Decision and Reasons for Decision

Administrative Review Tribunal

Applicant/s:	**LZLW**
Respondent:	**Minister for Immigration and Citizenship**
Tribunal Number:	**2023/4708**
Tribunal:	**Senior Member T Tavoularis**
Place:	**Brisbane**
Date:	**23 September 2025**
Decision:	**Pursuant to section 105(a) of the Administrative Review Tribunal Act 2024 (Cth), this Tribunal affirms the decision made by a delegate of the Respondent on 14 December 2022 to not revoke the mandatory cancellation of the Applicant's Class WC Subclass 030 Bridging C visa.**

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

Senior Member T Tavoularis

Catchwords

MIGRATION – Non-revocation of mandatory cancellation of a Class WC Subclass 030 Bridging C visa – Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 110 — primary and other considerations – protection of the Australian community from criminal or other serious conduct – whether conduct engaged in constituted family violence - the strength, nature and duration of ties to Australia – best interests of minor child in Australia – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed – impact on Australian business interests - decision under review affirmed

Legislation

Administrative Review Tribunal Act 2024 (Cth)
Domestic and Family Violence Protection Act 2012 (Qld)
Migration Act 1958 (Cth)

Cases

FYBR v Minister for Home Affairs (2019) 272 FCR 454
Plaintiff M1/2021 v Minister for Home Affairs [2022] HCA 7
PNLB and Minister for Immigration and Boarder Protection [2018] AATA 162

Secondary Materials

Direction No 110 – Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA
Migration Regulations 1994 (Cth)

Statement of Reasons

INTRODUCTION

1. The first of the two relevant issues before the Tribunal, namely, whether the Applicant passes the character test can be safely answered in the negative. He has received a term of imprisonment in excess of 12 months and it is thus common ground between the parties that the only remaining issue before the Tribunal is whether there is another reason to revoke the mandatory cancellation of the Applicant's Class WC Subclass 030 Bridging visa.[1] For Reasons that follow, I am satisfied that the cumulative weight of the relevant Primary and Other Considerations militating against restoration of the Applicant's visa status dispositively outweigh those in favour of doing so.

PRIMARY CONSIDERATION 1: PROTECTION OF THE AUSTRALIAN COMMUNITY

2. In considering this Primary Consideration 1, paragraph 8.1(1) of the Direction compels decision-makers to keep in mind that the safety of the Australian community is the highest priority of the Australian Government. To that end, the Direction further provides that the Australian Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens. Decision-makers should have particular regard to the principle that entering or remaining in Australia is a privilege that this country confers on non-citizens in the expectation that they are, and have been, law abiding, that they will respect important institutions and that they will not cause or threaten harm to individuals or the Australian community.

3. In determining the weight allocable to this Primary Consideration 1, paragraph 8.1(2) of the Direction requires decision-makers to consider:

    a) the nature and seriousness of the non-citizen's conduct to date; and

    b) the risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct.

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[1] Hereinafter referred to as '*the visa'*.

4. I will consider each in turn.

The nature and seriousness of the Applicant's conduct to date

5. The Applicant readily conceded during the course of his oral evidence that he has compiled a serious criminal history in this country. He readily conceded that his commission of some 180 offences related to dishonesty and drug possession. He further conceded the commission of 20 offences relating to additional charges of dishonesty, drug possession and traffic offending. He accepted that, overall, his criminal offending has primarily involved unlawful conduct in the realms of dishonesty and fraud and repeated drug offences and traffic matters.

6. He took no issue with his criminal history which indicates he has spent two relatively short terms of imprisonment. It was further conceded on behalf of the Applicant that viewed holistically, his offending has been '*very, very serious.'* This well-made concession was attributed to (1) the sheer number of offences which the Applicant committed over a criminal history that, in terms of sentencing episodes, runs from April 2021 to November 2022; and (2) the fact that he was sentenced to a term of imprisonment not once, but twice, in the course of that relatively short spree of offending.

7. While these concessions are well-made, it should also be noted that they are – in terms of assessing the nature and seriousness of the Applicant's unlawful conduct – consistent with the characterisation of much of his conduct in the Direction.[2] He has committed acts of family violence, which fall squarely within the provision of the Direction characterising such offending as *very serious.*[3] This family violence offending involved the Applicant administering physical violence upon his former wife and also mentally, emotionally, and physically harassing her. The factual circumstances of this offending involved the Applicant forwarding emotionally manipulative text messages to his former wife plus videos of him purportedly drinking weed killer as a means of ending his own life. He monitored her

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[2] *Direction No 110 - Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA* commenced on 21 June 2024. It replaces *Direction No. 99 – Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA*. I will hereinafter refer to Direction 110 as "t*he Direction*."

[3] Paragraph 8.1.1(1)(a)(iii) of the Direction.

location, entered her workplace and her vehicle and forcefully attempted to be intimate with her.

8. The Applicant has a conviction for contravening a direction or requirement put to him by a law enforcement officer. This is conduct squarely falling within the auspices of paragraph 8.1.1(1)(b)(ii) of the Direction as a crime against a government representative due to the position they hold or in the performance of their duties. The Direction mandates that such conduct is regarded as '*serious'* by the Australian Government and its community.

9. The sentences imposed on the Applicant, even in the circumstances of the relatively short periodic span of his offending, point to the very serious nature of his offending. I am mindful of the sentences that are precluded for consideration for present purposes under paragraph 8.1.1(1)(c) of the Direction. But even when those precluded sentences are left out, the balance of the sentences are certainly indicative of very serious offending. At the sentencing episode which occurred at a Magistrates Court in south-east Queensland in November 2022, the Applicant received head custodial terms for:

- 12 months for offending in the realm of fraud and unlawful use of a motor vehicle;
- 3 months for possession of dangerous drugs;
- 1 month for failure to appear in accordance with an undertaking;
- 1 month for failure to appear in accordance with an undertaking; and
- 6 months for stealing and receiving offences.

10. The imposition of a custodial term is regarded as the last resort in the sentencing hierarchy. Such custodial terms are viewed as a reflection of the objective seriousness of that offending.[4] To my mind, the fact that the Applicant received custodial sentences at such a relatively early stage of his criminal history is indicative of the very serious nature of his offending in this country.

11. The sheer volume of the Applicant's offences surely speaks to his offending being frequent. If one divides the Applicant's pattern of unlawful conduct into (1) those offences committed

[4] See *PNLB and Minister for Immigration and Boarder Protection* [2018] AATA 162 at [22].

and sentenced at his first sentencing hearing at a Magistrates Court in south-east Queensland in April 2021; and (2) those offences dealt with at the sentencing episode in November 2022, it becomes clear that there is a detectable escalation in seriousness of his offending. The first group of offences involved (1) breaches of bail; (2) failure to appear in accordance with an undertaking; (3) unlawful use of a motor vehicle; (4) unauthorised dealing with shop goods; and (5) unlawful possession of dangerous drugs.

12. The second group of offences sees the offending '*graduate'* in seriousness into the realm of a significant volume of fraud/dishonesty offending, domestically violent conduct, offending against police officers in the course of their duty and property offending in the realm of receiving tainted property. The frequency of the Applicant's conduct and the increase in its seriousness as it was committed is indicative of a totality of offending that has been very serious.[5]

13. There are demonstrative cumulative effects of the Applicant's repeated offending. First, his offending in the realms of fraud/dishonesty/property has caused material financial loss and damage to those harmed by that conduct. Second, his domestically violent conduct has caused its victim to become fearful and to experience the physical effects of the Applicant's offending in this regard. Third, his traffic offending is demonstrative of a person who refuses to comply with laws and regulation governing the use of Australian carriageways and it has also placed other road users at risk. Fourth, there is surely no denying the reality that the sheer scope of this Applicant's conduct has consumed more than its fair share of the community law enforcement, judicial sentencing and custodial resources. Combined, these cumulative effects speak to the very serious nature of the conduct that spawned them.[6]

Conclusion about the nature and seriousness of the Applicant's conduct

14. I have applied four of the nine factors at paragraph 8.1.1(1) of the Direction dealing with the nature and seriousness of the Applicant's conduct. These four factors clearly and volubly speak to a finding that this Applicant's unlawful conduct sentenced, respectively, in April 2021 and November 2022 has indeed been of a *very serious* nature. My overall finding will be that the nature and seriousness of that conduct has been *very serious*.

