

**Applicant:** Mahieddine Hamze

**Respondent:** Minister for Immigration, Citizenship and Multicultural  
Affairs

**Tribunal Number:** 2025/0792

**Tribunal:** Senior Member Hon J Rau SC

**Place:** Adelaide

**Date:** 20 October 2025

**Decision:** The Tribunal affirms the decision under review.

.....[sgnd].....

Senior Member Hon J Rau SC

## **CATCHWORDS**

*MIGRATION – refusal of a Partner (Provisional) (Class UF) visa under section 501(1) - whether the Applicant passes the character test – the visa Applicant has a criminal record - consideration of s 501(6)(d)(i) and s 501(6)(c) – whether the discretion to refuse to grant the visa under section 501(1) should be exercised – consideration of Ministerial Direction No. 110 – decision under review is affirmed.*

## **LEGISLATION**

*Migration Act 1958 (Cth)*

## **CASES**

*Afu v Minister for Home Affairs* [2018] FCA 1311

*FYBR v Minister for Home Affairs* [2019] FCA 50

*Minister for Immigration and Border Protection v Sabharwal* (2018) FCAFC 160

*Minister for Immigration and Multicultural Affairs v SRT* (1999) FCA 1197

*Re QKVH and Minister for Home Affairs* (2018) AATA 1855

*Re QQYJ and Minister for Home Affairs* (2019) AATA 770

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

*Uelese v Minister for Immigration and Border Protection* [2016] FCA 348

*YNQY v Minister for Immigration and Border Protection* [2017] FCA 1466

## **SECONDARY MATERIAL**

*Minister for Immigration, Citizenship, and Multicultural Affairs (Cth), Direction No 110 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA (21 June 2024).*

## **REASONS FOR DECISION**

**Senior Member Hon J Rau SC**

**20 October 2025**

# STATEMENT OF REASONS

## INTRODUCTION

1. The Applicant seeks a review of the decision by a delegate of the Minister for Home Affairs (**'the Respondent'**) made under section 501(1) of the *Migration Act 1958* (Cth) (**'the Act'**) on 13 January 2025 <sup>1</sup> to refuse to grant him a Partner (Provisional) (Class UF) visa (**'the Visa'**). The Visa application was refused, in an exercise of the discretion under s501(1), based on the Applicant's failure to pass the character test.<sup>2</sup>
2. Section 501(6)(d) (i) of the Act provides that a person does not pass the character test if *"in the event the person were allowed to enter or to remain in Australia, there is a risk that the person would... engage in criminal conduct in Australia."*
3. The Respondent formed the view that the Applicant did not pass the character test under s501(6)(d)(i) having regard to the Applicant's criminal history in Lebanon, as set out in a copy of his penal record. This record states:

*"Date of judgement: 26/07/2017 Court: Permanent Military Court in its criminal capacity kind of delinquency: bearing military gun, entering by force in breaking the night club door and making damages in the other's properties, beating the night club workers and humiliating them and transporting military weapon without license, in addition bearing axe. kind of penalty: one month imprisonment and payment of fine the amount of 200.000 LBP."*<sup>3</sup>
4. The accuracy of this record, in as much as it applies to him, is disputed by the Applicant. The fact of his conviction is **not**. This dispute is discussed further below.
5. The Respondent now also calls in aid s501(6)(c) of the Act which provides that a person does not pass the character test if, having regard to either or both of the person's past and

---

<sup>1</sup> Hearing Book ('HB') 97-110.

<sup>2</sup> HB 97-110.

<sup>3</sup> HB 114.

present criminal conduct, or the person's past and present general conduct, the person is not of good character.<sup>4</sup>

6. There are two issues before the Tribunal.
  - (a) *Whether the Applicant passes the character test, and, if not,*
  - (b) *Whether the discretion to refuse to grant the Visa pursuant to s 501(1) of the Act, should be exercised.*
7. In the exercise of the discretion under s501(1), the Tribunal must have regard to Direction 110.
8. The hearing was held on 22 September 2025. The Applicant was represented by Dr Jason Donnelly of Latham Chambers and the Respondent was represented by Mr Bora Kaplan of Nine Wentworth Chambers.
9. The final submissions in this matter were provided in writing, due to Mr Kaplan's personal circumstances preventing the Tribunal from utilising the time set aside for oral submissions. These submissions were received over the following week. The Applicant's closing submissions has been marked as Exhibit 3, and the Respondent's as Exhibit 4.
10. I have considered these submissions.
11. The Applicant gave evidence by MS Teams Video from Lebanon. He gave evidence with the assistance of an Arabic interpreter. As is often the case, the mediation of the Applicant's testimony through an interpreter, made the assessment of his evidence more difficult. It is hard to know whether the exact shades of meaning he intended, were accurately conveyed. That said, some important things were reasonably clear.
12. The Applicant was a poor historian. He gave lengthy and often irrelevant answers to questions. He repeated certain phrases, even when to do so was unresponsive. These phrases typically focused on his desire to be with his wife and his son, and his claim that he has "*changed a lot*" and that he has "*paid the price*". Both latter comments were offered in

---

<sup>4</sup> Exhibit 4: Respondent's Written Closing Submissions at [9].

response to questions about his criminal record. These comments are inconsistent, indeed incongruous with his evidence to the Tribunal, that he “*didn’t do something wrong*” in the first place.

13. The Applicant essentially claimed that he was an innocent man, out with friends, who was unfortunately and without any ill-intent, in the wrong place at the wrong time. This, if true, would be not only totally inconsistent with his conviction, but would also **not** require him to “*change a lot*”, or for him to have been obliged to pay a “*price*”, in any act of moral restitution.
14. The Applicant’s account of various important events has differed over time. Indeed, these inconsistencies continued to emerge and evolve, even during his evidence to the Tribunal. An example includes his inconsistent accounts of his involvement in the events of 3 March 2010,<sup>5</sup> which gave rise to his conviction in Lebanon. Another example concerns his failure to make disclosure of his then pending criminal charges, when making his Australian Tourist visa application, lodged on 6 August 2012.<sup>6</sup> Another example relates to his failure to disclose his past relationship and marriage in the Visa application, which is the subject of these proceedings.<sup>7</sup>
15. The Applicant’s account of events, as given during the hearing, changed as it went along. This was most evident when he apparently realised that he had painted himself into an evidentiary corner. An example of this was when he told the Tribunal that he was, in effect, released on bail after his initial arrest in 2010. This was inconsistent with his claim that he had not knowingly made a false declaration in his 2012 Australian tourist visa application, by denying in that application, the existence of his then pending charges. When this was pointed out, he then claimed that by 2012, he thought that the charges against him back in 2010, had been dropped. He could offer no cogent reason for why he held this claimed belief.
16. Overall, the Applicant presented as an unimpressive and unreliable witness. To the extent that there are differing independent accounts and records available, I generally prefer those to the Applicant’s account.

