Decision and Reasons for Decision

Administrative Review Tribunal

Applicant/s:	VPBY
Respondent:	Minister for Immigration and Citizenship
Tribunal Number:	2025/4093
Tribunal:	Senior Member M Sripathy
Place:	Sydney
Date:	3 September 2025
Decision:	The Tribunal sets aside the decision not to revoke the cancellation of the Applicant's Class WA Subclass 010 Bridging A visa under s501CA (4) and in substitution decides that the cancellation of the Class WA Subclass 010 Bridging A visa is revoked under s501CA (4).

Senior Member M. Sripathy

Statement made on 03 September 2025 at 10:05am

Catchwords

MIGRATION – *Cancellation of a Class TY, Subclass 444 Special Category (Temporary) visa under s 501CA(4) of the Migration Act 1958* (Cth) – *where the applicant does not pass the character test – whether there is another reason to revoke the cancellation – Direction No 110 - protection of the Australian Community – expectations of the Australian Community – strength, nature and duration of ties to Australia – legal consequences of decision under review - impediments*

Legislation

Crimes Act 1900 (NSW)

Crimes (Sentencing Procedure) Act 1999 (NSW)

Migration Act 1958 (Cth)

Migration Regulations 1994 (Cth)

Cases

Tanielu v Minister for Immigration and Border Protection (2014) FCA 673

Suleiman v MIBP [2018] FCA 594

*FHHM v MICMSMA [*2022] FCAFC 19

Nigam v Minister for Immigration and Border Protection [2017] FCAFC 127

CRNL v Minister for Immigration, Citizenship and Multicultural Affairs [2023] FCAFC 138

BNY23 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2025] FCAFC 14

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

BACKGROUND

1. This is an Application for review of a decision of a delegate of the Minister dated 11 June 2025 under s 501CA (4) of the *Migration Act 1958* (Cth) (the **Act**) not to revoke the mandatory cancellation of the Applicant's Class WA Subclass 010 Bridging A visa (**visa**).

2. The Applicant is a 30-year-old citizen of the Peoples Republic of China and permanent resident of the Special Administrative Region of Hong Kong. She first arrived in Australia on 20 October 2014. On 26 June 2023 she applied for a Student (Class TU) (Subclass 500) visa and was at that time granted the bridging visa subject of the cancellation. On 24 November 2023 the Applicant was convicted of an offence of supplying a prohibited drug in a quantity equal to or greater than a large commercial quantity and received a custodial sentence of six years and nine months.

3. On 11 July 2024 the Applicant's visa was mandatorily cancelled. On 25 July 2024 the Applicant made representations to revoke the cancellation.

4. The Applicant appealed against the severity of her sentence to the NSW Court of Criminal Appeal. On 6 June 2025 she was re-sentenced to four years and six months imprisonment.

5. On 11 June 2025 a delegate of the Minister made a decision under s 501CA (4) not to revoke the mandatory cancellation of the visa.

6. On 18 June 2025 the Applicant sought review of that decision.

7. The Application was heard on 21 and 22 August 2025. Dr Donnelly appeared for the applicant and Mr Bourke represented the Minister. The Applicant appeared and gave evidence in person with the assistance of an interpreter in the Cantonese and English languages, who appeared by video. The Applicant's partner and his mother also gave oral evidence.

8. In deciding the application, the Tribunal has taken into consideration the Applicant's submissions and oral evidence at hearing, written and oral evidence from her witnesses and evidence and material contained in the Hearing Book prepared by the Respondent.

9. A Hearing Bundle included the following documents, marked as exhibits as follows:

   (a) Applicant's materials "Exhibit HB1" including "Applicant's Statement of Facts Issues and Contentions" (ASFIC) and Applicant's Reply (AR)
   (b) Respondent's materials "Exhibit HB2" including "Respondent's Statement of Facts Issues and Contentions" (RSFIC)
   (c) "G documents" Exhibit "HB3"

10. For the following reasons, the Tribunal has decided to set aside the decision under review and substitute a decision that the cancellation of the Class WA Subclass 010 Bridging A visa is revoked under s501CA (4). .

RELEVANT LAW

11. Under s 501(3A) the Minister must cancel a visa that has been granted to a person if the Minister is satisfied that the person does not pass the character test because the person has a substantial criminal record having been sentenced to a term of imprisonment of 12 months or more and is serving a sentence of imprisonment on a full-time basis in a custodial institution.

12. The 'character test' is defined in subsection 501(6) of the Act. Relevantly, paragraph 501(6)(a) provides in part that a person does not pass the character test if the person has a substantial criminal record. Section 501(7)(c) relevantly provides that a person has a '*substantial criminal record'* if the person has been sentenced to a term of imprisonment of 12 months or more.

13. Subsection 501CA (3) provides that as soon as practicable after making a decision under subsection 501(3A) the Minister must give the person whose visa was cancelled written notice setting out the decision together with particulars of specified information that were the reason or part of the reason for making the decision. The Minister must also invite the person whose visa was cancelled to make representations to the Minister about revocation of the decision.

14. Subsection 501CA (4) allows for a revocation of a decision under s 501(3A) if representations are made in accordance with the invitation and the Minister is satisfied that the person passes the character test (s 501CA4) (b)(i)); or that there is another reason why the original decision should be revoked (s 501CA(4)(ii)).

15. An application to review a decision made under s 501CA (4) not to revoke the cancellation of a visa may be made to the Tribunal under s 500(1)(ba).

16. The Minister may give written directions under s 499(1) of the Act to a person or body having functions or powers under Act if the directions are about the performance of those functions or the exercise of those powers. Section 499(2A) requires the Tribunal to comply with any directions made under s 499(1).

17. Direction No. 110 *Visa refusal and Cancellation under s. 501 and revocation of a mandatory cancellation of a visa under s. 501CA* ('the Direction')[1] is the current direction and is binding on the Tribunal in performing its functions or exercising powers under section 501 of the Act.

18. The Direction sets out, in paragraph 5.2, the principles that provide a framework within which decision-makers should approach their task of deciding whether to exercise the discretion to refuse to grant a visa or revoke mandatory cancellation decisions. These principles are:

> *(1) Australia has a sovereign right to determine whether non-citizens who are of character concern are allowed to enter and/or remain in Australia. Being able to come to or remain in Australia is a privilege Australia confers on non-citizens in the expectation that they are, and have been, law-abiding, will respect important institutions, such as Australia's law enforcement framework, and will not cause or threaten harm to individuals or the Australian community.*
>
> *(2) The safety of the Australian Community is the highest priority of the Australian Government.*
>
> *(3) Non-citizens who engage or have engaged in criminal or other serious conduct should expect to be denied the privilege of coming to, or to forfeit the privilege of staying in, Australia.*

[1] Direction no. 110 — Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA, 7 June 2024 (commencing 21 June 2024).

(4) The Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they engaged in conduct, in Australia or elsewhere, that raises serious character concerns. This expectation of the Australian community applies regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.

(5) Australia has a low tolerance of any criminal or other serious conduct by visa applicants or those holding a limited stay visa, or by other non-citizens who have been participating in, and contributing to, the Australian community only for a short period of time.

(6) With respect to decisions to refuse, cancel, and revoke cancellation of a visa, Australia may afford a higher level of tolerance of criminal or other serious conduct by non-citizens who have lived in the Australian community for most of their life, or from a very young age.

(7) Decision-makers must take into account the primary and other considerations relevant to the individual case. In some circumstances, the nature of the non-citizen's conduct, or the harm that would be caused if the conduct were to be repeated, may be so serious that even strong countervailing considerations may be insufficient to justify not cancelling or refusing the visa, or revoking a mandatory cancellation.