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[5] Pursuant to paragraph 8.1.1(1)(e) of the Direction.
[6] Pursuant to paragraph 8.1.1(1)(f) of the Direction.

The risk to the Australian community should the Applicant commit further offences or engage in other serious conduct

15. **Sub-paragraph 8.1.2(1)** provides that in considering the risk to the Australian community, a decision-maker should have regard to the Government's view that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases. Some conduct and the harm that would be caused, if it were to be repeated, is so serious that any risk of it being repeated may be unacceptable.

16. **Sub-paragraph 8.1.2(2)** provides that in considering the risk to the Australian community, a decision-maker must have regard to the three following factors on a cumulative basis:

> *(a) the nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal or other serious conduct; and*
>
> *(b) the likelihood of the non-citizen engaging in further criminal or other serious conduct, taking into account:*
>
> > *i. information and evidence on the risk of the non-citizen re-offending; and*
> >
> > *ii. evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since the most recent offence …..; and*
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> *(c) where consideration is being given to whether to refuse to grant a visa to the non-citizen – whether the risk of harm may be affected by the duration and purpose of the non-citizen's intended stay, the type of visa being applied for, and whether there are strong or compassionate reasons for granting a short stay visa.*

Sub-paragraph 8.1.2(2)(a): the nature of the harm to individuals or the Australian community were the Applicant to engage in further criminal or other serious conduct

17. Both parties agree that in the event the Applicant were to reoffend, harm would be occasioned to those victims. The Applicant suggests that such harm would be '*…in the same nature of his previous offending…'*[7] but that the extent of such harm varies. It is suggested that the nature of harm from further traffic/driving offences and drug possession offences of the same nature that he has already committed '*…would be of relatively limited significance compared to that of his property/financial offending.'*[8]

18. The Respondent says if the Applicant reoffends in the same manner in which he has done to date, the resulting harm to victims and/or the community would be '*substantial.'*[9] I readily reach a state of satisfaction that further offending of the type already committed by this Applicant would range from physical and/or psychological harm together with materially quantifiable harm. Further, pursuant to sub-paragraph 8.1.2(1) of the Direction, I am satisfied that the harm resulting from repeated offending of the type sentenced in April 2021 and November 2022 is so serious that any risk of such recommission should now be found to be unacceptable.

Sub-paragraph 8.2.2(b): the likelihood of the non-citizen engaging in further criminal or other serious conduct

Applicant's position

19. The Applicant contends that most, if not all, of his spiral into very seriously offending has identifiable causes. It was submitted that this Tribunal should accept there has been specific context in and around his offending. He told the instant hearing that his offending was preceded by two deaths: that of his father who was a police officer and that of his brother. He spoke of how he was impacted by the infidelity of his former wife who committed adultery as a result of an affair with his cousin. He also spoke of coming into contact with negative peers as a result of his co-tenanting in a property with other illicit drug users.

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[7] A2, p 9, [38].
[8] A2, p 9, [38].
[9] R2, p 11, [40].

20. These factors are said to have caused the Applicant's addiction to heroin and other illicit drugs which, in turn, dictated and motivated much of his criminality which is now before the Tribunal. He gave oral evidence about being free of illicit drugs for at least several years given the time he has spent firstly in prison and more recently in immigration detention where he has resided for over two years. This period of removal from the community has allowed him time to reflect and to focus on his rehabilitation from any reliance on illicit drugs. There is no denying his completion of specific rehabilitative courses and his engagement with psychological support on an approximately monthly basis. He purports to be remorseful for his offending and has realised the extent to which the irresponsible abandon characterising much of his extensive offending has impacted both individual victims and his own family.

21. He claims to have found emotional and behavioural stability from the support he has received and will receive from his wife, her parents and his connection with his Sikh religion and the network around the Sikh temple where his fellow faith adherents congregate and worship. It was submitted that the extent of the proceedings around his attempts to have his visa status restored to him have lead him to much self-reflection and a clear understanding about just how serious and unacceptable his conduct has been. This is the third time this application is before this Tribunal. Two previous adverse decisions from this Tribunal have been remitted for reconsideration.

22. The instant Hearing had the benefit of two learned and able clinicians providing evidence, both written and oral. The first of them was Dr Emily Kwok, Consultant Psychologist who opined that the Applicant represents a low risk of reoffending. Her report cites specific protective elements against future recidivist risk. They were (1) the Applicant's long period of abstinence from drug use; (2) his stable and supportive marriage; (3) his active engagement with rehabilitation to date; (4) a strong motivation to, upon release into the community, follow a structured lifestyle devoted to providing for his new wife and infant child; and (5) an intention to engage with post-release ongoing psychological support.

23. Ultimately, Dr Kwok opined that '*…it is my opinion that [the Applicant] has a low risk of committing criminal offences in the future.'*[10] In terms of the extent to which she could

[10] A3, p 13, [72].

measure the Applicant's risk to the Australian community in terms of his general behaviour, she opined that the Applicant *'…is a low risk to the Australian community in terms of his general behaviour.'*[11]

24. The Hearing also received oral and written evidence from the registered Psychologist, Ms Tina Chatterjee. She spoke of having conducted over 20 individual treatment sessions with the Applicant since June 2023. Her oral evidence was that the Applicant was a regular and highly-engaged attendee during her sessions with him. She also spoke of being available to the Applicant if returned to the community for monthly consultations, the frequency of which could be increased as required. She notes the Applicant initially presented with low mood and feelings of stress due to his separation from his family. She said there was no clinical evidence of any symptoms referrable to depression and anxiety.

25. She was of the opinion that the Applicant '*…has been responsive to therapy and compliant with suggested strategies. He has found treatment to be helpful…he is committed to ongoing treatment with me once every 4 weeks to manage his mental health. This will help him remain drug free and therefore not reoffend again. We have discussed that if at any point his mental health deteriorates, sessions will become more regular. He expresses and demonstrates an attitude of willingness to seek professional assistance to help manage his issues.'*[12]

26. The ultimate submission put on behalf of the Applicant regarding recidivist risk is that the Tribunal should accept the Applicant now represents no more than a low recidivist risk based upon (1) the clinical evidence of Dr Kwok, Ms Chatterjee; (2) and the extent of the Applicant's abstinence from illicit drugs and the extent of his engagement with rehabilitative intervention; (3) the realisation that it was his difficulties with illicit substances that predominantly motivated his offending; and (4) the protective factors comprising his realisation of the impact of his offending on victims and his family, his stable marital relationship, his re-connection with his Sikh religious community and a clear understanding of just how serious his offending has been, given the trajectory of this case involving his visa which has been ventilated in this Tribunal three times and twice in the Federal Court of Australia.

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[11] A3, p 14, [72].
[12] A1, p 9.

The Respondent's position

27. The Respondent takes the position that the sheer scope of the Applicant's offending is '*clearly very, very serious'* but that the tribunal should be more impressed by the cumulative impact of the Applicant's offending and its impact on both victims and the Australian community. Taken in its totality, the Respondent contends that the evidence points to a finding that there remains an unacceptable risk of the Applicant reoffending. The Respondent accepts the Applicant has participated in certain drug and alcohol programs and that he has made at least some effort towards a state of satisfactory rehabilitation from a dependence on illicit drugs.