---

<sup>5</sup> HB 116.

<sup>6</sup> HB 488-498.

<sup>7</sup> HB 220-251.

17. I accept that the Applicant has an ongoing relationship with RA (his current wife) and his son, (Child B) in Australia. This is maintained electronically. They have never lived together in Australia. They both however, have lived with him in Lebanon for an extended period in 2021- 2022.
18. I accept that he also has an ongoing relationship with his sister (SH) and her family. They maintain contact electronically.
19. I accept that the Applicant has some connection to his wife's family in Australia. This connection, in as much as it was formed in Australia, was brief and occurred when he was here illegally. Again, to the extent that such connections exist, they are maintained electronically. Some of his wife's family have also visited him in Lebanon.
20. The Applicant called Professor Wong, a nephrologist, to give evidence regarding RA's medical issues. Professor Wong's evidence regarding RA's serious kidney condition was not disputed. This was corroborated by RA in her evidence. I accept that RA suffers from a very serious, indeed life-threatening congenital kidney disease, which will require intensive treatment, probably involving daily dialysis and possibly even an organ transplant in the foreseeable future.
21. The Respondent spent some time in a forensic cross-examination of Professor Wong regarding the provenance of two of handwritten notes.<sup>8</sup> The upshot of that, in summary, was that she had written the notes and handed them to the Applicant's wife at the end of consultations. She did **not** believe that the signature on those notes was, however, hers. This leads me to the conclusion that the notes were probably tampered with at some point after they were written by Professor Wong. It is unclear who would have done so, or why, but it was clearly someone associated with the Applicant, because that was the source of those notes. They were **not** included in summons material from Professor Wong. This issue was, however, something of a sideshow, in the context of the overall story. The substance of Professor Wong's opinion was not challenged.
22. The Applicant called his current wife, RA. She gave evidence by video. She did not require an interpreter. Her evidence was consistent with Professor Wong's evidence regarding her

---

<sup>8</sup> HB 160-161.

medical condition. She also gave evidence about her personal circumstances and those of her son. She gave evidence concerning her family networks in Australia, including the Applicant's sister and her family. I have no reason to doubt the truth of her evidence.

23. The Applicant did not call his sister, SH. The Respondent did not require her for cross-examination. It would, however, have assisted the Tribunal to hear from her about the Applicant's history and his ongoing connections in Australia.

### **Background Facts**

24. The Applicant was born in Lebanon on 1 February 1991. He is a Lebanese citizen, and he lives in Lebanon. He is 34 years old.<sup>9</sup>
25. The Applicant's current wife, RA, is an Australian citizen. She lives in Sydney. She is the Applicant's Sponsor.
26. On 3 March 2010, the Applicant engaged in conduct including assault, breaking and entering, property damage and having a military weapon without a license.<sup>10</sup>
27. The circumstances of offending set out in official records as follows:

*"Type of crime: Entering by breaking to Caligola night club and causing damage to others' properties and to the night club staff by harming and humiliating them. Holding and transporting I arms without legal permit.*

*Judgement: One month jail after diminution of penalty, 200.000 LBP as fine. Obliging him to give a pistol and to pay one million LBP."*<sup>11</sup>

*"Date of arrest/release: 14/03/2010- to 05/05/2010 and from 20/07/2017*

*Kind of crime: Entering the Caligola night club by breaking and making damages in others properties, assaulting the night club workers,*

---

<sup>9</sup> HB 165.

<sup>10</sup> HB 114-118.

<sup>11</sup> HB 116.

*discriminating them. Bearing non licensed. military weapons and bearing battle axe.*

*Place and date of the act: on the Lebanese: territories, on 03/03/2010*

*Legal article: 572-733-554-584-72-73 Weapons and 254 penalties*

***Date of judgement: 26/7/2017***

*Judgment: one month imprisonment after relief and adjunction, payment of 200.000 LBP fine, charging him to deliver the arms under penalty to pay one million Lebanese pounds the double of the price to be imprisoned one day against every ten thousands in case of default and declaring his innocence from article 636 penalties.*

*Judgment made: In due hearing.”<sup>12</sup>*

28. The English translation of the official court record was **not** challenged. It is however important to note the date of the judgement. There is a gap of over 7 years between the relevant criminal offending and the judgement. This gap was primarily due to the Applicant’s lengthy and largely unauthorised stay in Australia.
29. The Applicant said in a statement made on 29 October 2024.

*“On 14.03.2010, I was staying up late at a party with my friends where one of their relatives called them and then told me to go from our place to another one 10 party alone. When we arrived, I was surprised that they had come to support their relative in a fight with other young people. After an argument between everyone, some insults and bad words were directed at me and a fight broke out between us, **which prompted me to defend myself without intending to harm anyone or involve myself in unfortunate issues.** Afterwards, I turned myself in to the security forces to find out the truth and was punished for a month and a half and paid a fine. Thus, my criminal record has been cleared.”<sup>13</sup>*

---

<sup>12</sup> HB 118.

<sup>13</sup> HB 123.

30. There is a material difference between the sentencing court's version of events and the Applicant's version above. In both accounts above however, he seems to have been involved to some degree in the fighting. He concedes as much himself in the 29 October 2024 statement.
31. This confusion was further compounded by the Applicant's oral evidence to the Tribunal. In that evidence, he presented himself essentially as a victim of unfortunate circumstances, rather than as an instigator, or an active participant in the offending
32. The Applicant told the Tribunal that he was there on the day in question, with friends, but he did not have any idea that there would be trouble. He did not break into the club. He did not cause any damage. He did not have a weapon, and he did not humiliate or assault anyone. He said that when he realised that there was a problem developing involving his group of friends, he "stepped back". He said that all of them were later individually charged with the same group of offences, but he had personally done nothing wrong. In as much as the official record refers to **him** doing these things, it is wrong.
33. In relation to the Lebanese Military Court records, I note the Full Federal Court's decision in *Minister for Immigration and Multicultural Affairs v SRT*:

*" .....it is not open to the Tribunal to engage in any inquiry which would impugn the sentence. Accordingly, at least the essential facts found by a sentencing judge in the course of his or her deliberations concerning sentence and upon which the sentence is based must be accepted by the Tribunal. The most obvious example of such a fact is a finding as to the circumstances of the commission of the offence. The starting point for consideration by the Tribunal in relation to sentence, when concerned with the question of an order under s 200 of the Act, must be the findings made by the judge in imposing the sentence that satisfies the statutory description of a sentence of imprisonment for a period of not less than one year.*

*There are good policy reasons why such a principle should prevail. It could only undermine the criminal process for an administrative decision to be based on considerations inconsistent with the conviction or sentence imposed".<sup>14</sup>*

---

<sup>14</sup> [1999] FCA 1197 at [40]-[41].

