Federal Court of Australia

District Registry: New South Wales Registry

Division: General No: NSD726/2025

**MFKF**
Applicant

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

**ORDER**

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|---|---|
| **JUDGE:** | Justice Jackman |
| **DATE OF ORDER:** | 14 August 2025 |
| **WHERE MADE:** | Sydney |

**BY CONSENT, THE COURT ORDERS THAT:**

1. A writ of certiorari issue quashing the decision of the second respondent dated 15 April 2025.

2. A writ of mandamus issue directed to the second respondent requiring it to determine the applicant's application for review of the decision of the delegate of the first respondent dated 28 January 2025 according to law.

3. The first respondent pay the applicant's costs as agreed or assessed.

**THE COURT NOTES THAT:**

The second respondent (**the Tribunal**) erred in considering that the applicant presented as a "moderate" risk of harm to the Australian community (at [86], [129], [134], [136]). This was because the Tribunal engaged in impermissible speculative reasoning in relation to the applicant's long-term adherence to his treatment regime, and ability to abstain from substance abuse (at [85]–[86], [95], [112]–[113]), in circumstances where it had accepted:

a. there was expert evidence which suggested that the applicant's risk of reoffending was low (at [69]),

b. the applicant had been drug-free and in remission with no interest in taking drugs because he was committed to his treatment plan (at [77]),

c. the applicant had engaged in programs and demonstrated insight (at [83]), and

d. the applicant had actively sought treatment and that he takes medication (at [94]).

See *Muggeridge v Minister for Immigration and Border Protection* (2017) 255 FCR 81; [2017] FCAFC 200 at [36] (Charlesworth J, with Flick and Perry JJ in agreement); *CKL21 v Minister for Home Affairs* (2022) 293 FCR 634; [2022] FCAFC 70 at [74] (Moshinsky, O'Bryan and Cheeseman JJ).

The error was material in circumstances where the Tribunal could have realistically come to a different outcome having considered:

a. the protection of the Australian community "weighs heavily" in favour of affirming the Minister's decision not to grant a protection visa (at [95]),

b. the moderate risk the applicant represented was "unacceptable" (at [129]), and

c. that "substantial weight" be given to the nature of the offending and moderate risk of the applicant reoffending (at [134]).

See *MZAPC v Minister for Immigration and Border Protection* (2021) 273 CLR 506; [2021] HCA 17 at [39]; *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321; [2024] HCA 12 at [14].

Date orders authenticated: 14 August 2025

Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

**Schedule**

No: NSD726/2025

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Second Respondent ADMINISTRATIVE REVIEW TRIBUNAL