28. Issue is taken, however, with the extent of that rehabilitation and the extent of his remorse for his offending. The Respondent accepts the Applicant has acknowledged his unlawful conduct but that his remorse and insight should now be found to be lacking because of what was contended to be a limited understanding of how his conduct has impacted victims. The Respondent also accepts that certain life circumstances described by the Applicant – co-tenanting with negative peers, the deaths of his father and brother, the infidelity of his wife – may have occurred but that those factors should be viewed with circumspection because they bore the character of a justification of his wrongdoing and because he failed to mention them to the clinician, Ms Chatterjee.

29. The Respondent does accept the Applicant has developed an understanding of the extent to which his offending has isolated and made vulnerable both his wife and infant child. However, the Respondent urges the Tribunal to have real concerns about whether the Applicant's responsibilities to his wife and child will act as protective factors in this future. It was submitted that the Applicant has offended in the past when he was married to his current wife and while their child was a newborn.

30. There was a further challenge to the claimed protective factors represented by the Applicant's other extended family members and the Sikh community more generally. It was submitted that these factors were present and otherwise part of the life of the Applicant in the past but that they did not stop him from offending. There was a challenge to the findings of Dr Kwok in which she assessed the Applicant as a low risk of general reoffending. The submission was that the assessment methodology should be viewed cautiously because it involved comparing the Applicant's profile to that of a sample of other offenders. Further,

the Tribunal was urged to cautiously receive Dr Kwok's risk assessment due to Dr Kwok saying that a low risk does not necessarily carry any inferential connotation of any negligible risk or that there is no risk at all.

31. The concluding submission of the Respondent about recidivist risk was that this Applicant represents a not-insignificant risk of reoffending and that any recommission of his unlawful conduct should now be found to be unacceptable.

Findings about risk

32. Clinical opinion: it would be unsafe for this Tribunal to cavil with the clinical opinions of Dr Kwok and Ms Chatterjee, particularly those of Dr Kwok. The Respondent's grounds of challenge to that evidence were based on two things: (1) whatever protective factors are now claimed to exist against recidivist risk were there in the past but did not stop the Applicant from offending; and (2) his remorse and insight are not as fulsomely developed as they should be. I have two misgivings about these grounds of challenge. The first of them is that it is all too predictable and straightforward to say that what has occurred in the past is likely to occur in the future. Such a position completely discounts a person's capacity to demonstrate any benefit from a pattern of reformative and rehabilitative engagement. The second reason for my misgivings is that the Respondent purports to measure the extent of the Applicant's remorse and insight but does so without any contemporaneous clinical backing. The challenge to the Applicant's levels of remorse and/or insight were based on a lay interpretation of his evidence and the nature and extent of his disclosures to Ms Kwok and Ms Chatterjee. This is not evidence from an independent clinician engaged by the Respondent who could expertly counterpoint and challenge the findings of clinicians engaged by the Applicant.

33. Past negative factors: there is no cavilling with the fact that a series of adverse circumstances were at the genesis of the Applicant's pattern of offending. His father died, his brother died, his wife was unfaithful, he took up lodgings with negative peers involved in illicit drug use which in turn led him to becoming addicted to heroin and methylamphetamine. It would be trite to suggest that the overwhelming majority of this Applicant's unlawful behaviour has not been motivated and/or caused by (1) the severe impact of these drugs on his moral compass and capacity to distinguish right from wrong; and (2) a no doubt addiction-driven motivation to obtain money (nearly always unlawfully) to buy more drugs

to satiate his addiction. This is the undeniable reality behind his offending. Save and except for extraordinary circumstances, it is very unlikely that this pattern of deaths, infidelity and negative peer groups again converging into a causative basis behind the Applicant returning to his offending ways.

34. The Applicant's concessions: he has accepted the very serious nature and extent of his unlawful conduct; he has accepted his past difficulties with illicit drugs have been the progenitor of his offending; he has accepted those substance abuse difficulties require management and control upon any return to the community; and he has accepted that his offending has hurt other people and that it has isolated those closest to him.

35. Temporal considerations: as mentioned earlier, I am satisfied the Applicant has come to understand just how much trouble his offending has placed him in with particular reference to his visa status to remain here. He has been in this Tribunal three times and in the Federal Court on two occasions for this single case relating to his visa. In short compass, he initially came here in mid-July 2018 and, but for a month in early 2020, he has been resident in Australia. Of the seven years he has been here, the Applicant's unlawful conduct has seen him removed from the community since about mid-2022. He has had over three years of self-reflection deriving from the social isolation that comes with prison and/or immigration detention. Three years is a long time for someone to understand just how much trouble their offending has caused in terms of their continued visa status to remain here. Further, were he successful in this application and had his visa status restored to him, his is surely aware that further offending engaging the mandatory cancellation provisions will land him in precisely the same trouble all over again, and dare I suggest, with significantly lower prospects of succeeding in any future challenge against a second mandatory cancellation.

Assessment of recidivist risk

36. I am satisfied that the evolution of the evidence across a number of hearings referrable to this matter demonstrates the Applicant to be a person to whom a low recidivist risk can be allocated. I will not cavil with the clinical findings of (particularly) Dr Kwok. The Applicant has had over three years to comprehend and appreciate the extent to which his past offending has so very seriously jeopardised his capacity to remain in this country.

Sub-paragraph 8.2.2(c): is this a case of the Respondent refusing to *grant a visa* to the non-citizen?

37. The Direction also contains a reference to sub-paragraph 8.1.2(2)(c). With reference to this specific sub-paragraph, this matter does not involve a '*refusal to grant a visa to a non-citizen*'. It involves an application for the '*revocation*' of a decision refusing to revoke the earlier mandatory cancellation of the Applicant's visa. This specific paragraph is not relevant to the determination of this application.

Conclusion of Primary Consideration 1:

38. With reference to the weight attributable to this Primary Consideration 1:

a) I have found that the nature and seriousness of the totality of the Applicant's conduct to date has been *very serious;*

b) I have found that further offending of the type already committed by this Applicant would range from physical and/or psychological harm together with materially quantifiable harm. Further, pursuant to sub-paragraph 8.1.2(1) of the Direction, I am satisfied that the harm resulting from repeated offending of the type sentenced in April 2021 and November 2022 is so serious that any risk of such recommission should now be found to be unacceptable.; and

c) the totality of the evidence points to a finding that this Applicant represents a low risk of reoffending.

39. My analysis of the material leads me to a finding that this Primary Consideration 1 confers a *very heavy level of weight* towards this Tribunal affirming the decision under review.

PRIMARY CONSIDERATION 2: FAMILY VIOLENCE COMMITTED BY THE NON–CITIZEN

40. Paragraph 8.2 of the Direction provides:

> *1. The Government has serious concerns about conferring on non-citizens who engage in family violence the privilege of entering or remaining in Australia. The*

Government's concerns in this regard are proportionate to the seriousness of the family violence engaged in by the non-citizen (see paragraph (3) below).

2. *This consideration is relevant in circumstances where:*
   - *(a) a non-citizen has been convicted of an offence, found guilty of an offence, or had charges proven howsoever described, that involve family violence; and/or*
   - *(b) there is information or evidence from independent and authoritative sources indicating that the non-citizen is, or has been, involved in the perpetration of family violence, and the non-citizen being considered under section 501 or section 501CA has been afforded procedural fairness.*
3. *In considering the seriousness of the family violence engaged in by the non-citizen, the following factors must be considered where relevant:*
   - *(a) the frequency of the non-citizen's conduct and/or whether there is any trend of increasing seriousness;*
   - *(b) the cumulative effect of repeated acts of family violence;*
   - *(c) rehabilitation achieved at time of decision since the person's last known act of family violence, including:*
     - *i. the extent to which the person accepts responsibility for their family violence related conduct;*
     - *ii. the extent to which the non-citizen understands the impact of their behaviour on the abused and witness of that abuse (particularly children);*
     - *iii. efforts to address factors which contributed to their conduct; and*
   - *(d) Whether the non-citizen has re-offended since being formally warned, or since otherwise being made aware by a Court, law enforcement or other authority, about the consequences of further acts of family violence, noting that the absence of a warning should not be considered to be in the non-citizen's favour. This includes warnings about the non-citizen's migration status, should the non-citizen engage in further acts of family violence.*

The relevant incidents

41. The evidence contains reference to three incidents involving family violence conduct referable to the Applicant. These incidents are particularised in the material.[13] It is common ground that the Applicant accepts commission of the first domestically-violent related incident which refers to his breach of an extant family violence order. The second incident refers to the Applicant's alleged emotional manipulation against his victim by purporting to

[13] R2, pp 7-8, [19]-[22].

harm himself by consuming weed-killer. This included sending the victim video depictions of him apparently consuming that life-threatening substance. The third issue is about a family-violence related incident that, in an earlier ventilation of this matter in this Tribunal, the Applicant accepted he committed but now resiles that concession at the instant hearing. There is no need to fulsomely (or at all) discuss this third incident for present purposes. That is because during closing submissions, the Respondent's representative confirmed that they were not relying on that third incident for the purposes of the instant determination.