(8) The inherent nature of certain conduct such as family violence is so serious that even strong countervailing considerations may be insufficient to justify not cancelling or refusing the visa, or revoking a mandatory cancellation, even if the information available at the time of consideration suggests that the noncitizen does not pose a measurable risk of causing physical harm to the Australian community.

19. Informed by these principles, in making a decision the Tribunal must take into account the relevant primary and other considerations set out in the Direction.

20. Paragraph 7.1 of the Direction states that appropriate weight should be given to information and evidence from independent and authoritative sources. Paragraph 7.2 states that the primary consideration of protection of the Australian community is generally to be given greater weight than other primary considerations. It also states that otherwise, primary considerations should generally be given greater weight than ‘other’ considerations. Paragraph 7.3 states that one or more primary considerations may outweigh other primary considerations.

21. The primary considerations set out in paragraph 8 of Direction 110 are:

    (1) protection of the Australian community from criminal or other serious conduct;

(2) whether the conduct engaged in constituted family violence;

(3) the strength, nature and duration of ties to Australia;

(4) the best interests of minor children in Australia; and

(5) expectations of the Australian community.

22. The other considerations, which are not exhaustive, are set out of paragraph 9 of Direction 110:

a) legal consequences of the decision;

b) extent of impediments if removed;

c) impact on Australian business interests.

23. In this case, it is not in dispute that the Applicant had made representations about the revocation of the cancellation of his visa. The requirements of paragraph 501CA(4)(a) are met. The issues before the Tribunal are:

(a) does the Applicant pass the character test, as defined by section 501 and, if not;

(b) is there another reason why the original decision should be revoked.

DOES THE APPLICANT PASS THE CHARACTER TEST?

24. As stated above, the character test is defined in subsection 501(6) of the Act. Relevantly, s 501(6)(a) states that a person does not pass the character test if the person has a substantial criminal record, as defined in s 501(7). Subsection 501(7)(c) provides that a person has a substantial criminal record if the person has been sentenced to a term of imprisonment of 12 months or more.

25. On the evidence of the National Criminal History Check[2] the Tribunal finds on 24 November 2023 the applicant was convicted on a charge of supply prohibited drug >= large commercial quantity and sentenced to a term of imprisonment of six years and nine months. This sentence was later reduced by the Court of Criminal Appeal to four years and six months.[3]

[2] HB3, p325

[3] HB1 p115-137, HB2, p267-284

26. The Applicant concedes that she was sentenced to a term of imprisonment of more than 12 months and did not dispute that she did not meet the character test on this basis.[4]

27. The Tribunal finds that the Applicant has a substantial criminal record and does not pass the character test. The requirements of s 501CA(4)(b)(i) are therefore not met.

IS THERE ANOTHER REASON WHY THE CANCELLATION SHOULD BE REVOKED?

28. The remaining issue before the Tribunal is whether there is another reason why the cancellation should be revoked. The Tribunal will consider each of the primary and other considerations in accordance with matters referred to in Direction 110 as relevant to the facts of the applicant's case.

Primary Consideration 1: Protection of the Australian Community

29. In considering protection of the Australian community, paragraph 8.1(1) of 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 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.

30. The Tribunal is directed to 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, will respect important institutions and will not cause or threaten harm to individuals or the Australian community.

31. Paragraph 8.1(2) states 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.

[4] HB1, paragraph 10, p2

32. In *BNY23 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs*, the majority of the Full Court, observed, inter alia, Paragraph *8.1 as a whole was concerned with the primary consideration of, "protection of the Australian community from criminal or other serious conduct". In that context, the requirement for the decision-maker to consider the factors enumerated in paragraphs 8.1(2), 8.1.1(1) and 8.1.2 was directed towards assessment of the impact of those factors on the protection of the Australian community from criminal or other serious conduct by the non-citizen*. *Second, the phrase "nature and seriousness" should be understood as a composite phrase. That is because the nature of criminal offending may affect its seriousness, and the seriousness of such offending may affect its nature*. *Third, the "risk to the Australian community, should the non-citizen commit further offences or engage in other serious conduct", described in paragraphs 8.1(2) and 8.1.1(2) must be considered in light of the decision-maker's assessment of, "the nature and seriousness of the non-citizen's conduct to date", under paragraph 8.1.1(1).*[5]

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

The Applicant's criminal offending history

Criminal conviction

33. The offending which led to the cancellation of the Applicant's visa relates to the Applicant's conviction on 24 November 2023 of an offence of supply prohibited drug >=large commercial quantity.[6]

34. The Tribunal has considered the circumstances of the offending as set out in the sentencing remarks of Judge King[7] and judgement of the Court of Criminal Appeal (CCA),[8] that were taken from the agreed facts.[9]

35. In summary these are as follows. On 11 March 2022 a Controlled Operations Authority was granted to the New South Wales Police Force authorising undercover officers to engage in

[5] [2025] FCAFC 14.
[6] HB3, G6, p325
[7] HB3, G7, pp326-328,
[8] HB1, pp121-122
[9] HB2, pp257-258

negotiations or agreements related to the supply of prohibited drugs. On 7 June 2022, an undercover police officer corresponded with an unknown person via WhatsApp and arranged to purchase 1 kilogram of methylamphetamine for $150,000 on 9 June 2022. Arrangements were made for the cash to be collected in one location by a person wearing "orange work clothes, workers shoes" and the methylamphetamine would be supplied at a second location by another person, described as "an Asian woman".

36. At 3.30 pm the first undercover police officer delivered the cash at the nominated location to an unknown Asian male who handed over two Chinese yuan notes with individual serial numbers. The undercover police officer sent photographs of the two banknotes to a second undercover police officer who was collecting the drugs at the second nominated location. At around 3.39 pm the applicant was observed driving to the second location, parked her car directly behind the second undercover officer's car and entered the front passenger seat of his car, wearing a white beanie, white jumper, blue jeans and black face mask. She placed a pink plastic bag with the word "*Fancylife*" in the front passenger footwell and said "that's yours". The second undercover officer showed her the photo of the Chinese Yuan banknotes. She took a photo of it, sent it to an unknown person via WhatsApp and left the vehicle and drove away.

37. The pink bag contained a large plastic resealable bag containing white crystal, which was identified to contain 998.3g of methylamphetamine with a purity of 80% and a commercial value of $150,000.

38. Police obtained CCTV footage from the lift at the Applicant's apartment building for the date of the offence in which she could be seen for two minutes from 3.28pm holding the *Fancylife* bag and wearing the same outfit she was wearing at the time of the offence, a white beanie and white jumper.

39. A search warrant executed by the police at the Applicant's apartment at an address in Liverpool at 10 am on 15 September 2022 located the white beanie the Applicant was wearing at the time of the offence. At 11.30am on 15 September 2022 the Applicant was arrested at her workplace. She participated in an electronically recorded interview, with the assistance of a Mandarin interpreter where she said she resides at the Liverpool address, alone, but declined to answer any questions about the offence.

40. Judge King in his sentencing remarks referred to the role of the offender, weight and purity of the drug and its value as being relevant considerations in relation to the objective seriousness of the offence. The Judge considered one kilo of methylamphetamine, being twice the commercial quantity, is significant and concluded that objectively this is a serious offence. Regarding the role of the offender, the judge observed that while the agreed facts stated she was criminally responsible on the basis that she was aware there was a 'significant chance' the substance she supplied to the undercover officer was a prohibited drug, in the circumstances of the facts before the Court, this should be interpreted as being a 'very highly significant chance'. This was based on the facts which indicated she had possession of the drug when she left her apartment, she was solely responsible for handing it over, and she was party to an arrangement to engage in a not unsophisticated process of checking a code for security/identity purposes.[10]

41. In the sentencing Judge's view, the Applicant's role in supplying a prohibited drug of this quantity in these circumstances indicates the offending was objectively serious. The Judge made observations of the pervasiveness of methylamphetamine in NSW; it's adverse effects on users and the community and noted that it is a drug that is very destructive of social order in NSW.[11]

42. The CCA found no error in the sentencing judge finding the offence as more objectively serious than the parties had submitted, dismissing the appeal ground challenging the sentencing judge's assessment of the seriousness of the conduct.[12]

43. Apart from the conviction, subject of the cancellation, the applicant has no prior or other criminal history. This is not in dispute between the parties.