34. Whatever view the Applicant may have as to the legitimacy or otherwise of the judicial processes in Lebanon, the Tribunal cannot look behind the Lebanese Military Court's findings of material facts and the application of the law to those facts. The Applicant was convicted of serious offences.
35. It was not disputed by the Applicant's representative that the same conduct, if committed in Australia, would also constitute serious criminal offending.
36. The Applicant's expressions of remorse and claims of having changed, ring hollow in the context of his simultaneous denial of any wrongdoing, or criminal conduct.
37. On 14 March 2010, the Applicant was arrested. He was detained until 5 May 2010.<sup>15</sup>
38. The Applicant told the Tribunal that he was released on a bond to appear at a later court date. He paid money to secure his release. In our terms, this looks very much like a release on bail, on his own recognisance. He was unable to recall the court date for the hearing, although he said that there was at least one court attendance, a month or so later.
39. He was then asked questions about the declaration on his tourist visa application form, dated 26 July 2012. In it, the Applicant stated that he had **not** been convicted of any crime or **charged with any offence currently awaiting legal action**.<sup>16</sup> I am satisfied that this statement was, at the time that it was made, untrue.
40. At this point in his evidence, having now apparently appreciated that he had made an admission of being charged and released on bail, his story abruptly changed. He told the Tribunal that there was at that stage, "*no comprehensive order because we had not been to the hearing.*" This meant according to him, that he did not believe that he had been even charged with an offence.

---

<sup>15</sup> HB 118.

<sup>16</sup> HB 488-498.

41. The Applicant then segued into saying that by July 2012, he thought that the court case was “*finished or over*”. He was unable to explain how or why he had formed this view. We know for certain that the matter was **not** finally disposed of by the Lebanese court until 26 July 2017.<sup>17</sup>
42. The fact that he was later arrested immediately upon his return to Lebanon on 20 July 2017, is also conclusive evidence that the case was **not** in fact over in July 2012. It is consistent with him having absconded to Australia, when still on bail.
43. The Applicant’s claim to have thought in July 2012, that the criminal case against him was over, is in my view, a dishonest attempt to explain away, his knowingly false declaration on the Australian tourist visa application.
44. When further pressed on this topic, he said that it all happened back in 2012, and he did not now remember what happened, when the declaration was made.
45. I am satisfied that the Applicant knowingly made a false declaration in connection with the completion of the 26 July 2012 visa application form.
46. On 6 August 2012, the Applicant lodged the application form for a visa to visit Australia as a sponsored family visitor (the tourist visa).<sup>18</sup> The sponsor was his sister, SH.<sup>19</sup> She was living in Australia and the holder of an Australian permanent visa at the time.<sup>20</sup>
47. He stated in the tourist visa application form that the purpose of his proposed stay was “*visit family and for tourism*”.<sup>21</sup> There was no mention of any apprehension of harm, or threat to his personal safety.
48. He said that he planned to visit between 30 September and 12 November 2012.<sup>22</sup>

---

<sup>17</sup> HB 118.

<sup>18</sup> Short Stay (Visitor) (Class UL) Sponsored Family Visitor (subclass 679) visa.

<sup>19</sup> HB 503, 508, 546.

<sup>20</sup> HB 28-29.

<sup>21</sup> HB 501.

<sup>22</sup> HB 501.

49. In the tourist visa application, the Applicant's sister (SH) gave an undertaking in the following terms:

*"Sponsorship undertaking for a sponsored family visitor*

**WARNING:** *Giving false or misleading information is a serious offence.*

*I agree to accept responsibility for:*

- *all financial obligations to the Commonwealth incurred by those I am sponsoring arising out of the applicant's stay in Australia; and*
- *unless the Minister decides otherwise, compliance by those I am sponsoring with the conditions under which they may be allowed to enter Australia.*

*I understand that the following visa conditions will be imposed on the visa:*

- *the visitor must not work in Australia:*
- *the visitor cannot apply for a further stay in Australia:*
- *the visitor must not remain in Australia after the expiry of the period of stay of the visa on which they enter Australia:*
- *the visitor must not engage, for more than 3 months, in any studies or training while in Australia.*

*I understand that any breach of the above visa conditions will prevent me from being approved as a sponsor for 5 years."<sup>23</sup>*

50. On 26 March 2013, the tourist visa was granted. The approved stay period was 42 days from the time of arrival. The explicit conditions of the tourist visa included no work, no further stay and a requirement that the Applicant must leave before the tourist visa expired.<sup>24</sup>
51. On 29 March 2013, the Applicant came to Australia on the tourist visa.<sup>25</sup> At that time, I am satisfied that he was on the equivalent of bail, in relation to the 2010 charges, still outstanding against him.

---

<sup>23</sup> HB 553.

<sup>24</sup> HB 555-558.

<sup>25</sup> HB 438.

52. Having regard to all the evidence, I am satisfied that the Applicant knowingly not only made a false declaration in the tourist visa application, denying that he was facing criminal charges, but that he left Lebanon, fully aware that he had pending criminal charges there.
53. There is **insufficient evidence** before the Tribunal for me to form a view as to whether he breached any of his Lebanese bail conditions, at that time. If Lebanese authorities checked his passport on departure, they would have been entitled to assume that he would be returning to Lebanon, within 42 days.
54. On 23 April 2013, 25 days after his arrival, the Applicant lodged an application for a Protection Visa (the protection Visa).<sup>26</sup> Again, in this application, he denied that he had been charged with any offence.<sup>27</sup>
55. I am also satisfied that it is reasonable, based his evidence to the Tribunal about wanting to come to Australia because it was a “safe country”, and on all of his conduct both up to that time and subsequently, that it was always his plan to find a way to get to Australia and then to somehow, contrive to remain here. I am satisfied that he was, from the outset, prepared to do whatever it took to achieve this outcome. His conduct from the time of his tourist visa application onwards, is consistent him having made a concerted effort to exploit any opportunities and weaknesses inherent in the Australian immigration system, to secure the right to remain here permanently. This included him knowingly making false statements.
56. The Applicant’s protection Visa application within weeks of his arrival as a tourist, is consistent with this view.
57. At the same time the Applicant’s sister (SH), who was already a permanent resident in Australia, also made an application for protection.<sup>28</sup>
58. The Applicant’s protection application of course, meant that he was no longer required to depart Australia by 10 May 2013 as required by the conditions of the tourist visa, pending the determination of that protection application.

---

<sup>26</sup> HB 559-585.

<sup>27</sup> HB 561.

<sup>28</sup> HB 587-593.

59. In the protection application, in answer to the question “*Why did you leave that country?*” (Lebanon), the Applicant stated:

*“My father was a part of the Hezbollah before significant violence erupted within the party. Members of the Hezbollah are predominately of the Shia sect and my family belong to the Sunni sect. Because of this, my father has experienced persecution and aggression from these people since he left the party. His sons have been a target as well, including myself and my 3 brothers. We have experienced violent attacks as a family and are in constant fear for our safety and our lives. The Hezbollah are particularly persecuting my father and all of his family members because of the fact that he defected from the party and because he is a Sunni Muslim.”*<sup>29</sup>

60. It is notable that the stated reason for him leaving Lebanon, as recorded in the then recently completed tourist Visa application form was entirely different. It was “*to visit my sister, her family and for tourism*”.<sup>30</sup>

61. I am satisfied that the Applicant made the tourist visa application with the intention of lodging a protection application within the 42 days, permitted for his visit.