42. Paragraph 8.2 of the Direction compels two additional inquiries: (1) it is necessary to ascertain who was a member of the Applicant's family? and (2) whether any of the Applicant's conduct against any such family member amounts to family violence for present purposes? I will address each question in turn.

Who are members of the Applicant's family?

43. Paragraph 4(1) of the Direction defines family violence to mean *"…violent, threatening or other behaviour by a person that coerces or controls a member of the person's family...or causes the family member to be fearful."* The Direction (at paragraph 4.1) defines "*member of a person's family*" to include "*...a person who has, or has had, an intimate personal relationship with the relevant person.*" I am satisfied that the Applicant's previous wife is a member of the Applicant's family for present purposes.

Did Any of the Applicant's conduct constitute family violence?

44. It will be recalled that **'***Family violence*' in the Direction is defined as '*violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member) or causes the family member to be fearful*'.[14] This definition poses two separate questions:

- was the Applicant's conduct violent, threatening, or other behaviour that coerced or controlled a member of his family?
- was the Applicant's conduct violent, threatening, or other behaviour that caused a family member to be fearful?

[14] Paragraph 4(1) of the Direction.

45. It is clear from the descriptions of the Applicant's conduct perpetrated against his former wife in the first and second incidents was indeed conduct that was violent, threatening and/or behaviour that sought to coerce or control her. I am likewise satisfied that the Applicant's conduct in each of the relevant incidents was violent, threatening and that it was behaviour that caused his previous wife/victim to be fearful.

Is the Applicant's conduct captured by paragraph 8.2 of the Direction?

46. The Applicant's family violence conduct has been the subject of either a previous conviction(s) or has otherwise been described and reported in independent and authoritative sources. Accordingly, his family violence conduct must now be found to fall squarely within the auspices of either paragraph 8.2(2)(a) or paragraph 8.2(2)(b) of the Direction. The resulting findings must be that (1) the Applicant's conduct towards his former wife comprises family violence against that victim; and (2) this Primary Consideration is relevant to determination of the instant application. I so find.

Assessment of the seriousness of the Applicant's family violence conduct

47. I will now consider each of the factors in paragraph 8.2(3)(a)–(d) in turn for the purposes of assessing the nature and seriousness of the Applicant's family violence conduct.

48. **Paragraph 8.2(3)(a)**: requires an analysis of the frequency of the Applicant's family violence conduct and/or whether there is any trend of increasing seriousness. There is a ready acknowledgment from the Respondent that the Applicant's family violence conduct is confined to a particular period and is related to his relationship with his former wife.[15] I agree. Even a cursory look through the 33 entries for convictions contained in his criminal history discloses only one domestic violence-related conviction and that was for a breach of an extant order for which he was convicted in November 2022. The safe finding is that although the Applicant has committed family violence conduct, it should not be found to be either frequent or otherwise containing a trend of increasing seriousness.

49. **Paragraph 8.2(3)(b)**: requires consideration of the cumulative effect of repeated acts of family violence. Although the Applicant does not have a plethora of either convictions and/or

[15] R2, p 14, [60].

independently and reliably reported incidents about his family violence conduct, there can be no question that his family violence conduct has traumatised its victim. She experienced physical violence as a result of being slapped, having her legs hit and as a result of the Applicant trying to be too aggressively intimate with her. She also experienced emotional and psychological harm as a result of him sending her emotional text messages, videos of him pretending to drink weed killer and attending her workplace and following her. I will find that the Applicant's family violence conduct has cumulatively impacted its victim by causing her to experience physical pain as well as mental/psychological anguish and fear.

50. **Paragraph 8.2(3)(c)**: requires consideration of any rehabilitation achieved by the Applicant at the time of my decision since his last known act of family violence. This sub-paragraph compels three enquiries:

i. first, sub-paragraph 8.2(3)(c)(i) looks for the extent to which the Applicant has accepted responsibility for his family violence related conduct. In his evidence to the instant Hearing, the Applicant conceded his breach of the extant domestic violence order and was otherwise regretful and remorseful for his conduct towards his former wife. This acceptance of responsibility should, to my mind, be tempered against the position he took on the third incident – which he now denies – and which is a position totally at odds with his previous evidence to at least one earlier ventilation of this matter in this Tribunal. Be that as it may, I will nevertheless find that the Applicant does accept responsibility for this family violence related conduct.

ii. second, sub-paragraph 8.2(3)(c)(ii) seeks to understand the extent to which a non-citizen comprehends the impact of their behaviour on the abused person. If nothing else, the Applicant has understood that his family violence conduct is unacceptable and that he requires some level of rehabilitative intervention to address the factors predisposing it. There is a concerning theme in his evidence around responsibility for this conduct and it involves his attempts to justify his conduct in the context of his former wife's infidelity. It can be safely found the Applicant accepts some measure of responsibility for his family violence conduct but perhaps refuses to assume full responsibility for it.

iii. third, sub-paragraph 8.2(3)(c)(iii) seeks to identify efforts made by a non-citizen to address the factors which contributed to their family violence conduct.

> The Applicant has participated in various short online courses through the '*Universal Class'* organisation. The courses he completed included *'Domestic Violence 101',* '*Behaviour Management 101'* and *'Psychology 101.'* Of course, this is not to suggest (or find) that the Applicant should now be found to be totally rehabilitated from any propensity towards committing further family violence conduct. But it is undeniable that he has made at least some kind of rehabilitative effort towards this.

51. The outcome of the three inquiries compelled by this paragraph 8.2(3)(c) militates in favour of a finding that the Applicant's family violence conduct has been of a very serious nature. I so find.

52. **Sub-paragraph 8.2(3)(d)** requires me to look at whether the Applicant has, '*re-offended since being formally warned, or otherwise since being made aware by a Court, law enforcement or other authority, about the consequences of further acts of family violence'*. The material contains a copy of the protection order made on 12 November 2020 at a Magistrates Court in Southeast Queensland. Very importantly, this Order contains the following warning to the Applicant about contravening that Order:

> '*CONTRAVENTION OF ORDER: If you contravene any conditions of this order, you commit an offence against the Act,*[16] *and you may receive a penalty of up to three years of imprisonment in a 5 year period and 5 years imprisonment for subsequent offences within a 5 year period.*
>
> *NOTE: If this order is contravened in another State or a Territory of Australia, you may be subject to penalties imposed in that State or Territory.'*[17]

53. Despite this clearly worded warning, the Applicant proceeded to breach this Order for which he was convicted in November 2022 at a Magistrates Court in Southeast Queensland. This breach of an extant Order does the Applicant no favours in terms of this Tribunal's assessment of the seriousness of the family violence conduct in which he has engaged.

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[16] That is, the *Domestic and Family Violence Protection Act 2012* (Qld).

[17] R1, p 700.

Conclusion: Primary Consideration 2

54. I have found that sub-paragraphs 8.2(3)(a)-(d) facilitate a finding about the very serious nature of the Applicant's family violence conduct. Having regard my findings referrable to the various components of paragraph 8.2(3)(a)–(d) (inclusive), I am of the view (and I find) that this Primary Consideration 2 confers *a heavy* level of weight in favour of this Tribunal affirming the decision under review.

