Reasons for Decision

Administrative Review Tribunal

Applicant/s:	Alvaro Andres Perez Arizabaleta
Respondent:	Minister for Immigration and Citizenship
Tribunal Number:	2025/3624
Tribunal:	Deputy President K McMillan KC
Place:	Brisbane
Date of Decision:	6 August 2025
Date of Written Reasons:	30 September 2025

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

Deputy President K McMillan KC

CATCHWORDS

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – Direction no. 110 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – strength, nature and duration of ties to Australia – best interests of children – expectations of the Australian community – extent of impediments if removed - decision under review set aside and substituted decision made not to cancel visa.

LEGISLATION

Administrative Review Tribunal Act 2024 (Cth)

Migration Act 1985 (Cth)

CASES

Belmont v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCA 667.

Cargill and Minister for Immigration and Multicultural Affairs (Migration) [2025] ARTA 50

Gaspar v Minister for Immigration and Border Protection (2016) 153 ALD 337

Gray v Minister for Immigration and Border Protection (2024) AATA 3363

LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2024] 180 CLR 321.

Minister for Home Affairs v Buadromo [2018] FCAFC 151.

Marzano v Minister for Immigration and Border Protection [2017] FCAFC 66; 250 FCR 548,

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane (2021) 274 CLR 398

Minister for Immigration, Citizenship and Multicultural Affairs v McQueen (2024) 94 ALJR 594.

Pavey and Minister for Home Affairs [2019] AATA 4198

Plaintiff M1/2021 v Minister for Home Affairs [2022] 275 CLR 582

Rano v Minister for Home Affairs, Minister for Cyber Security [2024] FCA 1003

Suleiman v Minister for Immigration and Border Protection [2018] FCA 594

Taulahi v Minister for Immigration and Border Protection (2018) 357 ALR 467

SECONDARY MATERIALS

Direction no. 110 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA

Statement of Reasons

INTRODUCTION

1. On 6 August 2025 I determined to set aside a decision made by a delegate of the Respondent not to revoke the cancellation of the applicant's visa. These are my reasons.

2. The Applicant is a male citizen of Colombia. He was born in 1991 and is 33 years old. He arrived in Australia on 1 July 2011, aged 19. Since then, he has only left Australia on one occasion, between 30 June 2016 and 7 August 2016. He lives in Australia with his wife Ms G and young daughter, R.

3. Shortly after arriving in Australia, the Applicant was granted a Class BS Subclass 801 Partner visa (**visa**) pursuant to section 501CA(4) of the *Migration Act 1958* (the **Act**).

4. Since he arrived in Australia, the Applicant's employment has included cleaning, kitchenhand and eventually, engagement in the construction industry. He reported that he had full time employment installing air-conditioning ducts for a period of about 5 years.

5. The Applicant described a lengthy history of polysubstance abuse acknowledging significant:

> "symptoms of depression, anxiety and a diminution in his self-esteem, and a propensity to self-medicate with illegal drugs, including cannabis, cocaine, heroin, crystal methylamphetamines (ice) and Ketamine. He would also abuse benzodiazepines. He reported that his substance use was compounded by adverse peer group dynamics. At the time of his separation, there was a further deterioration in his mood state, which led to an escalation in his substance use as a means of self-medication. During this time he had no treatment for substance use[1] nor indeed for his Mood Disorder."[2]

6. The substance misuse continued unabated and caused tensions in the marriage leading to separation and a subsequent suicide attempt on his part. It was during the separation that he committed sexual offences.

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[1] A5 Report T Watson-Munro p 5

[2] P4 Ibid

7. On 11 February 2022, the Applicant was convicted in the District Court of New South Wales at the Downing Centre of three counts of *sexual intercourse without consent – S1* (**the offences**) for which he was sentenced to an aggregate term of imprisonment of 4 years with a non-parole period of 2 years and 8 months.[3] The offences were committed on 21 June 2020[4]. He remains in immigration detention at this time.

8. On 29 June 2023, the Applicant's visa was cancelled under section 501(3A) of the Act on the basis that he did not pass the character test because of the operation of subsections 501(6)(a) and 501(7)(c) of the Act, the Applicant having been sentenced to a term of imprisonment of 12 months or more (the **cancellation decision**).

9. On 3 July 2023, the Applicant was given notice of the cancellation decision. At this time, he was serving a sentence of imprisonment on a full-time basis in New South Wales, for an offence against a law of the Commonwealth, a State, or a Territory, at the time of the cancellation decision.

10. On 8 July 2023, the Applicant made representations to the delegate seeking revocation of the cancellation decision. On 14 May 2025, the delegate determined, pursuant to s 500(1)(ba) of the Act not to revoke the cancellation decision (the **reviewable decision**).

11. On 18 May 2025, the Applicant made an application to the Administrative Review Tribunal (the **Tribuna**l) seeking merits review of the reviewable decision made on 14 May 2025.

12. In making this decision, I have had regard to all exhibits tendered, together with all evidence and submissions made at the hearing conducted on 28 July 2025.