62. In the protection application, in answer to the question “*Have you experienced harm in that country?*” (Lebanon), the Applicant stated:

*“There are many incidents where I have experienced harm in my country. Examples of these are as follows:*

- *My family and I were violently attacked at the beach, particularly myself and my father. We both needed medical attention but feared further attacks so could not go to the hospital.*
- *Drive by shootings at my home at least once a month. We have been lucky up to this point that no-one in my family has been killed.*
- *Captured and held at gunpoint on several occasions while on my way to work. During these incidents, I have been robbed and physically assaulted.*

---

<sup>29</sup> HB 577.

<sup>30</sup> HB 493.

*My family and I live in constant fear but cannot turn to the authorities because both the police and military are corrupt. What I have mentioned above are only a few isolated incidents as there are too many to name. It has come to a point where none of my family members want to leave our house, but must in order to provide for the family. Our home is no longer considered safe either.”<sup>31</sup>*

63. In the protection application, in answer to the question “*What do you fear may happen to you if you go back to that country?*” (Lebanon), the Applicant stated:

*“I fear that I will eventually be captured and killed by Hezbollah. I have no faith in the authorities for protection so it is a very real possibility that my life will end in violent circumstances.”<sup>32</sup>*

64. In the protection application, in answer to the question “*Why do you think this will happen to you if you go back?*” (to Lebanon), the Applicant stated:

*“My family has become a target of the Hezbollah since my fathers defection from that party. They are aware of my departure and threats against my life were made before I left Lebanon. As soon as I was granted my visa, I left the country within 24 hours fearing an attack on my life. I have been afraid to make this application for fear that if he party members hear of it, they will attack my family in Lebanon.”<sup>33</sup>*

65. In the protection application, in answer to the question “*Do you think the authorities of that country can and will protect you if you go back?*”, the Applicant stated:

*“The police and military in Lebanon are extremely corrupt and are all individually affiliated with one party or another, depending on their own political views and the religious sect which they belong to. However, which individual police officer or soldier one can turn to for protection cannot be decided based on the above factors because bribery is rampant and one soldier who you think you can rely on can turn for the right amount of money.*

---

<sup>31</sup> HB 578.

<sup>32</sup> HB 578.

<sup>33</sup> HB 579.

*Also, the police and soldiers who are there to protect the people are very often the ones perpetrating violent attacks on the people due to their clandestine affiliations with certain political parties and movements.”<sup>34</sup>*

66. I note that the Applicant did ultimately return to Lebanon on 20 July 2017. So far, none of his grave fears, as set out above, have apparently been realised.
67. On 23 April 2013, the Applicant was granted a temporary Bridging Visa (Bridging Visa 1).<sup>35</sup>
68. On 21 May 2013, the Applicant completed a declaration to the Respondent, in connection with the protection application, which repeated his assertion in the tourist visa application, that he had been neither charged, nor convicted, of a criminal offence.<sup>36</sup>
69. Again, I am satisfied that he made a knowingly false declaration at this time.
70. On 22 May 2013, the Applicant’s sister (SH) requested that her name be withdrawn from the protection application, as she was already a permanent resident in Australia.<sup>37</sup>
71. The Applicant told the Tribunal that about 5 months after he arrived here, in about August 2013, he got news from Lebanon, for the first time, that he was expected to appear in court to face the 2010 charges.
72. So, even on his current version of the facts, he knew by then at least, that he was wanted in Lebanon, to face criminal charges. He elected not to return to face them.
73. On November 11, 2013, the Protection Visa was refused (the protection refusal).<sup>38</sup> The reasons for refusal relevantly stated:

*“I found the applicant’s testimony in relation to his father’s engagement with Hezbollah was confused, delayed and vague and strongly suggested that the testimony being provided was not candid or based on fact. Having*

---

<sup>34</sup> HB 580.

<sup>35</sup> HB 247, 628, 675.

<sup>36</sup> HB 654.

<sup>37</sup> HB 657-659.

<sup>38</sup> HB 669-692.

*interviewed the applicant and considering the written claims, I consider that it is highly unlikely that the applicant's father was engaged as a bodyguard for Hezbollah and that finding seriously undermines the applicant's overall claims for protection.*

...

*The claims for protection run contrary to the available country information and the applicant did not provide any testimony at interview that I would describe as compelling or persuasive that could convince me that his circumstances are unique and could defy the known country information. Having interviewed the applicant, it is my view that all of the applicant's claims for protection are fabricated. I appreciate that the applicant may not like to the current situation in Lebanon or the instability in the region and there may be more opportunities for him should he remain living in Australia. However, after considering all the evidence before me, I do not accept that the protection claims are credible. I do not accept that the applicant has any reason to fear Hezbollah on return to Lebanon and I do not accept that the applicant holds a subjective fear of being harmed or harassed by Hezbollah for any reason.*

...

#### **IS THE HARM FEARED FOR A CONVENTION REASON?**

##### ***Evidence and Reasons***

*As the applicant's material claims were found to be not credible, which essentially means that the applicant does not fear harm for the reasons offered in the written application and the written claims do not represent the applicant's circumstances or the situation he will encounter on return to Lebanon, there is no need to assess if the protection claims have a nexus to a convention ground.*

...

#### **DOES THE CLAIMED HARM AMOUNT TO SIGNIFICANT HARM?**

*As outlined in the Credibility Findings at Part 9, I am not satisfied that the claims for protection are credible. There are serious deficiencies and inconsistencies in the applicant's claims. Considered cumulatively, they are*

*so serious that I cannot be satisfied as to the credibility of the applicant. These doubts in relation to the applicant's claims are not marginal or irrelevant matters but lie at the heart of an assessment of whether the applicant has fears of being harmed in Lebanon.*

*As the applicant's material claims were found to be false and misleading and do not represent the circumstances he may face on return to Lebanon, I am not required to make a finding as to whether the claimed harm amounts to significant harm. I appreciate that there is no requirement to prove a subjective fear of harm under the complimentary protection provisions, however it is my assessment that clause exists to address risks of harm that are unknown to applicants and is not in my place to enliven false claims of harm raised by applicants.*

...

*As noted numerous times in this decision, the claims advanced by the applicant are not credible and therefore are not being further assessed. I can see no evidence that the applicant would face significant harm on return to Lebanon for any other reason.”<sup>39</sup>*

74. The Applicant sought a review of the protection refusal.
75. On 8 December 2013, according to the Respondent's records, Bridging Visa 1 ceased.<sup>40</sup>
76. On 15 February 2014, the Applicant met SD.<sup>41</sup>
77. On 23 April 2014, the Refugee Review Tribunal affirmed the protection refusal. The Applicant failed to appear before the Tribunal. No attempt was made by him or his representatives, to explain this, or to seek an adjournment.<sup>42</sup>
78. The Applicant sought judicial review.