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

55. Paragraph 8.3(1) of the Direction states:

> *(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.*

56. The subsequent paragraph 8.3(2) also stipulates that in the assessment of any other ties that a non-citizen may have in Australia, the decision-maker 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.*

Paragraph 8.3(1): Ties to immediate family members

57. It appears to be common ground between the parties that the Applicant's immediate family members in Australia comprise his current wife and their infant child, Child A. It seems clear that the Applicant has very strong ties to those two immediate family members. There was a concession from the Respondent that the Applicant's ties with his current wife and their infant child are very strong. I will find that these ties militate in favour of a heavy level of weight in favour of the Applicant pursuant to this Primary Consideration 3. This finding is predicated on the limiting proviso that his current wife and their infant child are Australian

citizens, Australian permanent residents and/or people who have a right to remain here indefinitely.

Paragraph 8.3(2)(b) Ties to extended family and social links

58. There is also discussion in the material about the extent of the Applicant's ties to his in-laws – that is, the parents of his wife. Their visa status clearly demonstrates that they are not Australian citizens, Australian permanent residents or people who have a right to remain in Australia indefinitely. It would not be safe to take their interests into account for the purposes of this Primary Consideration 3. The material also contains reference to two Uncles/Aunts who apparently reside in Australia. However, there is little or nothing in the material about the extent of any relationship the Applicant has to these two Uncles/Aunts. To the best of my understanding of the Applicant's position, no specific or other ties are propounded between the Applicant and these two Uncles/Aunts. Further, there is nothing in the material confirming that these two Uncles/Aunts are Australian citizens, Australian permanent residents and/or people who have a right to remain here indefinitely. I will put the Applicants in-laws and these two Uncles/Aunts to one side for present purposes. Only neutral weight can be safely allocated to this paragraph 8.3(2)(b).

Paragraph 8.3(2)(a): Additional factors to take into account

59. This component of Primary Consideration 3 requires me to look at how long the Applicant has resided in Australia, taking into account the following factors:

- whether the Applicant arrived here as a young child? [18] The Applicant arrived in Australia in July 2018 when he was 23 years old. He has lived here for a period of about 7 years. I will find that he did not arrive here as a young child. This component of paragraph 8.3(2) does not augment the weight allocable to his ties to this country;
- whether the Applicant began offending soon after arriving here? [19] The Applicant arrived here as a 23-year-old in mid-2018 and committed his first offence in Australia in September 2020. I will find that he did begin offending soon after arriving here. Thus,

[18] Paragraph 8.3(2)(a) of the Direction.
[19] Paragraph 8.3(2)(a)(i) of the Direction.

the weight allocable to the Applicant for this Primary Consideration 3 can be impugned on the basis of him offending soon after arriving here;

- the time the Applicant has spent contributing positively to the Australian community during his time here.[20] The Applicant has worked in Australia as a cleaner and a truck driver for a logistics company during the period 2018-2020. I will find he has a moderately strong work history in Australia. He would have have paid his share of income taxation on his earnings as a cleaner and a truck driver. He has some measure of community involvement via his volunteer work within his Sikh community. The material also discloses the has made donations of both money and blood to the Red Cross organisation. On the basis of his moderately strong employment and community contributions, I will find that this component of paragraph 8.3(2) of the Direction affords a *heavy* level of weight in the Applicant's favour towards a finding about the strength of his ties to Australia.

60. Accordingly, I am of the view (and I find) based on my analysis of the evidence around subparagraph 8.3(2)(a) of the Direction that:
    - sub-paragraph 8.3(2)(a) does not augment the weight allocable to the Applicant for the purposes of this Primary Consideration 3 because he did not arrive in Australia as a young child;
    - sub-paragraph 8.3(2)(a)(i) does impugn the weight allocable to the Applicant for the purposes for this Primary Consideration 3 because he did begin offending soon after arriving in Australia;
    - sub-paragraph 8.3(2)(a)(ii) does assist the Applicant because of his moderately strong employment and community contributions to Australia.

61. Therefore, only the specific sub-paragraph 8.3(2)(a)(ii) (employment and community contributions) serves to augment the weight I have already allocated to the Applicant pursuant to the earlier-applicable paragraphs comprising paragraph 8.3(1) and 8.3(2)(b) of the Direction, respectively, relating to his ties to immediate family members in Australia and his ties to extended family/social links in Australia (which, of course, comprise neutral weight).

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[20] Paragraph 8.3(2)(a)(ii) of the Direction.

Conclusion: Primary Consideration 3

62. I have referred to the three relevant components of this Primary Consideration 3. I am of the view, after having analysed the evidence relevant to each of those three components to which the evidence applies, that the totality of that evidence points to a *heavy* level of weight in favour of this Tribunal setting aside the decision under review.

PRIMARY CONSIDERATION 4: BEST INTERESTS OF MINOR CHILDREN IN AUSTRALIA

63. This Primary Consideration requires a decision-maker to consider what impact a decision to refuse or not revoke cancellation of a visa will have on children who are and will continue to be under the age of 18 years of age at the time of the decision.[21] The Direction further requires that the best interests of each child must be considered individually if there is more than one minor child identified.

64. In assessing the best interests of each child/ren, a decision-maker is required to take into account:[22]

> *(a) the nature and duration of the relationship between the child and the non-citizen. Less weight should generally be given where the relationship is non-parental, and/or there is no existing relationship and/or there have been long periods of absence, or limited meaningful contact (including whether an existing Court order restricts contact);*
> *(b) the extent to which the non-citizen is likely to play a positive parental role in the future, taking into account the length of time until the child turns 18, and including any Court orders relating to parental access and care arrangements;*
> *(c) the impact of the non-citizen's prior conduct, and any likely future conduct, and whether that conduct has, or will have a negative impact on the child;*
> *(d) the likely effect that any separation from the non-citizen would have on the child, taking into account the child's or non-citizen's ability to maintain contact in other ways;*
> *(e) whether there are other persons who already fulfil a parental role in relation to the child;*
> *(f) any known views of the child (with those views being given due weight in accordance with the age and maturity of the child);*
> *(g) evidence that the child has been, or is at risk of being, subject to, or exposed to, family violence perpetrated by the non-citizen, or has otherwise been abused or neglected by the non-citizen in any way, whether physically, sexually or mentally;*

[21] Paragraphs 8.4(1) and 8.4(2) of the Direction.
[22] Paragraph 8.4(4) of the Direction.

(h) evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen's conduct.

Identification of relevant minor child/ren

65. It is common ground between the parties that the only relevant minor child for present purposes is Child A who has recently turned three years of age. The Applicant's position is that he maintained an ongoing and meaningful relationship with Child A and that if his visa status is restored, he will act as primary care giver because his wife will be heavily involved in the conduct and management of her commercial cleaning business. It is contended that the Applicant's removal from Australia consequent upon an adverse outcome in this preceding: '*…would likely have significant adverse impacts for Child A. She would be separated from her father. [The Applicant's current wife] would be left to raise her in Australia without the Applicant's support. It is highly unlikely that [the Applicant's current wife] and Child A would move to India with the applicant…'*[23]

66. There is a further element in the evidence referrable to Child A that bears consideration. It relates to a report made by a Clinical Nurse working to Dr Kirby Wighton, Consultant Paediatrician. This report relevantly appears in the material.[24] Dr Wighton provides the following assessment:

> ***'Summary of assessment:***
> 1. *Child A is is [sic] an active toddler who has appropriate gross and fine motor development for her age. Her speech and language are appropriate for her language environment and there were no concerns for her neurological development at time of appointment.*
> 2. *Examination of Child A today identifies healthy growth and development. Weight and height at 97th percentile, head circumference at 50th percentile.*
> 3. *Her nutritional intake is low in iron and potentially other nutritional requirements for her age and it would be prudent to perform further testing to check her physiological status.*
> 4. *Her current social environment, routine and sleep behaviours may exacerbate her overall ability to emotionally regulate. It is unlikely that she is getting adequate quality sleep. She would benefit from a structured routine including meal times and bedtime.*
> 5. *Eczema present around eyes and mouth, dry skin on body. Eczema management plan discussed with [the Applicant's current wife] and script, sample moisturisers and information handouts given.*
> 6. *No other significant physical findings at time of examination.'*[25]

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[23] A2, p 12, [61].