LEGISLATIVE FRAMEWORK

[3] G3/68-70
[4] G3/73

Direction 110 (the Direction)

13. In exercising the power under s 501CA(4) of the Act, the Tribunal is mandated to comply with Direction 110 issued by the Minister under s 499(1) of the Act[5] (**the Direction**) which commenced on 21 June 2024.[6]
14. The guiding principles are set out in clause 5.2 of the Direction and the Tribunal must take into account the factors identified in clauses 8 and 9 of the Direction (to the extent relevant in the particular case) in deciding the application.[7]
15. An objective of the Direction is to guide decision-makers in exercising powers under ss 501 or 501CA of the Act.[8] In exercising the power under s 501CA(4), the Tribunal must have regard to the primary and other considerations set out in the Direction where relevant to the decision.[9]
16. In applying the considerations, information and evidence from independent and authoritative sources should be given appropriate weight. The protection of the Australian community consideration should generally be given greater weight than other 'primary considerations' and 'primary considerations' should generally be given greater weight than 'other considerations'. There is however scope to weight '*other considerations*' more highly in appropriate circumstances[10] and similar flexibility is available in the relative weighting of primary considerations.
17. The primary considerations are:
    a. Protection of the Australian community from criminal or other serious conduct;
    b. Whether the conduct engaged in constituted family violence;
    c. The strength, nature and duration of ties to Australia;
    d. The best interests of minor children in Australia;
    e. Expectations of the Australian community.
18. The other considerations are:
    a. the legal consequences of the decision;
    b. the extent of impediments to the Applicant establishing and maintaining basic living standards if removed from Australia;
    c. the impact on Australian business interests.

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[5] The Direction, cl 5.1(4); s 499(2A) of the Act.
[6] The Direction, cl 2.
[7] The Direction, cl 6.
[8] The Direction, para 5.1(4).
[9] The Direction, para 6.
[10] *Suleiman v Minister for Immigration and Border Protection* [2018] FCA 594 at [23].

19. I am also required to give consideration to any other considerations raised by the Applicant.
20. Considering the primary considerations and the other considerations involves an evaluative process, requiring the Tribunal to identify factors for and against revoking the cancellation, and to undertake an assessment and evaluation of those factors leading to the formation of a view as to whether the cancellation should be revoked[11].

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

21. The question for determination by the Tribunal is whether the Reviewable Decision not to revoke the mandatory cancellation decision was the correct or preferable one on the material before the Tribunal.[12]
22. Section 501CA(4) confers '*a wide discretionary power*' to revoke a mandatory cancellation, if the decision-maker, in this case the Tribunal, is satisfied that there is '*another reason*' why the cancellation should be revoked.[13] The majority of the High Court of Australia in *Plaintiff M1/2021 v Minister for Home Affairs* [14] noted that the assessment of whether there is, in fact, '*another reason*' is to be undertaken by reference to the representations made by the applicant.
23. The Applicant concedes that he does not pass the character test. The only question in issue is whether there is another reason why the original cancellation decision should be revoked.
24. I respectfully adopt the analysis by DP O'Donovan, who considered[15] recent Federal Court cases which raise if there exists '*another reason*', whether there is nonetheless a residual discretion as to the revocation of a visa. While the question does not appear to be finally settled,[16] he approached this matter on the basis that:

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[11] *Gaspar v Minister for Immigration and Border Protection* (2016) 153 ALD 337 at [38] per North ACJ

[12] *Administrative Review Tribunal Act 2024* (Cth) ss 9, 54, 56(1)(a); *Administrative Review Tribunal (Consequential and Transitional Provisions No 1) Act 2024*, s 3 and Sch 16 Item 24.

[13] Migration Act, s 501CA(4).

[14] *Plaintiff M1/2021 v Minister for Home Affairs* [2022] 275 CLR 582 at [22]. See also *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane* (2021) 274 CLR 398 at [13]-[15]; *Minister for Immigration, Citizenship and Multicultural Affairs v McQueen* (2024) 94 ALJR 594 at [6].

[15] *Gray v Minister for Immigration and Border Protection* (2024) AATA 3363

[16] See *Plaintiff M1/2021 v Minister for Home Affairs* (2022) 96 ALJR 497 at [22], LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2024] HCA 12 at [35].

(a) The decision-making process is a single stage process: if I am satisfied that there is another reason why the cancellation decision should be revoked, I do not have a discretion to nonetheless refuse to revoke it;
(b) Section 501CA(4)(b)(ii) requires an examination of the factors for and against revoking the cancellation. If satisfied, following an assessment and an evaluation of those factors, that the cancellation should be revoked, there is an obligation to act on that view.[17]

Primary Consideration 1 - Protection of the Australian Community

25. The first primary consideration, paragraph 8.1(1), focuses on the protection of the Australian community.
26. The Direction requires decision-makers to keep in mind that the safety of the Australian community is the highest priority of the Australian Government and to that end the Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens.
27. In this respect, the Tribunal is directed to have particular regard to the principle that entering or remaining in Australia is a privilege that Australia confers on non-citizens in the expectation that they are, and have been, law abiding, will respect important institutions, and will not cause or threaten harm to individuals or the Australian community.[18]
28. Paragraph 8.1(2) of The Direction then provides that decision-makers should also give consideration to:

(a) the nature and seriousness of the non-citizen's conduct to date; and
(b) the risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct.

29. The parties agree that the '*protection of the Australian community*' consideration weighs against revocation of the Cancellation Decision.

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[17] See *Gaspar v Minister for Immigration and Border Protection* [2016] FCA 1166 (*Gaspar*); (2016) 153 ALD 337, at [38], cited with approval by the Full Court in *Minister for Home Affairs v Buadromo* [2018] FCAFC 151. See also ibid, [21], citing, inter alia, *Gaspar v Minister for Immigration and Border Protection* [2016] FCA 1166; 153 ALD 337, [38] (North ACJ); *Marzano v Minister for Immigration and Border Protection* [2017] FCAFC 66; 250 FCR 548, [31] (Collier J, with whom Logan and Murphy JJ agreed).

[18] See also The Direction, para 8(1).