---

<sup>39</sup> HB 682-692.

<sup>40</sup> HB 675.

<sup>41</sup> HB 734.

<sup>42</sup> HB 694-705.

79. On 21 May 2014, a Second Bridging Visa (Bridging Visa 2) was issued to allow the Applicant to remain in Australia until “28 calendar days after the judicial review proceedings” relating to the protection refusal.<sup>43</sup>
80. Those proceedings were unsuccessful.
81. On 31 July 2014 Bridging Visa ceased according to the Applicant.<sup>44</sup>
82. The Applicant conceded that he then stayed here, even though he knew that he didn’t have a visa.
83. I am also satisfied that he knew that he was still wanted in Lebanon to face criminal charges.
84. From 2014 to 2017, the Applicant survived by working from time to time. Given that he was an illegal non-citizen without working rights, this work was unlawful. It is also implicit in this admission, that he did not have a tax file number and that he was not paying tax on his earnings. He said that he had a problem with transport. He was living by renting spare rooms in houses. His sister was not happy with him staying with her illegally. He moved around. He accepted in cross-examination that he put his interests in staying here, ahead of complying with Australian laws.
85. Again, this is entirely consistent with his pattern of conduct, from the time that he completed the tourist visa application in July 2012.
86. On 18 February 2015, the Applicant lawfully married SD (his first wife).<sup>45</sup> She is an Australian citizen.<sup>46</sup> He had been here illegally for about 7 months at that time.
87. The next day, on 19 February 2015, the Applicant made an application for a partner visa (the first Partner visa).<sup>47</sup>

---

<sup>43</sup> HB 708.

<sup>44</sup> HB 247.

<sup>45</sup> HB 726.

<sup>46</sup> HB 725.

<sup>47</sup> HB 711.

88. The Applicant's marriage to SD and his immediate application for a partner visa, are again entirely consistent with the Applicant's demonstrated determination to remain in Australia, by whatever means.
89. On 23 February 2015, the first Partner visa application was deemed to be invalid (the invalidity determination) because it breached a condition of the tourist visa, namely "no further stay". The Applicant was explicitly warned that:

***"Leaving Australia***

***You currently hold a Bridging visa D which ceases on 23 February 2015. If you stay in Australia after the date your bridging visa ceases (and you do not hold another visa) you will be here unlawfully. This has serious consequences including possible detention and removal from Australia.***

*If there are reasons why you cannot depart Australia by the time your visa ceases, you should contact us for advice and assistance as soon as possible. You can call 131 881 between 8.30 am and 4.30 pm Monday to Friday or you can visit any one of the department's offices.*

*Details of our office locations and opening hours are available at [www.immi.gov.au/myvisa/contact](http://www.immi.gov.au/myvisa/contact)*

***Lodging another application***

*You cannot make a valid application for a visa while you are in Australia unless you apply for a class of visa permitted by the condition listed above, or the Minister waives the condition.*

*Otherwise, to make a valid application you will need to depart and apply for a visa outside Australia."<sup>48</sup>*

90. The Applicant did not leave Australia.
91. A medical report from Dr Abu-Arab, a clinical psychologist, dated 9 March 2015, in support of the first Partner visa application states:

---

<sup>48</sup> HB 711- 713.

**“History Obtained:** Mrs [redacted] reported she first met her husband, Mr Mehieddine Hamze, on the 15th February 2014. A relationship developed, and the couple decided to marry a year later. They had their wedding on the 18th February 2015, and they live together at [redacted].

Mrs [redacted] reported her husband was told by the Department of Immigration and Border Protection that he needs to travel overseas and apply for a spouse visa from overseas.

**Psychological Issues:** Mrs [redacted] reported that since she learned about the requirement for her husband to leave Australia, she became anxious and depressed. She disclosed that her family were against her marriage as her husband is of a different nationality, (Lebanese national), and she is of Iranian-Persian background. She acknowledged however, that her mother and siblings eventually came to accept her marriage, but her father continues to object to the marriage. She reported her husband provides her with significant support. Even though she has a driver's license, she is not confident with driving to unfamiliar places. Her husband drives her when she needs to leave the home, he cooks her meals, and he does the grocery shopping. He prepares optimal conditions for her to attend to her university studies. He supports her emotionally and financially.

Mrs [redacted] reported that if her husband had to leave Australia, she would not be able to afford the rent, and on the other hand she would not be able to return to her family home as they were against her marriage.

Another source of frustration described by the patient revolves around the fact that if her husband has to leave Australia, he would go to his country of origin, Lebanon, where the political and military situation is volatile. She sadly reported that in North Lebanon there is a serious attempt to establish an area which is ruled by ISIS. She reported her husband's life would be in danger if he returned to Lebanon, especially as he holds Liberal views and because he married a woman from a different nationality.

At the same time, she would not be able to travel to Lebanon to live with her husband. Not only because of the volatile situation, but also because it would mean she would terminate her university studies.

As a result, Mrs [redacted] became depressed and anxious. She is unable to sleep, and when she falls asleep she wakes up several times during the

*night. She is unable to concentrate on her studies. She described her mood as sad every day for most of the day, and she lost interest in pleasant activities. Her memory and concentration have been affected.*

**Diagnosis:** *From a psychological perspective, I believe Mrs [redacted] qualifies for the diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood, according to the Diagnostic and Statistical Manual of Mental Disorders, DSM-V.*

*I support Mrs [redacted]'s application to allow her husband to remain in Australia, and apply for Permanent Residency Status from within Australia without the need to travel overseas. I believe her husband, Mr Hamze, provides significant support for her, and such support would allow her to successfully complete her university studies. There is no doubt in my mind that the young couple will be able to establish a successful family, and will be able to contribute to their community.*

*Please feel free to contact me if you need further information.”<sup>49</sup>*

92. On 10 June 2015, nearly 4 months after the invalidity determination, lawyers acting on the Applicant’s behalf, made a “*No further stay waiver*” (the first waiver application) request to the Respondent.<sup>50</sup>
93. On 15 June 2015, a physiotherapist, Max Sallam, prepared a report stating that the Applicant suffers from various physical restrictions.<sup>51</sup>
94. On 21 July 2015, SD swore a statutory Declaration in the following terms:

*“I [SD] of [redacted], customer service officer make the following declaration under the Statutory Declarations Act 1959:*

*1. I am 22 years old and I am completing a Bachelor of Business at the University of Western Sydney.*

---

<sup>49</sup> HB 734-736.

<sup>50</sup> HB 716-720.

<sup>51</sup> HB 739-740.