Other offending or conduct

44. There is also nothing in the evidence before the Tribunal that indicates any other material offending since the applicant's arrest and conviction.

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[10] HB3, G7, pp330-331
[11] Ibid, p331
[12] HB1, p131

45. There is evidence the applicant has had one urine analysis test recording a positive result for a non-prescribed drug while in custody.[13] No explanation for this was given by the applicant. Dr Donnelly submitted that this is a single incident and should be viewed in context and is insufficient to override the substantial evidence of her rehabilitation and pro-social behaviour prior to and during her incarceration.[14] Nothing further was submitted regarding this by the Respondent or adduced during cross examination.

46. Apart from this, the evidence indicates the applicant has been well behaved, had nil issues and has been generally productive in a work context during her incarceration.[15]

47. The Tribunal considers that the single incident of the positive urine analysis test while in custody, of itself, is an insufficient basis to find she has engaged in other serious conduct. It is also insufficient to establish, in the absence of any other evidence, that she has a substance abuse issue or addiction issue.

48. The Tribunal finds that the criminal conviction on which the cancellation was based is the applicant's only criminal offending conduct.

Assessment of the nature and seriousness of the Applicant's conduct

49. There is no dispute between the parties that the Applicant's offending involving supply of a significant quantity of methylamphetamine should be viewed as very serious.

50. The Statement of Issues Facts and Contentions submitted on behalf of the applicant conceded that the offence involving large scale distribution of a dangerous and addictive substance is one that the Australian government considers extremely serious due to its profound impact on individuals and society, and acknowledged that the way the offence was committed underscored its seriousness noting that the supply was part of a coordinated and sophisticated operation involving undercover police officers, significant sums of cash, coded communication and careful orchestration of the handover. Despite the absence of any prior criminal history for the Applicant, it is accepted that this single offence is of

[13] HB3, G 12, p363
[14] HB1, Applicant's SFIC, p4
[15] HB1, pp 16-45

exceptional gravity. The serious nature of the offending, its scale, the sentence imposed, and the broader societal impacts all weigh against revocation of the visa cancellation.[16]

51. However the Applicant submits that under paragraph 8.1.2(1) and (2) of the Direction the risk to the Australian community from any future conduct by the Applicant must be considered cumulatively, having regard to both the nature and seriousness of potential harm and the likelihood of the non-citizen engaging in further criminal or other serious conduct, and that the applicant poses a very low risk of reoffending and should not be regarded as presenting an unacceptable risk to the Australian community.

52. The issue of the risk to the Australian community is addressed further below.

53. The Statement of Issues Facts and Contentions filed on behalf of the Minister also submitted that the Applicant's conviction for supplying a significant quantity of a very dangerous drug (methylamphetamine) to the community, should be viewed as very serious. The Minister referred to the views of the sentencing judge and Court of Criminal Appeal regarding the scourge of the drug in question (methylamphetamine or ''ice') and the Tribunal was referred to the findings contained in the Final Report of the National ICE Task Force. The Respondent submitted that the applicant was aware that there was a '*very highly significant chance'* that she was involved in supply of a significant quantity of illegal drugs as part of a sophisticated scheme yet chose to proceed with the offence and provided no further information to the police regarding the operation. It was contended the 4 years and 6 months sentence is significant especially in the context of a first-time offender.

54. In considering the nature and seriousness of the Applicant's criminal offending or other conduct for the purposes of considering the primary consideration in 8.1 of protection of the Australian community, paragraph 8.1.1(1) of the Direction sets out factors to which decision-makers must have regard to.

55. While the Applicant's offending does not come within any of the specific crimes or conduct referred to in subparagraph 8.1.1(1)(a) or (b) as those which are viewed as 'very serious' or 'serious' by the Australian Government and the Australian community, the Direction makes clear it is not an exhaustive list.

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[16] HB1, pp3-4, paragraphs 14-15

56. As indicated above, it is not in dispute between the parties that supply of a significant quantity of a dangerous drug such as methylamphetamine to the community is viewed as very serious by the Australian Government and community.

57. The sentencing court judge found the offending to be objectively serious, having regard to the weight of the drug (twice the commercial quantity) and his finding that there was a *very highly significant chance* the applicant was aware the substance she supplied was a prohibited drug. The CCA found no error in this finding by the sentencing judge.[17]

58. The Tribunal also places weight on the findings of the National Ice Taskforce Report. The Report refers to the distinct problem that ice creates for society:

> *Unlike cannabis and heroin, ice is an extremely powerful stimulant. For some people, it can trigger psychological disturbances or violent and aggressive behaviour. Long term use may damage the brain and cause impaired attention, memory and motor skills. The distress ice causes for individuals, families, communities and frontline workers is disproportionate to that caused by other drugs.*[18]

59. The Report observes that *[f]amilies, frontline workers and communities are struggling to respond to the growing number of dependent ice users around the country*.[19]

60. Subparagraph (c) directs the Tribunal to take into consideration the sentence imposed by the courts. In this case, the CCA on appeal for severity of sentence, reduced the applicant's sentence from the original six years and nine months to four years and six months.

61. The Tribunal accepts the submission of the Respondent, that the sentence of over four years is significant particularly for a first-time offender, noting that custodial sentences are the last resort in the sentencing hierarchy. The Tribunal considered the CCA's reasoning that the sentence for an offence of supplying a large commercial quantity of methylamphetamine, being 'an inherently dangerous prohibited drug,' must reflect general

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[17] HB1, at [51]-[54], p131
[18] HB2, p 263, Respondent's SOFIC, paragraph 35, HB2, p 217
[19] HB2, p 264

deterrence and protection of the community and hold the applicant accountable for her actions. The Tribunal finds that the applicant's sentence is significant and reflects the seriousness of the offence.

62. There is no evidence before the Tribunal of the impact of the applicant's offending on any victims (subparagraph (d)) and in this case the Tribunal notes that the Applicant was arrested as part of an undercover operation and the drugs involved were likely to have been retained by the police.

63. As the Applicant has no other criminal offending history the considerations in subparagraphs (e), (f) and (g) are not relevant.

64. This is the first time the Applicant has offended and she has not been subject to a formal warning or otherwise been made aware of the consequences of further offending, although the Tribunal notes that the Direction states that the absence of a warning should not be considered to be in her favour.

65. The offence was committed in Australia, so subparagraph (h) is not relevant.

66. On the evidence and considerations referred to above the Tribunal characterises the subject offending as one which is viewed by the Australian Government and community as serious, and so finds.

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

67. The Tribunal must consider the risk to the community, should the Applicant reoffend. Paragraph 8.1.2(1) provides that in considering the need to protect the Australian community (including individuals, groups or institutions) from harm, decision-makers should have regard to the Government's view that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases. Some of the conduct and the harm that would be caused, if it were to be repeated, is so serious that any risk that it may be repeated may be unacceptable.[20]

[20] cl.8.2.2(1)

68. In assessing the risk that may be posed by the non-citizen to the Australian community, paragraph 8.1.2 requires the Tribunal to, cumulatively, have regard to the nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal or other serious conduct and the likelihood of the non-citizen engaging in further criminal or other serious conduct.