Nature and seriousness of the conduct

30. The Tribunal must consider the nature and seriousness of the Applicant's criminal offending and other conduct to date[19] by having regard to specific types of crimes or conduct which are '*viewed very seriously*' by the Australian Government and the Australian community. The Direction also provides that certain other crimes or conduct are considered to be serious. While there are categories of conduct to be considered very serious or serious, it does not limit the range of conduct that may be so regarded.[20]

31. Paragraph 8.1.1(1) of the Direction relevantly provides:

> 1 In considering the nature and seriousness of the non-citizen's criminal offending or other conduct to date, decision-makers must have regard to the following:
>
> (a) without limiting the range of conduct that may be considered very serious, the types of crimes or conduct described below are viewed very seriously by the Australian Government and the Australian community:
>
> (i) violent and/or sexual crimes;
>
> (ii) crimes of a violent and/or sexual nature against women or children, regardless of the sentence imposed;
>
> (iii) acts of violence, regardless of whether there is a conviction for an offence or a sentence imposed;
>
> (b) …
>
> (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 impact of the offending on any victims of offending or other conduct and their family, where information in this regard is available and the non-citizen whose visa is being considered for refusal or cancellation, or who has sought revocation of the mandatory cancellation of their visa, has been afforded procedural fairness;
>
> …..

32. In considering the nature and seriousness of the conduct the following aspects of the sentencing remarks of Judge Noman SC[21] are relevant:

    a. the Applicant did not know the victim. The Applicant knew the victim to be asleep. The Applicant's conduct towards the victim was with the actual knowledge that it was without consent;

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[19] The Direction, para 8.1(1).

[20] The Direction, para 8.1.1(1)(a).

[21] HB G docs75-76

b. the Applicant approached the sleeping victim at a party. She was asleep on a lounge in a living room at a house where the victim and the offender attended a party and thus vulnerable. There was no prior interaction between the victim and the Applicant during the party;

c. the Applicant removed a blanket that was covering the victim and digitally penetrated her for about 5 minutes. The Applicant masturbated to ejaculation. The victim had her eyes shut and was unaware of this. The victim experienced sustained forceful digital penetration that caused her pain. The victim also described how the Applicant moved her body and clothing;

d. the Applicant momentarily performed cunnilingus. The victim reported that this act caused her the most shame (and the trial Judge noted that this act presented as subjectively the most serious, despite the limited duration);

e. the Applicant also engaged in attempts to penetrate the victim's genitals with his penis, which resulted in part of the Applicant's penis briefly penetrating her;

f. the Applicant did not voluntarily cease his offending behaviour. Once there was penile penetration, the victim could no longer feign sleep. When she moved, the Applicant immediately ceased, moved to another couch and assumed a sleeping pose;

g. the Applicant had consumed alcohol and cannabis (or a range of substances) and that "*[the Applicant's] intoxication in no way excuses his conduct*" (G3/75);

h. "Count 1 is an act of digital penetration. This was of longer duration and caused pain to the victim. Two fingers were used and the fingernails caused the pain. This offence falls within the mid-range of seriousness" (G3/76);

i. "Count 2 involves the act of cunnilingus…it caused shame and humiliation to the victim and she presented as regarding it as the most serious…This offence falls below the mid-range of serious" [22].

33. The Applicant admitted the digital penetration to the Police, for which he expressed remorse, but did not make further admissions. His explanation at that time, and also to the Tribunal, was that he thought this would lead to seduction of the victim, which the Judge Noman SC described as "deluded".[23]

34. The victim stated that the offending impacted her mental health, and that she lost her confidence and independence. In her victim impact study, the victim said that she

[22] HB77

[23] HB 77

commenced medication, and her relationship with her boyfriend ceased. The victim also reported feeling unsafe even in her own home [24] (paragraph 8.1.1(1)(d)).

35. The Applicant was sentenced to a term of imprisonment, which is a sentence of last resort in the sentencing hierarchy and must be viewed as a reflection of the objective seriousness of the offending.[25]
36. In the Tribunal's view, the Applicant's convictions characterised as '*sexual crimes*' or '*crimes of a violent nature against women or children*' or any of the other categories highlighted to be serious or very serious and the argument by the Applicant as to the length of sentence imposed is not a relevant factor: see *Belmont v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCA 667 at [111] (Horan J).

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

37. In order to determine the risk to the Australian community should the Applicant commit further offences or engage in other serious conduct, the Tribunal must also consider the likelihood of the Applicant reoffending if he were permitted to remain in the Australian community This requires an assessment of the nature of the harm should the Applicant engage in further criminal or other serious conduct.[26] It also requires an assessment of the likelihood of the Applicant engaging in such conduct.[27]
38. There is no statutory constraint on the way that risk is assessed by the decision-maker other than that there must be a rational and probative basis for the assessment.[28]
39. The Tribunal and superior courts have extensively considered the issues surrounding the risk under s 501(6)(d) of the Act, from which paragraphs 8.1.2(1) and (2) of the Direction are drawn.
40. The Tribunal's task is to ascertain the realistic level of risk posed by the Applicant at the time of its decision, with the '*possible level of violence of the conduct being at least one measure (but not the only measure) of how serious the risk [is], or whether the risk should be "tolerated*"', such that it would be considered an unacceptable risk.

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[24] HB78

[25] See paragraph 8.1.1(1)(c) of the Direction; also see, for example, *Pavey and Minister for Home Affairs* [2019] AATA 4198 at [44] per Senior Member Tavoularis.

[26] The Direction, para 8.1.2(2)(a).

[27] The Direction, para 8.1.2(2)(b).

[28] See *BSJ16 v Minister for Immigration and Border Protection* [2016] FCA 1181 at [68] per Moshinsky J; *Hambledon v Minister for Immigration and Border Protection* [2018] FCA 7 at [41] per Kenny J.