[24] R1, pp 1029-1030.

[25] R1, p 1029.

67. I will approach this report from Dr Wighton with some measure of caution. His observations are of physical symptoms/elements referrable to Child A's physical health. Granted, there is some reference to her capacity to emotionally regulate and about whether or not she is getting enough sleep. But at the end of the paragraph containing these observations, Dr Wighton thinks these issues could be remediated by saying '*[Child A] would benefit from a structured routine including meal times and bed times.'* This has got nothing to do with these items being attributable to the Applicant's absence and is more likely the result of the very heavy commitment of time and effort needed to be expended by the Applicant's current wife on the management and conduct of her commercial cleaning business.

Application of factors at 8.4(4) of the Direction to Child A

68. **Sub-paragraph 8.4(4)(a):** It can be accepted that there is a relationship between the Applicant and Child A. She has recently turned three years of age having been born in July 2022. The nature and duration of the Applicant's relationship with her is clearly and obviously impacted by the reality that he has been removed from the community for about the same period as all of Child A's life thus far. There have been very long periods of physical absence by the Applicant from Child A's life. That said, there has been at least some extent of meaningful contact between them and there is no Court Order restricting that contact. This sub-paragraph 8.4(4)(a) militates in favour of the allocation of a heavy level of weight to the best interests of Child A.

69. **Sub-paragraph 8.4(4)(b):** the evidence of the Applicant's current wife can only be read in one way: such is the size and scope of her burgeoning commercial cleaning business that she most certainly needs the Applicant returned to her as a physical presence to assist with the care of Child A. The Applicant has plenty of time to develop and establish a positive parental role in the future life of Child A because there are some 15 parenting years left to run until she turns 18. This sub-paragraph 8.4(4)(b) militates in favour of the allocation of a heavy level of weight to the best interests of Child A.

70. **Sub-paragraph 8.4(4)(c):** there can be little or no doubt that Child A is aware of the reality that the Applicant is her father. She would most likely experience negative feelings when her current communications with the Applicant have to be ended. I have previously referred to the findings of Dr Kirby Wighton and do not consider that those findings support the proposition that his report is indicative of Child A experiencing any sort of psychological or

emotional impacts due to the Applicant not being physically present in her life. That said, there is little doubt that Child A has been – at least to some extent – been impacted by the Applicant's physical absence and would probably be similarly impacted in future were he to reoffend and again be removed from the community. This sub-paragraph 8.4(4)(c) militates in favour of the allocation of a moderate level of weight to the best interests of Child A.

71. **Sub-paragraph 8.4(4)(d):** again, it would be unsafe to apply the findings of Dr Wighton to any finding about the effect that the Applicant's physical separation from Child A has had on her. Were he removed to India, he would be able to maintain contact with her via non-in-person means be that either by a telephonic or electronic platform. This sub-paragraph should be put to one side and rendered neutral for present purposes.

72. **Sub-paragraph 8.4(4)(e):** Child A has been primarily parented by, in the first instance, the Applicant's current wife who, in the second instance, has been assisted by her parents. However, her parents' tenure in Australia is not permanent and they are due to return to India relatively soon. This reality added to the further extent of the current wife's commitments to her commercial cleaning business does, to an extent, moderate her capacity to fulfill a primary parental role. On this basis, I will find this sub-paragraph 8.4(4)(e) militates in favour of the allocation of a moderate level of weight to the best interests of Child A.

73. **Sub-paragraph 8.4(4)(f):** Child A has only recently turned three. She is too young to express any reliable views about how she would be impacted by the Applicant's removal from Australia. This sub-paragraph should be put to one side and rendered neutral for present purposes.

74. **Sub-paragraph 8.4(4)(g) and (h):** there is no evidence that either of these two factors apply to the instant facts. Both of these factors should be put to one side and rendered neutral for present purposes.

Allocation of weight to the best interests of the relevant minor-aged child

75. If the Applicant were to be permanently removed from Australia as a result of an adverse outcome in the instant matter, I am of the view that the combination of weight allocable to each of sub-paragraphs 8.4(4)(a), (b), (c) and (e) should, at its highest, attract the allocation of a *heavy* level of weight to the best interests of Child A.

Conclusion: Primary Consideration 4

76. I will therefore find that this Primary Consideration 4 is of *heavy* weight in favour of this Tribunal revoking the decision under review.

PRIMARY CONSIDERATION 5: EXPECTATIONS OF THE AUSTRALIAN COMMUNITY

The normative expectation

77. The Direction makes clear 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.[26] The Direction further explains:

> *'This consideration is about the expectations of the Australian community as a whole, and in this respect, decision-makers should proceed on the basis of the Government's views as articulated [in paragraph 8.5(1) – (3) of the Direction], without independently assessing the community's expectations in the particular case.'*[27]

78. With reference to the propositions in paragraph 8.5(1) of the Direction, this sub-paragraph is expressed thus:

> *"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."*

Has the Applicant breached the normative expectation?

79. This Applicant has breached the Australian community's expectations as a result of his very serious conduct for which he was sentenced in April 2021 and November 2022. I will therefore find that the Australian community, *'as a norm',* expects the Australian Government not to allow this Applicant to remain in Australia.

Is the Applicant's conduct alone sufficient to breach the normative expectation?

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[26] Paragraph 8.5(3) of the Direction.

[27] Paragraph 8.5(4) of the Direction. Paragraph 8.5(4) codifies the position laid down by the Full Court of the Federal Court in *FYBR v Minister for Home Affairs* (2019) 272 FCR 454.

80. The Direction also states that visa cancellation or refusal, or non-revocation of a mandatory cancellation of a visa, may be appropriate simply because the nature of the character concerns or offences are 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:[28]

> *(a) acts of family violence; or*
>
> *(b) causing a person to enter into, or being party to (other than being a victim of), a forced marriage;*
>
> *(c) commission of serious crimes against women, children or other vulnerable members of the community such as the elderly or disabled; in this context, 'serious crimes' include crimes of a violent or sexual nature, as well as other serious crimes against the elderly or other vulnerable persons in the form of fraud, extortion, financial abuse/material exploitation or neglect;*
>
> *(d) commission of crimes against government representatives or officials due to the position they hold, or in the performance of their duties; or*
>
> *(e) involvement or reasonably suspected involvement in human trafficking or people smuggling, or in crimes that are of serious international concern including, but not limited to, war crimes, crimes against humanity and slavery; or*
> *(f) worker exploitation*.

81. The Applicant has respective convictions for (1) domestically violent offending and (2) a conviction for a crime committed against a government official (i.e. the Police) in the performance of their duties. This offending comfortably falls within the auspices of the abovementioned sub-paragraphs (a) and (d) of paragraph 8.5(2) of the Direction. I am satisfied that these convictions are sufficiently serious such that the Australian community would expect the Australian Government to refuse to set aside the mandatory cancellation of his visa.

Are there any factors modifying the Australian community's expectations?