2. *I am currently working as a Customer Service Officer at McDonalds Rosehill.*

3. *I married Meheiddine Hamze on 18 February 2015. After I got married to Meheiddine, my father disowned me due to my father's opposition to our marriage. This is because Meheiddine is from Lebanon, and I am from Iran. I am also Shia and he is Sunni.*

4. *On 9 March, I was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood.*

5. *If Meheiddine were to leave, the following difficult circumstances would occur:*

*A. No-one to support me*

*i. I do not have any family in Australia other than my immediate family. My father has disowned me due to his opposition to our marriage and I cannot return home.*

*ii. I do not have any friends who can support me.*

*iii. I have spoken to the Australian Iranian Community Organisation, United Muslim Women Association and Auburn Islamic Centre and they have said that they are unable and/or have limited capacity to meet my needs.*

*B. Financial difficulty: I do not make enough income to support myself financially including through renting a place and buying groceries. I am a student at the University and will have to leave and find full time work. The stress associated with these difficulties will further aggravate my situation.*

*C. My mental health: I am continuing to see my psychologist for treatment and he has indicated that it is important that I continue to do so. As my psychologist has noted, I need constant support as a result of my mental health status, and this is likely to be aggravated if I do not have support from others, which due to the aforementioned reasons will be lacking if my husband were to depart Australia.*

6. *In light of the above circumstances, I kindly request that you grant Meheiddine a favourable outcome for his request for a waiver in relation to the No Further Stay Condition.*

*I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.*

*[signed].*<sup>52</sup>

95. In a letter dated 22 July 2015, the Applicant’s lawyers stated:

“ ...

3. *On 19 February 2015, the applicant applied for a Partner (Temporary) (Class UK) (Subclass 820/Partner (Residence)(Class BS)(Subclass 801) Visa that was declared invalid on 23 February 2015, due to restrictions imposed by Section 46 (1A) of the Migration Act 1958 (Cth) (“the Act”).*

4. *On behalf of the applicant, we request that Condition 8503 be waived so that he may validly reapply under Section 46 of the Act for the Substantive visa mentioned in paragraph 3, or alternatively for another class of visa for which he may be eligible.*

...

**a. Compelling and Compassionate Grounds**

6. *It is acknowledged that marriage does not constitute a compelling and compassionate circumstance likely to result in the grant of an 8503 waiver; Nguyen v MIMA (2001) 109 FCR 169.*

7. *However, according to Section 19 of Procedures Advice Manual 3, “The death, serious illness or serious medical condition of a member of the visa holder’s close family, in circumstances where the visa holder is required to remain temporarily to provide assistance or support might also satisfy requirements.”*

---

<sup>52</sup> HB 737-738.

8. The applicant has advised us that his wife is suffering from Adjustment Disorder with Mixed Anxiety and Depressed mood, which she was only recently diagnosed with. Please find annexed and marked "A" a copy of the report from Dr Mahmoud Abu-Arab.

9. The applicant's wife has various needs resulting from her diagnosis. She requires support such as:

- Aid driving
- Financial support
- Assistance in basic duties such as grocery shopping
- Preparation of meals
- Emotional support
- Other medical support for her medical condition

10. The applicant has also advised us that due to Mrs [SD] father's stark opposition to her marriage to a Lebanese national, she is unable to return home and would not be able to do so if the applicant departed Australia (she is Iranian). This would create an added burden on the applicant's wife, since she would need to support herself financially, emotionally and from a medical point of view while she is seeking treatment for the above mentioned medical condition.

11. The applicant has advised us that there is no one else available to support her while she is suffering from this mental condition, and based on the medical report received it is likely to worsen if he were to depart Australia.

12. We therefore submit that the applicant's wife, as a close family member, requires the applicant to remain in Australia to support her as a result of her current medical condition. We have also been instructed that she does not have any other individual or organization to assist her in her daily life (see Statutory Declaration attached and marked "B"). Emphasis is placed on the fact that she is unable to return to her family home, and that her medical condition means that she requires daily support which she would not be able to receive if she lives alone.

13. The applicant is also compelled to stay in Australia since the applicant's wife cannot return to Lebanon with him. This is because she is of Iranian Shia Background and he is of Lebanese Sunni Background. It would be unreasonable to expect the wife to travel with her husband to Lebanon,

*since it has the potential to expose her to a highly dangerous situation due to the tensions between Shia and Sunni. There is a plethora of information available in the research directorate in relation to the tensions between Shia and Sunni in Lebanon. It should be noted that Lebanon is a majority Sunni country who largely oppose the Hezbollah allied agreement with Iran and Syria. Killings from both sides have resulted in a very tense situation whereby either sect is reluctant to live in Areas where there is a majority.*

*14. On the other hand, those who support Hezbollah are allied against other Sunni extremists groups in the Middle East such as ISIS who has been killing minority groups for being 'infidels'.*

*15. In addition to the Sunni – Shia tensions, the applicant's wife is of Iranian background which would further aggravate her situation. This is highly likely to cause a worsening of her condition.*

*16. We therefore submit that his wife's medical condition and the circumstances arising from having a lack of carer available are compelling and compassionate grounds for the purpose of the grant of a waiver of "No Further Stay" condition.*

***b. Beyond the applicant's control***

*17. It is acknowledged that the applicant's decision to get married was not beyond his control.*

*18. However, it is submitted that the development of the medical condition that his wife has been diagnosed with was beyond his control.*

***c. Resulted in a Major change to the person's circumstances***

*19. As a result of his wife's medical condition, the applicant has advised us, that he is required to provide ongoing support to his wife in the form of financial, emotional and other support required to assist her while she is seeking treatment.*

*20. If the applicant were to return to Lebanon, he would not be able to assist his wife from overseas as she requires support that will not be available while he is overseas.*

*21. In addition, we refer to and emphasize paragraphs 13 to 15.*

Car accident

**a. Compelling and compassionate grounds**

22. In addition, the applicant has instructed us that in December 2014, he was the victim of a car accident that resulted in him having to attend medical treatment sessions for his injuries. Please find enclosed and marked "C", a letter from Dr Naim Islam in relation to the car accident and his current medical condition.

23. According to Dr Naim's examination of the applicant, he is unfit for work or study from 15/06/2015 to 30/09/2015, as a direct result from this car accident.

24. The applicant has also provided a report from his Physio Rehab Centre (annexed and marked "D")<sup>1</sup> in relation to him receiving physio-therapy treatment associated with his neck, right shoulder, lower back and right ankle. While the whole report is relevant, emphasis is placed on the physiotherapist's diagnosis of Mr Hamze having:

"Restricted cervical mobility with overlying muscular spasm – MRI scans indicated C5/6 posterior disc protrusion"

"Restricted lumbar mobility, bilateral weakness and paraesthesia and **pain on prolonged sitting** and standing-indication L4/5, 5/S1 broad based disc bulges impinging L5 Nerve Root"

25. It is therefore submitted that based on the Doctor's report and the report from Physio Rehab Centre, the applicant will not be able to travel in the immediate future due to the limitations imposed by his medical condition arising from the car accident. He is therefore compelled to remain in Australia based on the above mentioned compassionate grounds.