Antecedents and offending

41. Judge Noman SC acknowledged that the Applicant's childhood and upbringing were characterised by an element of disadvantage. Her Honour considered that the '*explosion of violence is likely informative of his poor peer associates and his substance abuse*.'[29]
42. The Applicant maintained his poly-substance abuse even when relocating to Australia and the trial Judge accepted at the time of offending he was significantly affected by illicit drug usage.
43. The conclusion drawn by Her Honour was that the Applicant's offending was not planned, and that he acted out of character and sexually abused a stranger who he believed to be asleep was explained by his drug and alcohol intoxication
44. The Applicant's evidence as to the events on the day of the offending, has been that he would not have sexually violated the victim if he had not been impaired by illicit substances and alcohol.[30]
45. As the Respondent submits, prior to the Applicant's statement dated 19 June 2025[31], the Applicant had not been forthcoming regarding the full extent of his past drug addiction. During his oral evidence before the Tribunal, he confessed to using a wide variety of illicit substances and spoke of his focus on the next 'fix' and his misplaced sense of control over his addiction. The full nature, extent, and duration of his drug-related issues is still somewhat opaque and there still remains some doubt as to the amount and frequency of polysubstance, use but the Tribunal concludes that the basis for a substance abuse disorder made out as opined by Mr Watson Munroe.
46. Whilst in incarceration he had limited opportunities for rehabilitation - he was not eligible for any criminogenic or custody-based programs, including drug and alcohol intervention. His institutional case plan confirms that he did not meet the risk threshold for inclusion in sex-offender programs based on completed sex-offender assessments.
47. During his incarceration, his most tested positive for marijuana in January 2024 which he describes as an '*act of stupidity*'.

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[29] HB79

[30] G3/85-8

[31] HB349 (at [19])

48. He also was caught smuggling contraband into the prison in March 2024, which led to him losing his work role in prison. The Applicant stated that he had succumbed to the pressure from other inmates[32]. He was reinstated in another position shortly thereafter.

Rehabilitation

49. While on bail, the Applicant attended 36 counselling sessions to address addiction and anger issues, both linked to poor impulse control[33];
50. the Applicant undertook approximately 15 sessions with a psychologist at Strategic Psychology[34].
51. He engaged regularly at the Chaplain Service with Mr Glen Berry, who gave written evidence to the Tribunal. He has attended bible studies, chapel service and communion. He submits that this has proved to be a useful service for him in respect to seeking religious guidance. Through his engagement with the Chaplain Service, he had completed '*Valiant Man*', a sexual integrity program and a 19 week '*Fathering From a Distance*' program which he considers has assisted him in his relationship with his daughter whilst incarcerated.[35]

Expressions of insight and remorse

52. The Applicant appealed his conviction for those aspects to which he pleaded not guilty. The Minister contends that should be construed as him not taking full responsibility, as remarked upon by the trial Judge. He appealed those counts, however he was entitled to exercise that legal right and no adverse inference is drawn by the Tribunal in relation to his decision to appeal his conviction.
53. In a statement made by the Applicant dated 29 January 2024, he stated at paragraph [25],

> [a]s I think about my possible deportation, I cannot help but feel a profound sense of injustice. My life in Australia was not perfect, but it was a life of contribution, of being a part of a community, of building a family. Being uprooted from this life feels like a punishment far exceeding the confines of my current situation [36].

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[32] G3/87.

[33] G3/78-79; Applicant's statement dated 19 June 2025 at [26]

[34] Applicant's statement dated 19 June 2025 at [26]

[35] HB373

[3636] HB124

54. The Respondent contends that this statement demonstrates that the Applicant lacks sufficient remorse and insight into the significant harm caused by his sexual offending, and that he rather considers the consequences of his offending to be unfair on him.
55. The Applicant has, on other occasions, expressed remorse and his evidence to the Tribunal, the evidence of Mr Berry and his account to Mr Watson-Munroe express a much fuller appreciation of his culpability.

Family support

56. The Applicant has the support of his extended family, friends and the Church with which he is affiliated, some of whom provided statements and gave oral evidence. His wife, Ms G, has at least weekly contact with the Applicant and describes a mutually supportive relationship. After he was charged with the offences and on bail, they reconciled. The Applicant said, '*[G] has been by my side throughout my imprisonment and during my time in immigration detention".*[37] Her situation is stark - her Mother continues to be in poor physical and mental health, suffering, amongst other conditions, anorexia and has had suicidal tendencies. Ms G works with children with special needs and -TR has the sole care of R their daughter. It is submitted that her experience equips her well to observe the impacts of the Applicant's absence on her daughter, R.
57. The Applicant enjoys the support of his extended family:
    a. Mrs AD, the aunt of Ms G, described a close relationship to her niece and the applicant characterising his offending as a '*mistake'*;
    b. Mr BD, husband of Mrs AD, who has offered employment to the applicant should he remain in Australia;
    c. Mr CK, brother-in-law of the Applicant, who is a Deacon of the Greek orthodox church. He was supportive of the Applicant, deposing to a close relationship with him, empathising with his substance abuse and mental health. He was unaware of the offending until recent times and describes it as a "mistake". Mr CK has a baby daughter and is keen for her to know the Applicant.
    d. Mr L, the Applicant's brother, who has a daughter S aged 11 and to whom the Applicant stands as godfather. The fraternal relationship did not appear to be

[37] Applicant's statement HB346

particularly close and at the hearing he appeared to be shocked at the Applicant's offending.