82. The remaining question is whether there are any factors which modify the Australian community's expectations. This question is informed by the principles in paragraphs 5.2(5), (6) and (7) of the Direction. In summary, I have identified those factors to comprise:

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[28] Paragraph 8.5(2) of the Direction.

a) Australia has a low tolerance of any criminal or other serious conduct by visa applicants or those holding a limited stay visa (paragraph 5.2(5));

b) the Australian community has a low tolerance of any criminal or other serious conduct by non-citizens who have been participating in, and contributing to, the Australian community for only a short period of time (paragraph 5.2(5));

c) Australia may afford a higher level of tolerance towards 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 (paragraph 5.2(6));

d) the nature of a non-citizen's conduct, or the harm that would be caused if the conduct were to be repeated, may be so serious that even strong countervailing considerations may be insufficient to justify a visa outcome that is not adverse to the non-citizen (paragraph 5.2(7)); and

e) the inherent nature of the non-citizen's conduct is so serious that it displaces even strong countervailing factors militating in favour of a positive visa outcome for a non-citizen even in circumstances where the non-citizen does not pose a measurable risk of harm to the Australian community (paragraph 5.2(8)).

83. In relation to sub-paragraph (a) of the abovementioned paragraph [82], the term '*limited stay visa*' is not defined in the Act. In this case, the Applicant held a Class WC Subclass 030 Bridging C visa until it was mandatorily cancelled on 14 December 2022. This visa is a limited stay visa.[29] Therefore, the Australian community has a low tolerance of this Applicant's criminal or other serious conduct.

84. In relation to sub-paragraph (b) of the abovementioned paragraph [82], the Applicant has spent about 7 years in Australia since arriving here aged 23 years. He has spent less than a quarter of his life in this country and is currently aged 30 years. He has a moderately strong work history in Australia and has made certain employment and community contributions while here. He has married in this country and has fathered a biological child here. His participation in, and contribution to, the Australian community he has made during his time here cannot be safely found to have been 'short'. Therefore, I will cautiously find

[29] Regulations 030.511 of the *Migration Regulations 1994* (Cth).

the Australian community's tolerance is not lowered by this part of the principles in 5.2(5) of the Direction.

85. In relation to sub-paragraph (c) of the abovementioned paragraph of [82], I repeat that the Applicant arrived in Australia as a 23-year-old in 2018. He has spent less than a quarter of his life in Australia and he did not come here at a very young age.[30] I will therefore find that the Australian community's level of tolerance of criminal or other serious conduct by this Applicant is not raised.

86. In relation to sub-paragraph (d) of the abovementioned paragraph [82], I am of the view that the balancing exercise between (on the one hand) the harm that would be caused by the Applicant re-committing his very serious criminal offending of the same type already committed and (on the other hand), whatever countervailing considerations may work in his favour, is not necessarily a principle referable to the community's expectations for present purposes. This is because I am of the view that his very serious offending (convicted in April 2021 and November 2022) has been of such a significantly serious magnitude as to dispel any applicable countervailing considerations working in his favour.

87. In relation to sub-paragraph (e) of the abovementioned paragraph [82], I am of the view that the Applicant's very serious conduct convicted in April 2021 and November 2022 is so serious such as to displace any strong countervailing considerations militating in favour of a positive visa outcome. I have found that the Applicant still represents a low risk of re-offending but I have found that if he were to re-offend, the resulting harm to the Australian community renders such a risk unacceptable.[31] This means that the balance of the abovementioned sub-paragraph (e)[32] does not need ventilation here.

88. Having regard to the above discussion around sub-paragraphs (a)–(e) (inclusive) referenced in paragraph [82] of these Reasons, I am of the view that the Australian community's expectations are *not* modified such that the community does not have a higher than usual tolerance of criminal conduct by the Applicant. Because of the very serious nature of the totality of his offending, this Primary Consideration 5 compels a finding that

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[30] This is consistent with my finding at [59] (first dot point) and [60] (first dot point).

[31] See [18] and [38(b)] of these Reasons.

[32] That is, about whether the Applicant does not pose a measurable risk of causing physical harm to the Australian community.

the community expects the Australian Government can and should refuse to set aside the mandatory cancellation of the Applicant's visa. I so find.

Conclusion: Primary Consideration 5

89. Primary Consideration 5 confers a *very heavy* level of weight in favour of this Tribunal affirming the Decision Under Review.

OTHER CONSIDERATIONS

Other Consideration (a): Legal consequences of the decision

90. The Applicant claims to fear harm by his cousin who is also now the husband of his former wife. He says that he also fears harm from two of his other cousins who are the brothers of the ex-wife's husband. These fears of harm derive from the Applicant's perception that these three cousins are part of some type of illegal criminal gang activity in India. The Applicant further professes a fear as a result of his failed marriage to his first wife and because the Applicant says he is (or will become) the beneficiary of significant property interests in India. The gist of this latter fear is that it financially suits the feared cousins to, as it were, have the Applicant out of the way. The Applicant points to a telephone call he received in 2020 from the abovementioned cousin who is married to the Applicant's former wife. The Applicant further contends that his current wife has been the recipient of threatening calls from the ex-wife and, further, that the current wife was followed around by an unknown male in an Indian shopping centre following a recent visit by her to that country.

91. Given this claim to fear harm, it is open to the Applicant to apply for a protection visa. Paragraph 9.1.2(2) of the Direction provides that where this is the case, the Tribunal is not compelled to consider non-refoulment issues to the same level and degree as would occur in the assessment and consideration of a formal application for a protection visa. Thus, this Tribunal is not compelled to determine whether Australia's non-refoulment obligations are engaged as a result of the Applicant's claimed fears of harm upon a return to India to the extent those fears are articulated by him. High Court authority endorses this position and confirms that if an Applicant in a s 501CA(4) matter remains capable of applying for and securing a protection visa, a Tribunal such as this one does not have to make an

assessment about any engagement of non-refoulment obligations as part of its merits review exercise.[33]

92. I will therefore cause this Tribunal to defer any assessment about whether Australia's non-refoulment obligations are engaged pursuant to the *Migration Act 1958* (Cth).[34] Be that as it may, I will nevertheless take into account other factors pointing to legal consequences resulting from determination is the instant application. A permanent removal to India would not be free of adverse consequences for the Applicant. If he fails in the instant application, he will be permanently excluded from re-entering Australia. Two consequences will follow. First, his permanent exclusion from Australia, which, however, is not something that engages paragraph 9.1 of the Direction and thus referable for my consideration. Section 501E of the Act prohibits the Applicant from applying for any other visa with the exception of a protection visa.[35]

93. The second consequence of his permanent removal from Australia carries with it the impact he will experience in terms of (1) impediments he will face upon a return and resettlement in India; and (2) the impact on the ties he has with people in Australia. As for the former (i.e. impediments), they fall for consideration later in these Reasons under paragraph 9.2 of the Direction. The latter (i.e. ties to Australia) I have already considered pursuant to paragraph 8.3 of the Direction.

94. I am satisfied that even in circumstances where I have deferred consideration of the extent to which Australia's non-refoulement obligations are engaged, there are legal and other consequences for the Applicant if now removed to India. Those additional consequences attract the allocation of a *moderate* weight to this Other Consideration (a).

Other Consideration (b): Extent of impediments if removed

Factors to be taken into account

95. Paragraph 9.2 of the Direction directs a decision-maker to take into account the extent of any impediments that the non-citizen may face if removed from Australia to their home

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[33] *Plaintiff M1/2021 v Minister for Home Affairs* [2022] HCA 7 at [29]-[30].
[34] Hereinafter referred to as '*the Act.*'
[35] Section 501E(2) of the Act.

country, in establishing themselves and maintaining basic living standards (in the context of what is generally available to other citizens of that country), taking into account:

(a) the non-citizen's age and health;

(b) whether there are any substantial language or cultural barriers; and

(c) any social, medical and/or economic support available to that non-citizen in that country.

96. **Paragraph 9.2(1)(a)**: the Applicant is presently 30 years of age. He turns 31 next month and in terms of his age, it can safely found he is in the prime of his life. In his Personal Circumstances Form, he ticked the '*No'* box in response to the question: '***Do you have any diagnosed medical or psychological conditions?***'[36] In her report, from as recently ago as May of this year, Dr Emily Kwok clearly states that '*…[the Applicant] does not currently present with symptoms to indicate he is suffering from a mental condition or illness.'*[37] I am thus satisfied that the Applicant's age and state of physical and mental health are not impediments to his return and resettlement in India.