69. The Tribunal will consider each of these in turn.

The nature of the harm to individuals or the Australian community were the Applicant to engage in further criminal or other serious conduct

70. There is no dispute between the parties, acknowledging that the type of offending is inherently serious, that were it to be repeated it would cause significant psychological and physical harm to individuals and the wider community.[21]

71. Above, the Tribunal found the nature and seriousness of the Applicant's conduct to be serious. It accepts that the seriousness of the Applicant's offending and the harm to the community were it to be repeated is equally serious.

72. As to whether this is *an unacceptable risk* requires consideration of not only the likelihood of it occurring but also the seriousness of the consequences if it does: *Tanielu v Minister for Immigration and Border Protection* (2014) FCA 673 at [95] per Mortimer J.

73. The Tribunal finds that the consequences of the offending by the Applicant being repeated is serious.

The likelihood of the non-citizen engaging in further criminal or other serious conduct

74. In considering the likelihood of further criminal or serious conduct, the Tribunal must take into account information and evidence on the risk of the non-citizen re-offending; and evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since their most recent offence: 8.1.2(b).

[21] See HB1, Applicant's SFIC, paragraph 21, p4; Respondent's SFIC, paragraph 35, HB2, p 217

75. On this issue, there is disagreement between the parties.

76. It is submitted on behalf of the Applicant that she poses a very low risk to the Australian community of reoffending, relying on the finding of the District Court's sentencing judge that the applicant was of low risk of reoffending, informed by the evidence of her personal circumstances, lack of mental illness or substance dependence and otherwise clean criminal history.[22] In oral submissions Dr Donnelly further referred to the fact that she was granted bail on the basis of being of low risk, and was in the community on bail for five months and this period tested her rehabilitation. Further it was submitted that upon release she will be on parole until August 2027 and subject to parole conditions. She has an otherwise clean record, and the evidence is that she has had no behaviour issues while in prison. The CCA found that she had good prospects for rehabilitation and her sentence was reduced on the basis that this was not properly taken into account in the original sentence. The evidence of the Applicant's partner's mother is that the offending was out of character for the applicant. Under cross examination the applicant stated that if she were under financial pressure again she has gained insight and would take steps to seek assistance and not try and handle it by herself. Dr Donnelly contended for these reasons the risk is not unacceptable.

77. The Respondent, on the other hand, contends that the Applicant remains at a low, but still tangible risk of reoffending and on that basis, given the significant and serious consequences of the spread of ice in the Australian community, the risk is unacceptable.[23] The Respondent contended that credibility concerns regarding the Applicant's evolving and inconsistent claims about why she committed the offence, arising from her evidence to the Tribunal, give rise to a lingering uncertainty about precisely why she committed the offence and that she has not been truly forthcoming about this. Therefore it is difficult to accept that the Applicant has taken responsibility and is now demonstrating insight. It was submitted that limited weight should also be given to the potential for the Applicant's partner and his family as meaningful stabilising influence on her given they had no knowledge of what she was involved in at the time of offending, and also that there is no certainty that they will be together in the long term.

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[22] HB1, Applicant's SFIC, paragraphs 23-30, pp4-6

[23] HB2, Respondent's SFIC, paragraphs 38-42, pp 217-218

78. The Tribunal has considered the information and evidence and submissions before it on the risk of the applicant reoffending.

79. The Tribunal finds that the probative evidence before it supports a conclusion that the applicant poses a low risk of reoffending. The Respondent conceded as much in oral submissions.

80. The Tribunal places weight on the findings made by the sentencing judge,[24] drawn from the evidence of the Sentencing Assessment Report (SAR), dated 1 November 2023, a psychological report of Kris North dated 25 October 2023, affidavit of Ms Hoile, the applicant's solicitor dated 27 October 2023, and character references from the applicant's partner and his mother dated 25 and 26 October 2023 presented in the criminal proceedings.

81. The Tribunal also places weight on the judgement of the CCA[25] which allowed the appeal on severity of sentence on the basis that the sentencing judge did not take into account the applicant's good prospects for rehabilitation that arose from that evidence.

82. The evidence and findings of the sentencing judge and CCA supports that the applicant has no record of previous convictions, was of good character prior to the offending, and lacked criminogenic factors such as mental health issues, use of prohibited drugs or abuse of alcohol. The evidence indicates she had a stable relationship, home environment and stable employment.

83. It was accepted by the sentencing judge that the Applicant was from a stable family background, came to Australia at the age of 19 years in 2014 on a working visa and worked in hospitality and retail before obtaining a student visa and studying English and various other courses. It was accepted she was in part time employment while engaged in study and worked at a marble factory for four years before entering custody. It was accepted that she has never been formally assessed or diagnosed with any mental health issues, and there is no indication of any serious mental health issues. There was no evidence before the sentencing judge to indicate any addiction to alcohol or prohibited drugs. She completed

[24] HB3, pp331,
[25] HB 1 pp135-136

a short course in computer skills while on remand, and was participating in a remand addictions program, which was noted to be of doubtful utility in the absence of having addictions but seen as encouraging that she had sought skills to assist her later in life.

84. The SAR assessed the Applicant as at low risk of reoffending, by reference to the Level of Service Inventory -Revised (LSI-R) and the sentencing judge accepted this as an accurate assessment in the circumstances of her history.

85. The Tribunal observes however that in accepting this assessment of risk Judge King specifically did not accept the offender's statement as to what she did on the basis that these statements were 'hearsay', untested and self-serving.

86. The evidence of the case note reports from Department of Corrective Services on which the Sentence Assessment Report (SAR) record the Applicant providing an explanation of the circumstances of the offence in an interview with the assessor on 24 October 2023, ,as stating that a "work colleague had asked her to drop off a parcel on the way home from work" and "she had no inkling that it was illegal". She said she was not getting any financial gain and was "doing a favour for a friend". She stated "she was unaware she had done anything illegal until her arrest". "In hindsight she thought she should have been suspicious but stated that she was not involved in any money so did not know about payment etc" and "denied having any knowledge of the amount of money changing hands".[26] This account was included under the consideration of "Attitudes" by the assessor in the SAR, and as the Tribunal understands the sentencing remarks this explanation was not accepted by Judge King in accepting the assessment of her as low risk.

87. By contrast, the Statement of Agreed Facts signed by the applicant on 29 May 2023[27] indicates the offender acknowledges criminally responsibility for the offence on the basis that she was aware there was a significant chance the substance she supplied was a prohibited drug. This concession of responsibility is inconsistent with and contradicts the explanation she gave to the assessor in October 2023 referred to above.

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[26] HB1, p20

[27] HB2, p257

88. Before the Tribunal, the Applicant has given a different and new explanation for her participation, in her Statement of 7 August 2025[28] and at hearing. She now says she became involved in the offending after being coerced by a man known as “Eric” who she later discovered to be associated with a Hong Kong triad syndicate. She claimed that this person threatened her and her family and forced her to transport packages that she later learned contained illicit drugs. She claims she did not profit from these activities and acted under duress. The Applicant claims to the Tribunal that she provided a detailed witness statement to the Detective Sergeant of Fairfield Police Area Command about Eric’s criminal activities, and that “her cooperation was important”.

89. The Applicant expanded on this explanation in her oral evidence at hearing. She stated that she met Eric in the context of her business activities selling kitchen benchtops to clients and they were doing business deals together. In this context she fell into debt to him, and owed him a sum of some ten thousand dollars. He began to pressure her to repay him and threatened to harm her family members, including her boyfriend and brother in Australia and parents in Hong Kong. He then told her that if she did one job for him he would clear her debt. He did not tell her all the details only that she had to give a bag to somebody. She said that she did not know until later that the bag contained one kilogram of ice.

90. On further questioning the Applicant clarified that Eric told her the package contained drugs but did not tell her what kind or the weight but she knew it wasn’t a good thing. She confirmed that she did not receive any profit from the transaction but her debt was to be cleared.