Assessments of the Applicant's risk of reoffending

58. In his pre-release report dated 23 July 2024, the Applicant was assessed as a medium/low risk of offending according to the Level of Service Inventory – Revised (LSI-R), which is a tool used to identify an offenders' likelihood of reoffending and their criminogenic needs. However, the LSI-R assessment was overridden to medium on the grounds that the Applicant had a current STATIC 99R assessment, being a tool used to estimate the risk of sexual recidivism among adult male sex offenders[38]. A psychologist also assessed the Applicant as being in the average range of committing a further sex offence.[39]
59. A report was obtained from Mr. Watson-Munroe, a psychologist with a considerable body of experience in providing medico-legal assessments. He proffered an opinion as to the Applicant's risk of reoffending should he be permitted to return to reside in the Australian community. He gave oral evidence and was cross-examined at the Tribunal hearing. The Applicant's history was supplemented by documentation and collateral information provided by Ms G.
60. Psychometric testing was administered to the Applicant[40] and the results of that confirmed Mr Watson-Munro's clinical assessment of the Applicant suffering a Depressive Disorder (severe and recurring) according to DSM-5-TR.
61. Mr Watson-Munro opined that the time of the offending, the Applicant was suffering a range of mental health conditions according to DSM-5-TR. After separation from Ms G and approximately 2 years prior to his offending conduct, the Applicant attempted suicide by way of overdose. It was apparent that he was experiencing symptoms of severe and recurring depression against the backdrop of the breakdown of his marriage and substance use disorder. The Applicant was not receiving treatment during this time and his behaviour, in part, was being fuelled by adverse peer group dynamics.
62. Mr. Watson-Monroe offered the opinion that at the time of the offending it was a confluence of poly-substance use which involved a range of illicit and dangerous drugs

[38] G3/88

[39] G3/89;

[40] Beck Depression Inventory

in addition to him using benzodiazepines against a backdrop of severe and recurring depression and anxiety materially contributed to the commission of the offence.

63. The Applicant pleaded not guilty to some of the charges laid against him and later appealed against the conviction and the severity of the sentence which was dismissed in the court of criminal appeal. In Mr Watson-Munro's opinion, with the effluxion of time which has involved considerable counselling and treatment, in addition to other programs the Applicant has undertaken, he has clear insight to the impact of his substance use on his mental health. Consequently his judgement referable to poor impulse control and an absence of consequential thinking has matured.
64. Mr Watson-Munro assessed the protective factors in place, expressions of remorse, abstinence of substance use (beyond the one incident in 2024), his strong commitment to and focus on his wife and daughter and his motivation to seek employment which will be therapeutic in terms of structure and income to support his family.
65. He acknowledged the prior pre-release report's assessment of reoffending – but distinguished the static factors addressed in the former contributing to an individual's offending, from the dynamic factors which are highly relevant and include expressions of remorse, commitment to treatment, insight to the dynamics surrounding the offending and protective factors in an individual's life such as the support of his family and desire from employment in addition to continuing treatment in the community. Against that backdrop he assessed the Applicant's risk of engaging in the same or similar offending conduct in the future if released into Australian community, is now trending from moderate to low.
66. The report was subject to robust cross-examination focusing in particular on those dynamic factors which lowered the risk of further offending. The protective factors identified by him as being the Applicant's extended family, the church and employment were already present at the time of his offending, albeit he was separated from his wife and child; his separation from his wife being directly attributable to the substance misuse issues. The subsequent reconciliation with his wife and child acted as powerful motivation for his continued abstinence and compliance.
67. It is also notable that some of the extended family expressing support were not aware of the convictions until preparing this matter for hearing. Mr L expressed shock at the conviction.

68. Mr Watson-Munro did not have the advantage of seeing the Applicant in person. He explained that is why he had 2 telephone conferences with the Applicant and sought collateral information from Ms G.
69. One aspect which troubled the Tribunal was the repeated comment made by the Applicant's immediate and extended family, that the offending conduct was a '*mistake*'. Sexual assault committed on a vulnerable woman would hardly be considered as an error and he was pressed as to this. Mr Watson-Munroe explained this as a way that the family reconcile his behaviour with their own experiences of the Applicant.
70. At the outset of his report, Mr Watson-Munro said that he was encouraged by the Applicant's absence of a prior forensic history, his repeated expressions of remorse, the positive steps which the Applicant has undertaken while in custody to improve upon his prospects of successful rehabilitation into the Australian community and the renewed love and support of his wife and daughter.
71. An additional relevant consideration the Applicant reported was that during the period of his offending, he was experiencing symptoms of a substance use disorder preferable to alcohol cannabis and cocaine. Beyond one occasion of using cannabis in January 2024 he has remained drug free; he also has not also consumed alcohol since the time of his arrest. In this setting he could now be considered to be in a state of full remission. Nothing elicited in cross-examination altered his views.[41]
72. Mr Watson- Munroe's evidence was of significant value to the Tribunal. He was forthright in his oral evidence and demonstrated a nuanced understanding of the relevant events and history up to and including the offences. Equally his opinion as to recidivism was clearly articulated as were the factors underpinning it.

Consideration as to risk to the Australian Community

73. The Respondent contends, without demur by the Applicant, that any further offending by the Applicant of a similar nature to the offences would have the potential to cause physical, psychological and/or financial harm to the victims and members of the Australian community. As such, it is submitted that the harm that would be caused is so serious that any risk of similar future offending is unacceptable[42].

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[41] A5 p 3

[42] paragraph 8.1.2(1) of Direction 110.