**b. Beyond the applicant's control**

26. It is submitted that the car accident was beyond the applicant's control.

**c. Resulted in a major change to the person's circumstances**

27. It is submitted that the car accident resulted in a major change to the person's circumstances as a result of the injuries he sustained and which according to the reports, has limited his ability to travel.

Conclusion

28. *In light of the above mentioned circumstances, we kindly request a favourable decision is made in relation to the request for an 8503 waiver.*<sup>53</sup>

96. The Applicant was here arguing, amongst other things, that he was needed to support SD's medical and financial needs. This is a strikingly similar argument to the one currently being advanced by him, in these proceedings.
97. On 30 July 2015, the Applicant's lawyers withdrew the first waiver application.<sup>54</sup>
98. On 26 August 2015, lawyers acting on the Applicant's behalf, made another "No further stay waiver" (the second waiver application) request, to the Respondent.<sup>55</sup>
99. The second waiver application was supported by another letter from his lawyers, similar in some respects, but not identical to the letter of 22 July 2015 (supra). Relevant differences include:

*"17. The applicant has also advised us that due to Mrs [SD] father's stark opposition to her marriage to a Lebanese national, she is unable to return home and would not be able to do so if the applicant departed Australia (she is Iranian). This is confirmed in the Psychologist's report. Particular stress is placed on:*

*"She disclosed that her family were against her marriage as her husband is of a different nationality (Lebanese national) and she is of Iranian-Persian background. She acknowledged however, that her mother and siblings eventually came to accept her marriage, **her father continues to object to the marriage**"*

*18. It is submitted that due to the patriarchal nature of Middle Eastern family households, the applicant's wife would not be able to return home and she has advised us that there is no one else available to support her while she is suffering from this mental condition, and based on the medical report*

---

<sup>53</sup> HB 727-732.

<sup>54</sup> HB 742.

<sup>55</sup> HB 743-757.

received it is likely to worsen if he were to depart Australia. Emphasis is therefore placed on the fact that she is unable to return to her family home, and that her medical condition means that she requires daily support which she would not be able to receive if she lives alone.

19. This would create an added burden on the applicant's wife, since she would need to support herself financially, emotionally and from a medical point of view while she is seeking treatment for the above-mentioned medical condition.

20. We therefore submit that the applicant's wife, as a close family member, requires the applicant to remain in Australia to support her as a result of her current medical condition.

21. We therefore submit that his wife's medical condition and the circumstances arising from having a lack of carer available are compelling and compassionate grounds for the purpose of the grant of a waiver of "No Further Stay" condition.

***Discrimination and likely harm if she were to depart to Lebanon***

22. It is acknowledged that the applicant's wife may depart Australia to Lebanon with the applicant. However, we submit that there is a reasonable likelihood that the applicant's wife may likely suffer discrimination in Lebanon due to her cultural background, especially since she will be required to return to an area of Sunnis and she is of Iran-Shiite background.

23. Lebanon is a Sunni Majority country, with Shiites making a minority. In a 2009 report, Brandeis University cited the following statistics in relation to the growth of the Shiite population in Lebanon:

[graph]

24. However, it should be noted that the influx of Syrian refugees would have severely affected the statistics, given that one in every four people in Lebanon are now Syrian refugees.

25. In a 2015 report on the situation of Syrians in Lebanon, Reuters noted: "Politicians also fret about the mainly Sunni Muslim refugees' impact on Lebanon's delicate sectarian balance, in which power is carefully divided between Christians, Shi'ite Muslims, Sunnis, and other, smaller groups."

26. The Council on Foreign Relations noted:

*The intensification of the Syrian civil war is putting increased stress on Lebanon's political system and security infrastructure. Lebanon has absorbed more than one million Syrian refugees since the start of the conflict in 2011—compromise nearly one-fourth of Lebanon's population and more refugees than any other country bordering Syria. However, in October 2014, Lebanon announced that it would not accept any more Syrian refugees.*<sup>56</sup>

100. On 9 September 2015, the second waiver application was refused by the Respondent.<sup>57</sup>
101. It must have been apparent to the Applicant by this time, that the first Partner visa application would not succeed.
102. The Applicant says that it was at about this time, that he decided his marriage to SD had no future. He told her it was over. This was because SD was not ready to have a family. He stated that her refusal to have child at this time, was critical in his decision to leave her and to move on.
103. He claims that he asked her to withdraw the partner visa application. The Applicant was unable to provide any evidence of this request.
104. The Applicant's evidence about when he split with SD, was vague. Given the documentation before the Tribunal, this may have been between July and September of 2015. Assuming this to be so, they had been married for only 5 to 7 months. He still had no visa and little obvious prospect of obtaining one.
105. Based on his evidence to the Tribunal, I am satisfied that his priority at that time, was fathering a child. SD's refusal to do so, ended their relationship.
106. The Applicant was also unable to point to any evidence of having ever divorced SD.

---

<sup>56</sup> HB 743-757.

<sup>57</sup> HB 771-779.

107. The Applicant told the Tribunal that he didn't know anything about a divorce. He left that up to her. He conceded that he has no idea whether they were ever divorced. As far as he was concerned, she didn't want children, so he finished their relationship.
108. I am **not** satisfied, given the total absence of evidence, that the Applicant has ever been legally divorced from SD.
109. It follows that all his later representations about being "*married*" to RA are at least questionable, as a matter of law. This does **not** necessarily detract from the substance of their relationship, but it raises serious questions about the truth of his representations to the Respondent and to the Tribunal, about its legal form.
110. The Applicant knowingly continued to remain in Australia as an illegal non-citizen.
111. The Applicant conceded in his evidence, that was here without a valid visa from 1 August 2014 to 15 February 2015 and from 24 February 2015 to 19 July 2017.<sup>58</sup>
112. It is also conceded that there is no evidence of "*substantial positive community involvement*".<sup>59</sup>
113. The period of almost 3 years as an illegal non-citizen, is totally consistent with the Applicant's past pattern of conduct, in this instance, ignoring the immigration laws of this country, to remain here.
114. It is totally **inconsistent** with the Applicant's submission that he has, since 3 March 2010, demonstrated an "*extended period of lawful and responsible behaviour (which) is a compelling indicator of the Applicant's character and self-discipline.*"<sup>60</sup>
115. On 28 September 2016, the Applicant's nephew, (Child A) was born. He is the son of his second wife's sister, "HA".<sup>61</sup> The Applicant had at the time however, not yet even met his second wife, RA.

---

<sup>58</sup> HB 126.

<sup>59</sup> HB 11 at [66], HB 247-249.

<sup>60</sup> HB 11 at [14]-[16].

<sup>61</sup> HB 818-820.