91. Regarding her claim that she gave police assistance about Eric she said that she spoke with the police when they came to the prison around June 2024 for around two hours. She said when she was first arrested she did not tell the police anything about this because she was afraid. But later on she decided to tell the police about him. She told them the whole story of what happened in the incident and that she only participated once. Since the incident of delivering the bag she has not had any contact with Eric.

[28] HB1, p87

92. The Applicant was cross examined about the inconsistent and changing narrative of her participation in the offence and it was put to her that she was seeking to reduce her culpability for the offence.

93. The Applicant's response was that she was scared because of the threats that Eric had made to harm her boyfriend and brother so she did not tell the truth at that time. She said she was initially trying to put it all on herself but later realised she should ask for help so she decided to tell the truth.

94. The Tribunal has concerns about this new explanation for the offending that have been advanced for the first time in these proceedings.

95. There is no evidence in the material before the Tribunal of the police interview referred to by the Applicant, and no explanation for why this has not been provided.

96. The evidence of the Applicant's partner and his mother, while referring to her offending being out of character and their assumptions she must have been under some pressures, offered no direct corroboration. Neither indicated any knowledge of threats made to the Applicant or any knowledge of the offending.

97. There is no evidence that this explanation was put to the CCA in the appeal against severity of sentence that was heard on 4 December 2024, which was subsequent to the claimed interview with police. Given its potential significance to issues of her motivation and culpability, the Tribunal considers its omission in the context of those proceedings undermines the credibility of the claim.

98. For these reasons the Tribunal has concerns about the veracity of the Applicant's explanation she was pressured into delivering the package by a work associate who was involved in a criminal syndicate. It finds this claim lacks credibility and does not accept it on this basis. It does not accept, in the absence of probative evidence in support, that she gave information about this person or anyone, to NSW Police.

99. However, to the extent that the Respondent relies on an adverse credibility assessment of the Applicant arising from her changing and inconsistent explanations about the offending, to conclude that her risk of reoffending, while low, is unacceptable, the Tribunal does not

agree. The Tribunal considers the adverse credibility findings regarding her explanations for the offence do not override the weight of probative evidence that indicates she poses a low risk of reoffending. Specifically, she has no prior criminal history, was granted bail and served 5 months on remand without issue, and the evidence discloses no criminogenic risk factors. In the absence of any substance use or addiction, evidence of antisocial acquaintances, and stable history of employment and family and relationship support, the Tribunal concludes that the risk to the Australian community of the applicant reoffending is low.

100. The Tribunal finds that the weight of evidence before it does not support a conclusion that the risk posed by the Applicant of reoffending is an unacceptable risk in these circumstances.

101. Overall, having regard to the seriousness of the offending and the low risk posed by the applicant, the consideration of the protection of the Australian community weighs moderately against revocation of the cancellation of the Applicant's visa.

Primary Consideration 2: Whether the conduct engaged in constituted family violence

102. There is no evidence that the Applicant has committed any family violence and this factor is not relevant to the Tribunal's decision.

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

103. Paragraph 8.3 of the Direction provides:

> (1) Decision-makers must consider any impact of the decision on the non-citizen's immediate family members in Australia, where those family members are Australian citizens, Australian permanent residents, or people who have a right to remain in Australia indefinitely.
>
> (2) Where consideration is being given to whether to cancel a non-citizen's visa or 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.

The Applicant's family in Australia

104. The Applicant has two immediate family members in Australia, her de facto partner and her brother. The Respondent contends, and the applicant concedes in submissions in reply,[29] that as her brother is not at this time an Australian citizen or Australian permanent resident he cannot be considered under this primary consideration.

105. The Tribunal accepts that her partner is an Australian citizen. It accepts on the evidence, including the partner's oral evidence at hearing, that they have been in a relationship since 2020, a period of some 5 years, they have lived together for a period of that time, including most recently while on remand in respect of the criminal offence. It accepts that he has remained supportive of her throughout these proceedings, visiting her regularly in prison and attending the hearing and giving evidence in support in this matter.

106. The evidence of the sentencing remarks and CCA judgement, and information contained in the NSW Corrective Services' case notes and SAR corroborate the partner's support through the criminal proceedings and while she has been incarcerated.

107. The Tribunal finds on the evidence that the Applicant and her partner are in a committed partner relationship. It accepts that her partner would be significantly impacted if the applicant's visa remained cancelled and she is precluded from making a Partner visa application to live with him in Australia following her release from jail, either onshore or from offshore.

108. It accepts that the because the applicant would, as a consequence of the decision not to revoke the cancellation, be permanently excluded from returning to Australia, the only way

[29] HB1, p83

the Applicant and her partner can live together is for her partner to permanently relocate outside Australia. This would require him leaving his business, family, including his mother who is emotionally and financially dependent on him. The Tribunal considers this a significant impact and would cause hardship to him and his extended family.

Strength, nature and duration of other ties

109. Paragraph 8.3(2)(a) requires the Tribunal to have regard to the length of time the non-citizen has resided in Australia and give less weight where the offending began soon after arrival; and more weight should be given to time the non-citizen has spent contributing positively to the Australian community.

110. The Tribunal accepts the applicant has been residing in Australia since 2014 arriving at the age of 19 years. Her offending, limited to the conviction which is subject this cancellation, occurred in 2022. The evidence before the Tribunal is that she has had a stable and consistent work and study history until her arrest and incarceration in 2022 and engaged in employment while on remand.[30] On the basis of this information the Tribunal considers the applicant contributed positively engaging in work and study for a number of years before the offence. Although the Applicant's period of residency has entirely been as the holder of temporary visas rather than a permanent visa, there is no evidence to indicate she did not maintain lawful status throughout this time, and the Direction does not limit consideration to permanent residency. It is accepted the applicant was already an adult when she arrived in 2014, though a young adult and she has resided here for a significant period of her young adult years.

111. In this regard the Tribunal has had regard to the principle in 5.2(5) that Australia has a low tolerance of any criminal or other serious conduct by visa applicants or those holding a limited stay visa. It accepts that the applicant was at the time of offending, and has throughout her period in Australia, been the holder of a limited stay visa.

112. However it also notes that the decision to revoke the cancellation in this case, would not extend the period of her stay. This is because the Bridging visa which is the subject of the cancellation is associated with her Student visa application. This visa was consequentially

[30] HB1, p57. HB3, G11, p72

cancelled under s501F. If the Bridging visa cancellation is revolved and the Student visa application is reinstated, even if granted its period of validity would have expired by the time of her release from jail, given the specified course end date.[31] The significant effect of revoking the cancellation in this case is that it would allow her to apply for another visa, such as a Partner visa.

113. The evidence before the Tribunal from the Applicant and her partner, is that this is their intention, to apply for a Partner visa if her cancellation is revoked. On the basis of this evidence, the Tribunal is satisfied that the is a visa pathway for the Applicant and in this sense it is not purely 'speculative'.

114. While incarcerated she has been employed as a Leading Hand in Packing and Assembly Business Unit and more recently as a clerk in Buy Ups. Case note report indicate favourable assessments of her behaviour and attitude towards work.[32]

115. The Respondent's contention is that any positive contribution should be weighed against the significant detriment to the community through her offending and incarceration since 2023. The Tribunal observes that this (i.e. the weighing exercise) is precisely what the Tribunal is undertaking in the current review.

116. Paragraph 8.3(2)(b) requires the Tribunal to have regard to 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.

117. In this regard the Tribunal considers the partner's mother will be impacted by the decision.[33] Her evidence when asked what impact it would have on her if her son were to have to live in Hong Kong if the Applicant's visa cancellation is not revoked was that it would be very bad and she would be devastated. Her son gave evidence that currently he provides financial support to help his mother pay her rent. He is the only one of her children providing this support. If he was required to sell his business and relocate to Hong Kong to be with the Applicant, he would not be able to continue to provide this support.