74. The impact on the victim have been severe and are likely to be of a long term nature.
75. As conceded on the Applicant's behalf the potential harm if it recurs would heighten the community's intolerance for risk-8.1.2.(2)(a).[43] It is also submitted that when that likelihood is assessed cumulatively under para 8.1.(2)(b) the evidence points to a markedly diminished risk of such serious conduct.
76. It is accepted that the applicant was on bail for 18 months prior to trial without reoffending and that together with his period in incarceration and detention largely being incident free apart from the two examples above.
77. The Applicant has undertaken significant rehabilitation prior to his conviction and during his incarceration including '*Valiant Man*' and '*Fathering from a Distance*'. He has also continued to receive pastoral care from Mr Berry. He has also been gainfully employed whilst in prison and detention.
78. The Applicant has also been on the Buprenorphine Program for over 8 months and has been compliant taking his Opioid Agonist Treatment injection. Together with the matters discussed in paragraphs 78 and 79 below, his commitment to rehabilitation and abstinence serve to underpin Mr Watson Munroe's opinion that the Applicant is in remission.
79. The Applicant has protective factors in the community including extended family, social interaction and an offer of employment, however those were present up to the time of the offending. The Tribunal is of the view that the most significant development since his offending has been his reconciliation with his wife and his appreciation of the heavy burden of responsibilities she has borne. He seemed genuine in his desire to rejoin the family unit and this serves as the strongest deterrent to reoffending. He is acutely aware that his removal from Australia would render that impossible.
80. The Tribunal accepts that whilst the offending conduct is very serious and any repetition of it would cause significant physiological and physical harm, the evidence of Mr Watson- Munroe is that the risk of reoffending is trending to low and significant weight can be placed on the matters in paragraphs 77 and 78 of these reasons. I accept the conclusions reached by Mr Watson-Munroe as to the applicant's risk of reoffending as trending from moderate to low.
81. Whilst this consideration must weigh against the Applicant, the Tribunal accords it moderate weight.

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[43] ASFIC p3

Primary consideration 2 – Family violence committed by the Applicant

82. Paragraph 8.2 of Direction 110 states that 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 are proportionate to the seriousness of the family violence engaged in by the non-citizen. Paragraph 4.1 of Direction 110 defines family violence to mean violent, threatening, or other behaviour by a person that coerces or controls a member of the person's family or causes the family member to be fearful.

83. There is no evidence before the Tribunal that the Applicant has engaged in any family violence. This consideration is therefore neutral.

Primary consideration 3: The strength, nature and duration of ties to Australia

84. This consideration requires the Tribunal to have regard to the strength, nature and duration of the Applicant's ties to Australia. Paragraph 8.3 of The Direction provides that:

> 1 Decision-makers must consider any impact of the decision on the non-citizen's immediate family members in Australia, where those family members are Australian citizens, Australian permanent residents, or people who have a right to remain in Australia indefinitely.
>
> 2 Where consideration is being given to whether to cancel a non-citizen's visa or whether to revoke the mandatory cancellation of their visa, the decision-maker 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) how long the non-citizen has resided in Australia, including whether the non-citizen arrived as a young child, noting that:
>
> (i) less weight should be given where the non-citizen began offending soon after arriving in Australia; and
>
> (ii) more weight should be given to time the non-citizen has spent contributing positively to the Australian community
>
> (b) the strength, duration and nature of any family or social links with Australian citizens, Australian permanent residents and/or people who have an indefinite right to remain in Australia.

85. The Applicant has resided in Australia for approximately 14 years, arriving as an adult when he was 19 years old[44]. Accordingly, while he did not spend any of his childhood in Australia, he has lived here from late adolescence.
86. As outlined earlier in these reasons, he has immediate and extended family in Australia, including[45]:
    a. pivotally his wife, Ms G, and their daughter R. Ms G's evidence, which is accepted, is that she and the Applicant talk daily and she is struggling to care for R, her immediate family and work full time;
    b. his brother, Mr L;
    c. His extended family in Australia, comprising 8 aunts/uncles, 9 cousins, and 13 nieces/nephews (G3/110-112),including :
        i. his niece, SP,
        ii. his cousin, LA;
        iii. his cousin's husband, WP;
        iv. his brother-in-law, CK;
        v. his mother-in-law, MK;
        vi. his father-in-law, BK;
        vii. his aunt, AD; and
        viii. his uncle, BD.
87. It should be noted that from 2018-2020 the Applicant was separated from Ms G, so it is unclear how much he saw of his wife's family in that time. The Applicant has been incarcerated or in detention since 2022, and he has only had sporadic, if any, physical contact with his extended family. A number of his nieces and nephews are still very young children and he could not have any significant relationship with them.
88. The Applicant has undertaken the following education in Australia:

> "[s]tudied English for one year. Then completed Diploma in Networking. Did Diploma and Advanced Diploma of Project Management and Certificate IV of Business"[46]

89. The Applicant has been employed in Australia as a cleaner and kitchen hand from 2012 to 2015 and as a labour contractor from 2018 to 2022.

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[44] G3/104; G3/165
[45] G3/107-108, 112
[46] G3/114;

90. The Applicant deposed to providing *'voluntary services to [a] local church at Kogarah*'[47] and sets out informal acts of community support he has participated in – namely, '*attending church parish events…helping an elderly couple cross a busy intersection, and attending homelessness awareness events*'[48]
91. The Applicant has worked intermittently and made desultory contribution to the community. The Minister accepts that he has developed family ties and that if he was deported it would have a very significant effect upon his family, especially his wife and daughter.
92. I am satisfied that the Applicant has substantial significant ties to the Australian Community. This factor weighs significantly in favour of revocation of the cancellation decision.

Primary consideration 4 – Best interests of minor children in Australia affected by the decision

93. Paragraph 8.4 of Direction 110 requires decision-makers to make a determination as to whether non-revocation under section 501CA of the Act is, or is not, in the best interests of a child affected by the decision. Where there are two or more relevant children, the best interests of each child should be given individual consideration to the extent that their interests may differ. In considering the best interests of the child, the following factors are among those which must be considered, where relevant:
    - the nature and duration of the relationship between the child and non-citizen (and less weight should generally be given where the relationship is non-parental and/or there is no existing relationship);
    - 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; and
    - whether there are other persons who already fulfil a parental role in relation to the child.
94. The Applicant has one daughter, R. He has a parental role with R. She is currently 10 years old[49]. He expresses that the relationship has developed as R has matured

[47] G3/115
[48] at [18].
[49] G3/108

from a very young child. He has a close relationship with her, maintaining contact with her via weekly visits and daily telephone and video calls[50]. The Applicant and Ms G have both expressed concern that separation from her father has adversely impacted R and that she has missed him being able to part of her daily activities. She is very keen to reunite with him[51].