97. **Paragraph 9.2(1)(b):** The Applicant spent the first 23 years of his life in India. There cannot possibly be any demonstrable lack of cultural or linguistic familiarity with that country. He has spent less than a quarter of his life here, comprising seven years. His time in Australia cannot be found to have caused a cultural or linguistic obliteration of his familiarity with those things in India. There are no substantial language or cultural barriers impeding his return or resettlement there.

98. **Paragraph 9.2(1)(c):** first, in terms of *medical support* in India, it should be noted that India is a country of 1.5 billion people. It is reasonable to infer that publicly available medical support in a country having 60 times the population of Australia will not be at precisely the same level as would be available to the Applicant in Australia. Be that as it may, the Applicant will be able to access the same level of publicly available medical support as other citizens of that country. Further, any failure by the Indian authorities to maintain an adequate level of publicly available healthcare in that country would – due to the huge population

[36] R1, p 426.
[37] A3, p 10, [61].

numbers – result in calamitous public health outcomes. Clearly, this is not the case in modern India. I am of the view that whatever impediments the Applicant may confront in terms of sourcing publicly available healthcare in India, are not insurmountable.

99. Second, with reference to *economic support*, I am satisfied the Applicant has acquired a level of work experience in Australia which holds him in good stead to find gainful employment in India. His age and robust state of health make him suitable to a range of employment opportunities. The extent to which those opportunities are and will become available to him is no different to that which applies to other citizens of India. I am of the view that whatever impediments the Applicant may confront in terms of sourcing employment in India, are not insurmountable.

100. Third, with reference to *social support* in India, he cannot deny he has family members who reside there with whom he is in regular contact. He is in regular contact with his mother and minor son in that country and there is little to cavil with the proposition (and finding) that he will be able to reside with his mother. The element of social support in India is not an impediment to his return and resettlement there.

Findings about impediments

101. My findings about impediments are as follows:

- the Applicant's age and state of physical health are not impediments to his return and resettlement in India;
- there are no substantial language or cultural barriers impeding the Applicant's return and resettlement in India;
- any lack of economic support in India is not an insurmountable impediment to his return and resettlement there;
- any lack of social support in India is not an impediment to his return and resettlement in India; and
- any lack of medical support in India is not an insurmountable impediment to his return and resettlement there.

102. Given my findings about each of the three sub-paragraphs to this paragraph 9.2 of the Direction, I am of the view that this Other Consideration (b) confers, a *moderate* level of weight in favour of this Tribunal exercising the power to revoke the mandatory cancellation of the Applicant's visa.

Other Consideration (c): Impact on Australian business interests

The evidence around an "Australian business interest"

103. The evidence around this Other Consideration (c) relates to the capacity of the Applicant's current wife to conduct her cleaning business in circumstances where her capacity to do so is impeded by the more significant requirement of her acting as primary care giver to Child A. The current wife has received some support in the care of Child A while the Applicant has been removed from the community because her parents have temporarily come to Australia to assist her in this regard. However, her parents stay in Australia is not permanent and they are due to imminently return to India. This means that if returned to the community, the Applicant would be required to act as primary care giver for Child A.

104. If the evidence is to be accepted, the current wife's commercial cleaning business is a substantial one. She spoke of holding '*contracts'* with the likes of Reece Plumbing[38] and Bunnings[39] and of having a significant number of employees. The evidence was either non-existent or weak in terms of any written proof of such '*contracts'* with entities of that size and scope. It would beggar belief if such publicly listed entities did not keep a register of contracts and agreements into which they had entered with third party service providers. One can therefore have misgivings about the size and scope of the business undertaking which the Applicant's current wife says she owns and operates.

105. The further point is this: the Applicant has been removed from the community for something like three years. Yet the current wife – albeit with the support of her temporarily present parents – has apparently grown the business to the size she now claims it is. In other words, she has taken the business to its present point without the Applicant and, provided arrangements can be made for assistance in the care of Child A, there is little to suggest

[38] Publicly listed as '*Reece Limited.'*

[39] A wholly owned subsidiary of the publicly listed *'Wesfarmers Limited.'*

she (the current wife) could not continue operating this sizable cleaning business into the future. The further point is that the necessary *'employment link'* referred to in paragraph 9.3(1) of the Direction has no application to the instant facts. If the Applicant is removed to India, history demonstrates that his current wife would be able to continue to operate the commercial cleaning business and that his removal would not significantly compromise the delivery of important cleaning services in Australia. Even if the current wife closed down that business and went back to India with him, its activities would be subsumed into rival commercial businesses.

106. I concur with the Respondent's observation about the precise nature of the '*employment link'* disclosed by the evidence. At best, the Applicant has an indirect link to his current wife's cleaning business. There is little or nothing to suggest he will make direct contributions to that business as a '*hands on'* employee or contractor.[40] His primary function in relation to her business is to look after Child A while she (the current wife) meets what she claims to be the very significant time and effort towards the operation and management of that business.

107. In these circumstances, only neutral weight can be allocated to this Other Consideration (c).

Findings: Other Considerations

108. The allocation of weight to the Other Considerations in the present matter can be summarised as follows:

(a) legal consequences of the decision: is of ***moderate weight*** in favour of revocation;

(b) extent of impediments if removed: is of ***moderate weight*** in favour of revocation; and

(c) impact on Australian business interests: is of ***neutral weight*** in favour of revocation.

[40] R2, p 21, [99].

CONCLUSION

109. Under section 501CA(4)(b) of the Act, there are two alternate conditions precedent to the exercise of the power to revoke the mandatory cancellation of the Applicant's visa: either the Applicant must be found to pass the character test; and if not, I must be satisfied there is another reason, pursuant to the Direction, to revoke the cancellation decision. As noted (and found) previously in these Reasons, the Applicant does not pass the character test.

110. In considering whether there is another reason to exercise the power afforded by section 501CA(4)(b)(ii) of the Act to revoke the mandatory cancellation of the Applicant's visa, I have had regard to the considerations referred to in the Direction. I find as follows:

- Primary Consideration 1: is of a ***very heavy*** level of weight in favour of affirming the decision under review;
- Primary Consideration 2: is of a ***heavy*** level of weight in favour of affirming the decision under review; weight;
- Primary Consideration 3: is of a ***heavy*** level of weight in favour of setting aside the decision under review;
- Primary Consideration 4: is of ***heavy*** *weight* in favour of setting aside the decision under review;
- Primary Consideration 5: is of a ***very heavy*** level of weight in favour of affirming the decision under review.

111. I have outlined the weight attributable to each of the Other Considerations. I am of the view (and I find) that the combined respective weights I have allocated to Primary Considerations 3 and 4 and Other Considerations (a) and (b) are dispositively outweighed by the combined respective heavy and very heavy weights I have allocated to Primary Considerations 1, 2 and 5.

112. A holistic application of the considerations in the Direction therefore militates in favour of this Tribunal finding there is not another reason to revoke the mandatory cancellation of the Applicant's visa.

DECISION

113. Pursuant to section 105(a) of the *Administrative Review Tribunal Act 2024* (Cth), this Tribunal **affirms** the decision made by a delegate of the Respondent on 14 December 2022 to not revoke the mandatory cancellation of the Applicant's Class WC Subclass 030 Bridging C visa.

I certify that the preceding one hundred and thirteen (113) paragraphs are a true copy of the Reasons for the decision herein of Senior Member T Tavoularis

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

Associate

Dated: 23 September 2025.

Dates of hearing:	**12 June and 16 June 2025**
Counsel for the Applicant:	**Dr Jason Donnelly Esq., Barrister-at-Law**
Solicitors for the Applicant:	**Zarifi Lawyers**
Solicitor for the Respondent:	**Ms Gabrielle Ho (Senior Associate) Clayton Utz**