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[31] HB2, p250

[32] HB1, pp23-38

[33] HB1, p92, Witness' oral evidence at hearing.

118. In her Personal Circumstances Form[34] and Statement dated 7 August 2025[35] the Applicant also referred to having aunties and uncles and cousins who are permanent residents living in the Gold Coast with whom she maintains phone contact.

119. No further evidence or information is before the Tribunal about the strength or nature of the applicant's ties to these extended family members, and the Tribunal considers there is no reason why she cannot continue to maintain telephone contact with them if the cancellation is not revoked.

120. The Applicant provided a Statement from Pastor Fung[36], who was not required for cross examination. The statement indicates the Pastor has had interactions with the applicant since April 2024 in the context of her interest in learning about the Bible and Christianity. There is no indication in the statement of the Pastor's citizenship or residence status in Australia, but noting that he is a volunteer with Prison Fellowship Australia the Tribunal is prepared to infer that he may belong to one of these categories. The Tribunal accepts that the Pastor has visited and studied the Bible with her as claimed. It accepts his opinion in relation to her commitment to transform herself and turn away from wrongdoing. However, on the limited information before the Tribunal, it is not clear what if any impact the decision not to revoke the cancelation would have on this individual.

121. Overall, considering the evidence and findings above relevant to this primary consideration, and particularly the impact on the applicant's partner, and his mother and extended family members, of a decision not to revoke the cancellation as well as the duration and contribution of her residency in Australia prior to her offending, the Tribunal considers this factor weighs strongly in favour of revoking the cancellation of the visa.

Primary Consideration 4: Best Interests of Minor Children in Australia

122. Paragraph 8.4 of the Direction requires a decision-maker to consider whether a decision to refuse or not revoke cancellation of a visa is in the best interests of a child (under 18)

[34] HB3, p357
[35] HB1, p89
[36] HB1, p209

affected by the decision. The Direction requires that the best interests of each child must be considered individually if there are more than one minor child/ren identified.

123. In her Personal Circumstances Form the Applicant did not indicate any relevant children.[37] When this was put to her in cross examination she explained that she was assisted in completing this form by a corrective services officer and did not understand that it could mean children that were not her own.

124. In the SFIC submitted in support of the applicant, her partner's six-year-old niece is identified as a relevant child.[38] The Applicant confirmed in her oral evidence that she has not, to date, met this child. Nevertheless the contention made on the applicant's behalf is that this consideration is forward looking and if her visa cancellation is revoked and she is released into the community this would facilitate a meaningful relationship to develop with this child who is a close relation of her partner. In cross examination the Applicant stated that she would like the opportunity to meet and have a relationship with her partner's relations, and if they marry, she would be her niece by marriage.

125. The Respondent contends there is limited evidence regarding this child and any future relationship this child may have with the applicant is purely hypothetical, particularly so because the visa under consideration is a temporary bridging visa and it is not clear how long the applicant would remain in Australia.

126. The Respondent submits it is open to the Tribunal to give this primary consideration neutral weight, neither against or in favour of revocation, citing Full Federal Court authority in *Nigam v Minister for Immigration and Border Protection* [2017] FCAFC 127 at [44] as support for such a finding in circumstances such as this.

127. Notwithstanding the omission in the PCF, the Applicant has now identified a child for the purposes of this consideration, and the Tribunal will consider the best interests of this child affected by the decision on the available material. The Tribunal has also considered the relationship between the applicant's partner and his niece on the basis of the affect on her

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[37] HB3, p. 353

[38] HB1, Applicant's SFIC paragraph 44, p8

if he had to leave Australia to be with the applicant if the cancellation is not revoked and she is permanently excluded from Australia.

128. Paragraph 8.4(4) sets out factors that must be considered, where relevant, in assessing the best interests of the child.

129. The Applicant has not met the child to date. Her partner's oral evidence to the Tribunal was that he does not see his niece that often but he is close to her father, who is his brother. The Direction provides that less weight is to be given where the relationship is non parental and there is no existing relationship (subparagraph (a)).

130. Subparagraph (b) relates to the extent to which the applicant is likely to play a positive parental role in the future. Given she has not even met the child and the child has her own parents, the Tribunal finds it unlikely she will play a parental role in the child's life and places no weight on this factor.

131. In respect of the factor in subparagraph (c), concerning the impact of the Applicant's prior conduct, and any likely future conduct, and whether the conduct has or will have a negative impact on the child, there is no evidence about this before the Tribunal. However, the fact the Applicant has yet to meet the child or her parents, and absence of any supporting evidence in these proceedings from her parents, tends to suggest that the parents either do not know or do not approve of the applicant's conduct.

132. Subparagraph (d) requires the Tribunal to consider the 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. In this case, the applicant has not yet met the child, and if the visa cancellation is not revoked she is unlikely to meet her in person. In these circumstances it is difficult to see how separation from the Applicant would impact her. There would be nothing to prevent, subject to her parent's consent, introduction and contact by video and telephone communication in future were the Applicant and her partner to continue their relationship overseas.

133. In respect of subparagraph (e), the information before the Tribunal indicates the child lives with her parents, including the Applicant's partner's brother who has a parental role.

134. There are no known views of the child before the Tribunal (subparagraph (f)), nor evidence that the child has been or is at risk of being exposed to family violence, abuse or neglect by the applicant, or suffered any trauma (subparagraphs (g) and (h)].

135. Having regard to the evidence and considerations above, and the limited information it has regarding this child, the Tribunal concludes that the best interests of the child weighs neither for nor against the non-revocation of the cancellation in this case. The Tribunal accepts the Respondent's submission that this conclusion is open on the authority of *Nigam,* cited above.

Primary Consideration 5: Expectations of the Australian Community

136. This consideration makes clear 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. Subparagraph 8.5 (4) goes on to state that this consideration is about the expectations of the Australian community as a whole, and in this respect, decision-makers should proceed on the basis of the Government's views as articulated above, without independently assessing the community's expectations in the particular case.

137. The consideration lists particular character concerns which, if raised by the Applicant's conduct, the Australian community would expect the Australian Government to refuse entry or cancel their visas: subparagraph 8.5.(2).

138. The Direction states that the above expectations of the Australian community apply regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community: subparagraph 8.5(3).

139. The Tribunal observes that the applicant's offending does not come within any of the specified conduct set out in subparagraph (2) of 8.5. However, as discussed and accepted above under the protection of the Australian community consideration, the Applicant's role

in the supply of a significant quantity of methylamphetamine is a serious offence and the Australian community would expect that the Applicant not be allowed to remain in Australia.

140. There is no dispute between the parties regarding this consideration.[39]

141. The Tribunal weighs the factor of expectations of the Australian community strongly against revocation of the cancellation of the visa.

Other considerations

142. Paragraph 9 of the Direction requires the Tribunal to take into account, where relevant, other considerations including, but not limited to: legal consequences of the decision; extent of impediments if removed; impact on Australian business interests.

9.1 Legal consequences of the decision

Non refoulement obligations

143. The Applicant's Statement of 7 August 2025 and her oral evidence referred to fears of harm if returned to her country of nationality from "Eric" or his associates and concerns about heightened political repression and being at risk because of her pro-democracy views and having witnessed and sympathised with the student led "yellow" movement on her last visit in 2019.

144. The Tribunal, above, rejected the Applicant's claims regarding Eric and threats made by him as lacking in credibility. In any event in her oral evidence the applicant did not indicate any personal fear from Eric upon return. She did not claim to have had any contact since the offending.