95. SP is the Applicant's niece[52]. She is currently 11 years old. The Applicant has submitted that he is SP's godfather and that they had a close bond prior to his incarceration. He further submitted that SP would suffer emotional hardship if he was removed from Australia [53]
96. The Applicant has a second newborn niece, AK born in 2025[54]. The Applicant has not yet met AK due to his incarceration and immigration detention.
97. There are 3 other children identified by the Applicant and minor children in Australia affected by the decision – namely, J, V and E. The father of J, V and E has given a brief statement dated 15 June 2025.
98. The Minister contends and the Tribunal accepts that:
    - there is no corroborating evidence from SP or otherwise to establish that SP will be particularly affected by the non-revocation of the cancellation decision.
    - the limited evidence provided by SP's father as to their relationship and contact suggests that the Applicant has not been part of SP's life since 2022 and it is unclear before then how frequent the contact was;
    - there is no existing relationship between the Applicant and SK;
    - the Applicant's relationship with each of SP, AK, J, V and E is non-parental, and accordingly less weight should be given to these relationships as the Applicant does not play a role of critical importance in their daily lives;
    - if the Applicant is returned to Colombia, he will be able to maintain contact with each of these children in other ways, such as by telephone and video, but it will be hard to establish given their ages and lack of interaction to date; and
    - there is no evidence from J, V or E (or their parents, JK and PK) to establish that these children will be particularly affected by the non-revocation of the cancellation

[50] G3/109
[51] G3/109; G3/127; G3/129- 130
[52] Applicant's statement dated 19 June 2025 at [11].
[53] G3/111.
[54] Applicant's statement dated 19 June 2025 at [12]

decision or to substantiate the nature of the relationship between these children and the Applicant, other than the Applicant's statement that his connection with his wife's extended family is significant and that her cousin's children are closely bonded with his daughter[55].

99. The Respondent accepts that it in the best interests of the Applicant's daughter R, that the visa cancellation is revoked and accepts that there is some evidence that revocation may be in the best interests of at least SP and AK.

100. The practical loss of the seminal relationship between the Applicant and R is likely to have a profound impact upon her at her age and her stage of development. As discussed earlier in these reasons, Ms G is struggling to cope as a single parent, and understandably so. Her employment also provides her with insight into the likely impact of the Applicant's absence upon R. Neither Ms G nor R could relocate to Columbia given Ms G's relationship with her mother, and that R is settled at school and that all of R's family, including cousins, live in Australia.

101. I find that a decision not to revoke the cancellation of the Applicant's visa would have a very significant effect upon R and some effect upon SP and AK. I find that the children J, V and E would not be impacted to any significant degree by a decision not to revoke the cancellation of the Applicant's visa.

102. This factor weighs very heavily in favour of revocation.

Primary consideration 5 – Expectations of the Australian community

103. Paragraph 8.5(1) of Direction 110 relevantly states that 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.

104. Paragraph 8.5(2) of Direction 110 directs that:

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

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[55] Applicant's statement dated 19 June 2025 at [13]

…

c) commission of serious crimes against women…in this context, 'serious crimes' include crimes of a violent or sexual nature…

105. Paragraph 8.5(3) of Direction 110 states that the expectations of the Australian community apply regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.

106. In *Cargill and Minister for Immigration and Multicultural Affairs (Migration)* [2025] ARTA 50, the Tribunal stated at [143] that:

> paragraph 8.5(3) arguably further qualifies the 'norm' expressed in para 8.5(1), which refers to the 'unacceptable risk' of conduct being engaged in. This makes it clear that a 'measureable [sic] risk' of physical harm to the community is not required for the community expectation that the non-citizen not hold a visa to be engaged, where serious character concerns are raised through the persons conduct or offending.

107. Paragraph 8.5(4) of Direction no. 110 directs that:

> [t]his 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 [i.e., in paragraph 8.5], without independently assessing the community's expectations in the particular case.

108. The Minister contends that as the Applicant has been convicted of an objectively very serious offence and one of a sexual nature against a vulnerable woman, the Australian community would expect the Applicant's visa to remain cancelled.

109. As such, the Minister submits that this primary consideration weighs very heavily against revocation of the cancellation decision and the Tribunal accepts this conclusion.

Other consideration 1 – Legal consequences of the decision

110. Paragraph 9.1 of Direction 110 requires the Tribunal to consider the legal consequences of its decision, taking into account any non-refoulement obligations and whether the applicant is covered by a protection finding.

111. The Applicant has made claims that he will face threats to his safety and wellbeing if he is returned to Colombia, due to his numerous tattoos which commemorate his favourite soccer team covering much of his body. The Applicant contends that the soccer culture in Colombia elevates it to religious status, and that he fears being harmed or killed by supporters of other teams. The Applicant's brother supports that

claim in his statement. Voluminous material was relied upon by the Applicant[56] concerning the violence perpetrated following games - one fan every 20 days is killed and serious harm to those considered fans of rival teams.

112. The delegate considered this claim and proceeded on the basis that it was open to the Applicant to make an application for a protection visa and that Australia's non-refoulement obligations would be fully assessed during the processing of any such application[57]. The Minister contends that the Tribunal ought to similarly take this approach, noting that it is open to the decision-maker to defer assessment of whether the Applicant is owed non-refoulement obligations on the basis that it was open to the Applicant to apply for a protection visa (*Plaintiff M1/2021 v Minister for Home Affairs* (2022) 275 CLR 582; [2022] HCA 17 at [30]). To date the Applicant has not made application for a protection visa and no protection finding has been made in relation to the Applicant.[58]

113. It is also accepted by the Minister that the applicant will be subject to an indeterminate exclusion from Australia by operation of the special return criteria in clause 5001(c) of Schedule 5 to the *Migration Regulations 1994* (Cth), which is a relevant legal consequence that the Tribunal must take into account: *Rano v Minister for Home Affairs, Minister for Cyber Security* [2024] FCA 1003 per Feutrill J at [12]-[14].

