlikely that his family would see him again.

99. I note that the Applicant did not spend his formative years in Australia, but did not commence offending until 7 years after his arrival, during which time he maintained employment.

100. Accordingly, I give this consideration heavy weight in favour of revocation of the delegate's decision.

PRIMARY CONSIDERATION 4: THE BEST INTERESTS OF MINOR CHILDREN IN AUSTRALIA

101. The Applicant has 10 nieces and nephews in Australia, with whom he has a greater or lesser contact.

102. His most regular contact is with the three children of his sister, Comfort. Who are aged approximately 9, 7 and 5. I accept the evidence of both the Applicant's sister and brother in law, that the Applicant plays an important role in their lives.

103. In relation to the other 7 children, it would appear that the Applicant has less contact but he still plays a part in their lives. The children of his sister Comfort call the Applicant 'Uncle' and speak to him almost every day.

104. Although the Tribunal was not informed of the exact terms of the restrictions placed on the Applicant as a child sex offender, it would appear that he is able to maintain an ongoing relationship with his nieces and nephews, although there may be some reporting and other restrictions.

105. I note that the Applicant is not in a parental relationship with any of the children, and does not provide financial support. Although the Applicant may live in close proximity to some of the children if he moves to Melbourne, it is relevant that his sister, Comfort, lives in Orange and there is no suggestion that the Applicant would live in Orange long term.

106. In light of all of the evidence before the Tribunal I give this consideration moderate weight in favour of revocation of the delegate's decision.

PRIMARY CONSIDERATION 5: THE EXPECTATIONS OF THE AUSTRALIAN COMMUNITY

107. Direction 99 sets out the expectations of the Australian community. Broadly, these encapsulate the findings of the Federal Court in *FYBR v Minister for Home Affairs* FCAFC 185, where the Full Court decided by majority that it is not for the decision-maker to assess the expectations of the Australian community for the purpose of applying this consideration. Rather, the expectations of the community that decision-makers are required to consider are set out in direction at paragraph 8.5.

108. There can be no doubt, when looking at the considerations in Direction 99, that the Applicant's behaviour is does not accord with the expectations of the Australian community. In particular, the community expects that women and children will be safe and protected from sexual predations.

109. It is relevant to take into account the traumatic circumstances of the Applicant's early life, including witnessing the death of his mother and time spent in refugee camps.

110. Overall, however, I am of the opinion that this consideration weighs heavily in favour of affirming the reviewable decision.

OTHER CONSIDERATIONS

Legal consequences of the decision:

111. It was agreed by the parties that the circumstances of the current case do not engage Australia's non-refoulment obligations. It was also common ground that the Applicant would be unlikely to succeed in an application for a Protection visa despite the fact that he said he was still frightened about the prospect of returning to Liberia because of what had happened to his mother some 30 years ago. It is not necessary for this Tribunal to make any findings in relation to a protection visa.

112. It was however, accepted by both parties that the Applicant is likely to face detention until any application for a protection visa is determined or the Applicant is issued another visa, or deported.

113. It was raised by counsel for the Applicant that if deported, the Applicant would face permanent exclusion from Australia. Although this may be correct, such a consequence would, however, be dependent on the outcome a number of factors beyond the remit of this Tribunal.

114. Given all of the uncertainties, I give this consideration neutral weight.

Extent of impediments if removed:

115. The Applicant has no ties with Liberia, he and his family fled that country in very traumatic circumstances. The Applicant has never returned to Liberia since fleeing the country as a 6 year old child, and expressed what I accept is genuine fear of returning to that country.

116. The Applicant would have no support from family or friends in Liberia and would have no knowledge of support services or local cultural norms.

117. There was no evidence before the Tribunal as to whether the Applicant would face language barriers if he were to return to Liberia.

118. The Applicant would have no accommodation in Liberia, is likely to face difficulty finding employment, and even though he may be able to access the same medical services as other Liberian residents it is likely that it would take him some time to do so.

119. Forced removal to a country with which the Applicant has no familiarity, would no doubt be very deleterious to his mental health, particularly given his genuine fears for his safety if returned to Liberia. The fact that these fears may not, on the evidence before the Tribunal, be well grounded does not mean that they are not genuinely held.

120. The Applicant would, in my view, face considerable emotional, financial and physical stress if he were to be removed from Australia to Liberia, a country where his mother was murdered in front of him as a 6 year old child.

121. I accept the Applicant's evidence that although he has a half-sister who resides in Guinea, she would be unable to assist him, especially as she has no employment and children to support. I place no weight on the argument that the Applicant would be able to leave Liberia and go to live with his half-sister in a third country, as there is simply no evidence to support such a proposition.

122. I give this consideration very heavy weight in favour of revocation of the delegates decision.

GENERAL

123. It was put to the Tribunal that it could consider matters not directly covered by Direction 99 and in particular, that the Tribunal should take into account the Applicant's traumatic upbringing, having witnessed the murder of his mother and growing up in refugee camps.

124. In the circumstances of this case, it is not in the opinion of the Tribunal, necessary to go beyond the provisions of Direction 99, and as I explained to the parties in the hearing, all of the relevant matters were properly considered within the context of the relevant considerations under Direction 99, and I give no weight to any arguments on considerations outside the provision of Direction 99.

CONCLUSION

125. This was a very difficult case in which to determine a proper overall balance, taking into account the relevant considerations and the evidence overall.

126. On the one hand the Applicant is guilty of very serious crimes, including sexual offending against a minor. He could properly be seen to have abused the trust of the Australian community and to have failed to take advantage of opportunities to avoid prison given to him through the criminal justice system. He has ignored the restrictions placed on him as child sex offender.

127. On the other hand, the Applicant has had a very traumatic childhood. He did not start to offend soon after arrival in Australia, his offences started some 7 or 8 years after his arrival, and coincided with the breakdown of his marriage and an increase in his use of marijuana and alcohol. The Applicant showed considerable remorse and has undertaken a number of courses which should assist in ameliorating the risk of further offending. He has a large and supportive family in Australia and history of consistent work whilst in the community.

128. Imprisonment and immigration detention have been a salutary lesson to the Applicant. The fact that the Applicant knows the consequences of reoffending should be a significant deterrent.

129. On balance, I find the correct and preferable decision is to set aside the reviewable decision, and in substitution decide that the cancellation of the Applicant's visa is revoked.

I certify that the preceding 129 (one hundred and twenty-nine) paragraphs are a true copy of the reasons for the decision herein of The Hon. John Pascoe AC CVO, Deputy President

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

Associate

Dated: 12 January 2024

Date(s) of hearing:	**4 & 5 January 2024**
Counsel for the Applicant:	**Dr Jason Donnelly**
Solicitors for the Respondent:	**Mr Aaron Taverniti**