145. In respect of fears for herself, she referred to having joined a protest parade in her country. Later in her evidence she stated that she participated online. On cross examination she said her political involvement was limited to wearing black clothes to symbolise her support of the protesters, and that she did this on 3 or 4 occasions. Her evidence was that she had

[39] HB1 Applicant's SFIC, paragraph 52, p9. HB2, Respondent's SFIC, paragraphs 61-62

no issues departing the country to return to Australia and she was not sure whether she would be of interest to the authorities now for this reason, in 2025 given the passage of time.

146. In closing submissions, Dr Donnelly conceded, based on the evidence of the Applicant, that non refoulement obligations were not invoked, but submitted it is still open to the Tribunal to find that the applicant may face risk of some harm or discrimination if returned, outside of non-refoulement obligations, not necessarily rising to the level of serious or significant harm.

147. Paragraph 9.1.2 of the Direction provides that where claims giving rise to non-refoulement obligations are raised in a request to consider revocation of cancellation they must be considered. This is the case even if it is open to the applicant to apply for a protection visa, although it is not necessary to consider non refoulement obligations in the same level of detail as those issues may be considered in a protection visa application. In this case the Applicant concedes that non refoulement claims are not pressed, but it is submitted that she is at risk of harm that may not rise to the level of serious or significant harm.

148. Having made adverse credibility findings above regarding the Applicant's claims relating to the individual she referred to as Eric and purported threats made by him, the Tribunal is not satisfied on the material before it in this non revocation proceeding that the decision not to revoke the cancellation gives rise to Australia's non refoulement obligations in respect of this claim. The Tribunal did not accept that the applicant was threatened by a person named Eric, or that she gave information about him to the NSW Police. Based on these findings, the Tribunal is not satisfied that the applicant would face a real chance of serious or significant harm upon return to Hong Kong from Eric or any of his associates.

149. On the limited and general evidence of her claims relating to protest activity in 2019/2020, the Tribunal is not satisfied that she faces a real chance of serious or significant harm for reasons of her political activity or political opinions. In reaching this conclusion, the Tribunal has had regard to the country information submitted by the Applicant, and in particular the DFAT report[40] and Country Policy and Information note: Hong Kong National Security

[40] HB1, p157, and p173.

Legislation China April 2025. It is not satisfied the evidence of the Applicant's actions fit the profile of those who are likely to come to the attention of authorities. Having regard to the limited extent of the applicant's involvement and expression of support for the students, revealed from her evidence (that she wore black clothing on three or four occasions during her last visit in 2019/2020) and the passage of time since then, the Tribunal is not satisfied that this conduct amounts to 'participation' in the protests that would draw adverse attention to her upon return at any level, and therefore it is not satisfied that she would experience surveillance, discrimination or harm at any level on this basis.

Other legal consequences

150. The Tribunal accepts that a legal consequence of the decision not to revoke the cancellation of the visa is that following her release from prison at the end of her non parole period, the applicant will remain in immigration detention as an unlawful citizen and will be liable for removal from Australia as soon as reasonably practicable: s198 of the Act.

151. It also finds that if the mandatory cancellation is not revoked the applicant will be permanently excluded from returning to Australia once removed. This is because she will be unable to satisfy the Special Return Criteria in cl 5001(c) of Schedule 5 of the Migration Regulations 1994 (Cth) and will accordingly be ineligible for most classes of visa that would enable her return to Australia: *Rano v Minister for Home Affairs, Minister for Cyber Security [2024] FCA 1003* per Feutrill J at [12]– [14].

152. The Applicant will also be affected by s 501E of the Act which precludes her from making an application for another visa, other than a protection visa, while in Australia.

153. The Tribunal considers that the above legal consequences of the decision, are significant. It has also taken the impact of the prohibition of making a Partner visa application onshore or offshore on her partner into account in the primary consideration of strength, nature and duration of ties above.

154. Given that the visa under consideration is a Bridging visa that has by now already ceased (as referred to above), the Tribunal notes that the particular significance of the legal consequence in this case is solely that it will allow her a pathway to a further visa application

which she would otherwise be denied. This circumstance weighs in favour of revocation of the cancellation of the visa.

155. This has also been taken into consideration under a primary consideration, from the perspective of the impact on her Australian citizen partner.

9.2 Extent of impediments if removed

156. This consideration requires the Tribunal to consider the extent of impediments the Applicant may face in establishing herself and maintaining basic living standards (in the context of what is generally available to other citizens of that country), taking into account: her age and health; whether there are substantial language or cultural barriers; and any social, medical and/or economic support available to her in that country.

157. The Applicant is 30 years old. There is no evidence before the Tribunal to indicate she has any health issues.

158. At hearing she gave evidence that she was born in the Hong Kong Special Administrative Region and spent her childhood there and attended school up to the age of 18 and worked for one year in a sales job before she came to Australia at the age of 19. She lived with and was supported by her parents. Her father was employed and continues to work now. Her parents live in a rented apartment where they have been living for the past 7 to 8 years. She is in contact with her parents and they have been emotionally supportive of her throughout the criminal process. She has returned to Hong Kong once a year since she has been in Australia, up until the end of 2019, beginning of 2020 and stayed with her parents each time. Were she to return, she would stay with her parents in their rented apartment. In addition to her parents she has extended family including her father's siblings and her maternal grandfather, who is in an aged care home.

159. On the Applicant's evidence, the Tribunal finds there are no cultural or language barriers she faces in Hong Kong. It finds that she has family support that she can access, and at least in the short term would be able to access accommodation with her parents.

160. The Tribunal has considered the contention made by Dr Donnelly that the applicant will encounter stigma and discrimination when seeking employment as a result of her serious

criminal record and her status as a deportee will be an obstacle to reintegration, at least in the medium term. Various articles were submitted in support of this on behalf of the applicant.[41] The Tribunal is not satisfied that the evidence in these articles supports for this contention and the applicant herself under cross examination acknowledged that she would be able to obtain employment as long as she did not give up trying.

161. Although contended that the applicant would face disadvantage accessing medical services due to a combination of her criminal record, employment stigma and diminished emotional and social supports, the Tribunal finds there is no evidence to support this contention. Equally there is no evidence to support that she would be denied social support available to other citizens upon return.

162. The Tribunal accepts the applicant may face some difficulties re-establishing herself in Hong Kong after a prolonged absence from the country. On the other hand, she will be returning with work experience, study and training qualifications gained from her time in Australia. To the extent that the Tribunal accepts she may face some self-stigma arising from her conviction and incarceration in Australia, the evidence does not support that she will necessarily have to disclose her conviction to her employers.[42] In light of her concession that she does not believe her criminal conviction would prevent her obtaining employment the Tribunal does not accept this would be an impediment if removed.

163. The Tribunal accepts that separation from her long-term partner would cause emotional hardship if he was unable or unwilling to join her. The Tribunal gives this consideration some weight in favour of revocation of the cancellation.

9.3 Impact on Australian Business interests

164. This consideration requires the Tribunal to consider any impact on Australian business interests if the Applicant is not allowed to remain in Australia, noting that an employment link would generally only be given weight where the decision would significantly compromise the delivery of a major project or delivery of an important service in Australia.

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[41] HB1, pp 94-112

[42] HB1, pp111.

165. The Applicant's partner gave evidence that he is a qualified mechanic and sole owner and operator of a mechanical repair business servicing classic cars in Peakhurst with an annual turnover of $400,000. He stated that his presence in Australia is essential for the business to function and his personal relationships with customers are central to its success.

166. His evidence is that if the Applicant is removed from Australia he would face an extremely difficult decision. He would likely have to accompany her and doing that would mean he would have to sell or close down his business. It would be difficult to sell the business because regular mechanics cannot generally work on the cars he specialises in. His customers would have to find specialists in other areas.

167. The Tribunal accepts that if the cancellation is not revoked, and the Applicant's partner accompanied or followed the Applicant to Hong Kong his business and clientele would be impacted. While somewhat speculative at this time, on the evidence of the long standing and committed nature to the relationship for almost 5 years and the evidence of the Applicant's partner that this is the likely decision he would make, the Tribunal gives this consideration some weight in favour of revocation of the cancellation.