114. As to the weight this consideration, the Respondent contends in effect this ought have no weight for or against the revocation.

115. There has been judicial consideration of what, if any weight should be accorded to this consideration .The Full Court of the Federal Court in *Taulahi v Minister for Immigration and Border Protection*[59] found that where a decision is made by the Minister personally under s 501(3) of the Act, the Minister is bound to take into account the legal consequences of the decision because of the legal construct in which the decision is made. In in the current context, the Direction requires the legal consequences to be taken into account and the immediate consequences which flow from it. The consequences to be taken into account are the direct and immediate consequences of the particular decision.

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[56] HB387 and following

[57] G4, 64

[58] RSFIC para 65

[59] (2018) 357 ALR 467

116. The Tribunal considers that as the Applicant has not sought a protection visa and he is at imminent risk of being deported to Columbia, he will return to a country where he holds fears for his safety and his family are likely to be unable to provide more than emotional support.

117. This factor weighs moderately against revocation of the cancellation decision.

Other consideration 2 – Extent of impediments if removed

118. Paragraph 9.2 of Direction 110 relevantly provides that 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: the non-citizen's age and health; whether there are substantial language or cultural barriers; and any social, medical and/or economic support available to them in that country.

119. The Applicant was born and raised in Colombia, and lived there until moving to Australia in 2011, at the age of 19[60]. As such, the Minister contends and the Tribunal accepts that the Applicant would not experience any cultural or linguistic difficulties in Colombia.

120. While the Applicant has immediate family members in Colombia, consisting of his parents and sister, as well as extended family[61], his family have limited financial resources based upon the failure of a family business. The Minister contends that the Applicant will likely be able to rely on his family for at least emotional support. It is questionable what practical support they can provide as he attempts to re-establish his life in Colombia.

121. The Respondent submits that the Applicant is currently 33 years old[62] and that due to his youth and relatively good physical health, the Applicant would not experience any long-term difficulty with finding employment. The Tribunal accepts that he suffers from longstanding mental health vulnerabilities including depression, anxiety, substance dependency, and a history of suicidal ideation.

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[60] G3/165

[61] G3/112; G3/123,

[62] G3/104

122. These conditions are currently being managed in Australia, with access to structured treatment, counselling, and community support. Removal would abruptly remove these remedial measures and exacerbate his psychological distress, particularly due to permanent separation from his wife and young daughter.

123. His mental health is likely to decline and it would appear that the health system in Columbia is inferior to that offered in Australia.

124. As canvassed above, the Applicant claims to be at risk because he has numerous tattoos of his favoured soccer team, which are displayed prominently on his body and may mark him as a target for hostility or violence from supporters of other teams[63]. He submits that his return to Columbia could expose him to unemployment, social isolation, psychological deterioration, and possibly renewed substance misuse. The cumulative effect of these factors—limited support, risk of violence, and inability to maintain basic standards of living— are significant impediments under clause 9.2 of Direction No. 110.

125. I give this consideration serious weight in favour of revocation of the cancellation of the Applicant's visa.

Other consideration 3 – Impact on Australian business interests

126. Paragraph 9.3 of Direction 110 relevantly provides that decision-makers must consider any impact of Australian business interests if the non-citizen is not allowed to enter or remain in Australia, noting that an employment link would generally only be given weight where the decision under section 501 or 501CA would significantly compromise the delivery of a major project, or delivery of an important service in Australia.

127. There is no evidence that this consideration is relevant to the Applicant's case. This consideration has neutral weight.

Any Other Consideration

[63] G3/122

128. The Applicant and the Respondent did not raise any other consideration. I cannot identify any other consideration relevant to the Applicant's case.

Conclusion

129. The Tribunal has assessed the considerations as follows:
    a. Primary Consideration 1, Protection of the Australian community, should weigh moderately against revocation of the cancellation decision;
    b. Primary Consideration 3, Strength, nature, and duration of ties to Australia, should weigh significantly in favour of revocation of the cancellation decision;
    c. Primary Consideration 4, Best interest of minor children in Australia, should weigh heavily in favour of revocation of the cancellation decision;
    d. Primary Consideration 5, Expectations of the Australian community, should weigh very heavily against revocation of the cancellation decision;
    e. Other Consideration 1, Legal Consequences, weighs moderately in favour of revocation of the cancellation decision; and
    f. Other Consideration 2, Extent of the impediments, weighs moderately in favour of revocation of the cancellation decision.

130. The task of weighing the considerations must be undertaken noting paragraph 7 of the Direction regarding the weight to be given to primary consideration 1 and that one or more primary considerations may outweigh other primary considerations. I have determined that the weight I give to Primary Considerations 3 and 4, together with Other Considerations 1 and 2 outweigh the weight I give to Primary Considerations 1 and 5.

131. Application of the Direction therefore favours the revocation of the cancellation of the Applicant's visa. As a result, the Tribunal finds that there is another reason to revoke the mandatory cancellation of the Applicant's visa.

132. Pursuant to section 105 of the *Administrative Review Tribunal Act 2024* (Cth), the Tribunal sets aside the decision under review, and substitutes a decision that the cancellation of the applicant's visa is revoked.

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Date(s) of hearing	28 July 2025
Counsel for the Applicant:	Dr Jason Donnelly
Solicitors for the Respondent:	Hunt and Hunt Lawyers, Nameeta Chandra