Other relevant matters

168. This review concerns a decision not to revoke a cancellation of a Class WA Subclass 010 Bridging A visa issued to the applicant in association with an application for a Student visa made on 26 June 2023. That application was subsequently cancelled pursuant to s501F of the Act.

169. The Respondent has contended that this is a case involving an applicant whose ongoing residence in Australia has been maintained since 2014 on the basis of temporary visas as opposed to a case about a person whose permanent residency has been cancelled. It is submitted that the Student visa application was in relation to a course that has since ended and evidently if the cancellation is revoked and the Applicant's Bridging visa is reinstated, it is not clear how she would propose to continue to maintain her residency in Australia. It is submitted that Principle 5.2(5) of the Direction applies in this case; and the Tribunal should take into consideration that Australia has a low tolerance of any criminal or other serious conduct by visa applicants, or those holding a limited stay visa, or by other non-citizens who

have been participating in and contributing to, the Australian community only for a short period of time.

170. The Applicant in reply contended that, contrary to the Respondent's contention that it is not clear in this matter how the applicant proposes to continue to reside in Australia if the cancellation is revoked, there is clear evidence before the Tribunal that the Applicant and her partner have an intention to apply for a Partner visa and this is not uncertain.

171. The Tribunal has taken into consideration principle 5.2(5) and the Respondent's contentions concerning the context of the Applicant's history of having only ever held temporary visas but finds the applicant circumstances in this particular case are distinguishable. Despite only having held a series of temporary visas to date, there is no evidence to indicate she has not been residing lawfully in Australia since 2014, which is a substantial period of time. The evidence is that she had completed various courses in that time as the holder of student visas and, significantly, she has formed a committed relationship with an Australian citizen which has been ongoing since 2020 up to the present time. The applicant and sponsor have indicated their desire to lodge a Partner visa applicant and in the Tribunal's view there is evidence of a legitimate visa pathway relating to the partner relationship that is available if the cancellation is revoked. On the other hand, the legal consequence impacting her Australian citizen partner if the cancellation is not revoked is significant in that she is permanently excluded from residing in Australia. These circumstances distinguish this case from visa holders who hold a limited short stay visa and have been here for only a short period. These matters have also been weighed in the context of the primary consideration of strength, nature and duration of ties to Australia and other consideration of legal consequences above.

172. The Tribunal also observes that revocation of the cancellation in this case will not lead to the applicant being released into the community immediately. She has more than six months to serve on her sentence before she is eligible for release on parole and will then be subject to parole conditions for a further period. She will also be required to meet character criteria in the context of any Partner visa application made. If she does not make a Partner application or if the relationship ceases, she may not be eligible for a partner visa and in the absence of any other visa she will be required to depart Australia.

Findings on Considerations

173. The Tribunal has made the following findings as to the weight it gives to the relevant primary considerations in the Direction:

- The nature and seriousness of the Applicant's conduct weighs significantly against revocation of the cancellation of the visa. While protection of the Australian community against serious criminal conduct of the kind committed by the applicant weighs against revoking the cancellation of the visa, the Tribunal found that the risk to the Australian community of the applicant reoffending is low.

- There was no evidence of family violence in this case and this consideration is not relevant to the Tribunal's decision.

- The strength, nature and duration of ties to Australia weighs in favour of revocation of the cancellation of the visa;

- The best interests of the child in this case is neutral.

- The expectations of the Australian community weighs strongly against revocation of the cancellation of the visa.

174. In respect of other considerations, the Tribunal finds:

- The legal consequences of the decision weigh in favour of revocation of the cancellation of the visa;

- The extent of impediments if the applicant is removed weighs slightly in favour of revocation of the cancellation; and

- Australian business interests weigh slightly in favour of revocation.

CONCLUSION

175. The Applicant does not pass the character test under s501 of the Act and the Tribunal has considered whether there is another reason why the cancellation should be revoked, having regard to the primary and other considerations set out in Direction 110.

176. Paragraph 7 of the Direction gives guidance on how the relevant considerations should be weighed and applied. Judicial authorities have considered the exercise of balancing and weighing considerations in the relevant Ministerial Directions. In *Suleiman v MIBP* the Court referred to the appropriate weight to be given to primary and other considerations, stating that what is required is *an inquiry as to whether one or more considerations should be treated as being a primary consideration, or the consideration to be afforded greatest weight in the particular circumstances of the case because it is outside the circumstances that generally apply*.[43] In *FHHM v MICMSMA* the Ful Court endorsed the approach in *Sulieman*, framing the question as *whether there was some reason why the general circumstance where the primary considerations should be given greater weight than the other considerations should not apply when it came to weighing the various considerations that were relevant to the particular case*.[44]

177. In *CRNL v Minister for Immigration, Citizenship and Multicultural Affairs*[45] the Full Court stated that compliance with the Direction is not achieved by focussing upon individual considerations attributing some form of weight to that consideration in isolation. The task of the Tribunal is to *bring together the considerations as part of a single evaluation of their relative significance thereby weighing them all together*.[46] The Court went on to state:

> *The balancing process is directed to determining whether there is "another reason" why the visa cancellation should be revoked. It requires an identification of the matters that may constitute "another reason" and bringing to bear the considerations that the Direction requires the Tribunal to take into account where relevant in determining whether or not the Tribunal is satisfied that there is another reason (or reasons) to revoke the visa cancellation. Some of the considerations set out in the Direction, where relevant, may weigh in favour of revocation, and so may constitute "another reason" capable of supporting the state of satisfaction required in order for revocation under s 501CA(4)(b)(ii) to occur. But whether they do qualify as a reason of that kind will need to be assessed in the context of different considerations set out*

[43] [2018] FCA 594 at [23] considering para 8(4) of Direction No 79.
[44] [2022] FCAFC at [34].
[45] [2023] FCAFC 138.
[46] Ibid at [28].

in the Direction which may weigh against revocation, where relevant. That is why it is appropriate to describe it as a process of weighing and balancing.

178. In bringing together the considerations as part of a single evaluation as required in *CRNL* the Tribunal finds the nature and seriousness of the Applicant's conduct weighs against revocation of the cancellation of the visa but in this case it is tempered by the weight of evidence before the Tribunal supporting that the risk to the Australian community of the applicant reoffending or committing other serious conduct is low. Therefore while the Tribunal gives the primary considerations of protection of the Australian community against criminal and other serious conduct and expectations of the Australian community, significant weight against revocation in this matter, this is balanced against the primary consideration of the Applicant's strength, nature and duration of ties to Australia, which the Tribunal weighs strongly in favour of revocation of the cancellation especially because of the significant impact on the Applicant's Australian citizen partner and his family. The primary considerations relating to family violence does not arise, and best interests of the child, is neutral in the Tribunal's assessment. The other considerations, including legal consequences of the decision, extent of impediments and business interests all also fall on this side of the scale in favour of revocation.

179. Balancing all of these findings and weighing them together in a single evaluation, on the totality of the evidence before it, the Tribunal is satisfied that there is another reason why the cancellation decision should be revoked under s501CA (4), having regard to the Direction 110.

DECISION

180. The Tribunal sets aside the decision not to revoke the cancellation of the Applicant's Class WA Subclass 010 Bridging A visa under s501CA (4) and in substitution decides that the cancellation of the Class WA Subclass 010 Bridging A visa is revoked under s501CA (4).

Date of hearing:	**21 and 22 August 2025**
Date final submissions received:	**11 August 2025**
Counsel for the Applicant:	**Dr J Donnelly**
Solicitors for the Respondent:	**Mr C Bourke, Sparke Helmore Lawyers**