116. Child A has serious health issues.<sup>62</sup>
117. On 20 December 2016, while he was still illegally in Australia, the Applicant met RA.<sup>63</sup> The Applicant's father and RA's father were friends. He met RA at her father's (AA) home.<sup>64</sup> RA is an Australian citizen.
118. On 4 February 2017, 46 days later, the Applicant and RA were engaged.<sup>65</sup>
119. This brief period of courtship is again consistent with the Applicant's past conduct. It is consistent with his demonstrated persistence, in seeking an opportunity to achieve legal residency status in Australia.
120. On 20 March 2017, RA flew to Lebanon to meet the Applicant's family.<sup>66</sup> At this stage she had known the Applicant for about 3 months. This 3-month period is the **only** time that they knew each other in Australia. They were **not** living together. During all this time, the Applicant was here **illegally**.
121. On 25 March 2017, the Applicant was found driving without a valid visa. He was taken into immigration detention.<sup>67</sup>
122. On 26 March 2017, RA flew back to Australia.<sup>68</sup>
123. On 19 July 2017, the Applicant departed Australia.<sup>69</sup>
124. On 20 July 2017, the Applicant was arrested immediately upon his return to Lebanon, in relation to the still outstanding 2010 criminal charges.<sup>70</sup>

---

<sup>62</sup> HB 818-820.

<sup>63</sup> HB 827-828, HB 442.

<sup>64</sup> HB 442.

<sup>65</sup> HB 243-244, HB 442.

<sup>66</sup> HB 442.

<sup>67</sup> HB 249, HB 827 at [5].

<sup>68</sup> HB 442.

<sup>69</sup> HB 438.

<sup>70</sup> HB 438.

125. On 26 July 2017, the Applicant was convicted in the Permanent Military Court in Lebanon of various offences related to assault, breaking and entering, property damage and having a military weapon without a license. He was sentenced to one month's imprisonment and a fine.<sup>71</sup>
126. On 27 August 2017, RA travelled to Lebanon.<sup>72</sup>
127. On 30 September 2017, the Applicant married RA in Lebanon.<sup>73</sup>
128. As has previously been observed, the legal status of this marriage, at least according to domestic Australian law, is unclear.<sup>74</sup> I note that in Australia, it is a criminal offence for a person who is married to "*go through a form or ceremony of marriage with any person*".<sup>75</sup>
129. In 2018, HA and Child A visited the Applicant in Lebanon.<sup>76</sup>
130. On 8 April 2019, the Applicant submitted the application for the Visa.<sup>77</sup>
131. The Applicant failed to disclose his previous marriage to his first wife, SD and the First Partner Visa application.<sup>78</sup>
132. On 29 September 2019, RA returned to Australia. She was pregnant with Child B at the time.<sup>79</sup> Child B was conceived in Lebanon.
133. On 16 January 2020, the Respondent requested the Applicant to provide an AFP clearance.<sup>80</sup>

---

<sup>71</sup> HB 114, 116, 118.

<sup>72</sup> HB 442.

<sup>73</sup> HB 165, HB 821 at [5].

<sup>74</sup> E.g. See *Marriage Act 1961* (Cth) s 23(1) (a), s 23B (1) (a), s 60-64, s 88A-88G, s 94.

<sup>75</sup> See *Marriage Act 1961* (Cth) s 94.

<sup>76</sup> HB 818-820.

<sup>77</sup> HB 220-251

<sup>78</sup> HB 246

<sup>79</sup> HB 821 at [6].

<sup>80</sup> HB 364-366.

134. On 24 January 2020, the Applicant's son (Child B) was born.<sup>81</sup>
135. On 4 March 2020, the Respondent wrote to the Applicant regarding the provision of false or misleading evidence. This related to the first partner Visa application, referred to above, lodged on 23 March 2015.<sup>82</sup>
136. The Applicant responded saying:

*"Thank you for the invitation to comment on information.*

*Firstly my sincere apologies providing any information or lack thereof that you deem to be misleading or false. **It is only on receiving your letter that it came to my attention that it was indeed relevant to disclose that I had a past relationship with a different sponsor.** The reason I did not disclose this is because my first application was deemed invalid and I then assumed it was closed and no longer valid.*

*To the best of my understanding I understood my first application was invalid and therefore I didn't think it was important and was not advised it was important to mention it. **It was my view that the application was never lodged and my relationship at that time did not continue so I didn't know I had to state it and write it in my application.** If I knew it was necessary I would have included it because I have nothing to hide and would not leave out any information on purpose. I did not tell my current agent [redacted] about my past situation because I didn't think it was relevant after it was "invalid". I regret this now and it was not my intention to provide false or misleading information. It was a careless error in assumption since my first application was invalid.*

*I take remorse for not disclosing this information because before departing Australia my situation was critical and I did declare in my application that I did something wrong which I now regret.*

*In your letter you have invited me to provide any compelling circumstances to justify the waiver of PIC4020. I am the spouse of [RA] born [redacted DOB].*

---

<sup>81</sup> HB 106.

<sup>82</sup> HB 386-389.

*[RA] and I have lived together in Lebanon since we were legally married on 30 September 2017 and our engagement took place on 4 February 2017.*

*I am pleased to inform the embassy that I am no longer the person I was before and I regret that I was illegal while in Australia from 31 July 2014 until 25 March 2017 and since I left Australia on 19 July 2017 I changed completely and I regret the bad behaviour which I committed in Australia. I have had to reflect and feel that through reflection and time away I am in a much better place now.”<sup>83</sup>*

137. He told the Tribunal that he didn't mention SD because he had left her and that there was no relationship anymore. He said that told his agent that he had a past relationship, but the agent didn't change the form accordingly.
138. This is an entirely different excuse to the one that he gave to the Respondent in earlier correspondence, namely that he didn't think it counted because the first Partner visa application was invalid.
139. When asked about the passage quoted above, the Applicant agreed that it was is correct.
140. This was, however, inconsistent with his later evidence to the Tribunal.
141. The Applicant made no mention in the passage above, as he told the Tribunal, of having had a later discussion with his agent, Mr Helou, wherein he told him about his first marriage and the first Partner visa application.
142. The Applicant did not mention in the passage above, as he told the Tribunal, that he believed that the question on the form was actually asking whether he was **still in a relationship with SD**, in 2019.
143. As previously observed, the Applicant has not adequately explained what happened to his first marriage with SD, or when. Indeed, it remains unclear whether that marriage has ever been dissolved.

---

<sup>83</sup> HB 126.

144. I am satisfied that the Applicant knowingly made a false declaration about his relationship with SD, because he believed that to do so, would assist in the success of this visa application.
145. Again, this would be entirely consistent with his past conduct.
146. On 11 September 2020, the Respondent requested the Applicant to explain why he had not declared his military service given that his charge was dealt with in a military court.<sup>84</sup>
147. On 24 November 2020, the Applicant said that he was exempted from military service.<sup>85</sup>
148. The Applicant told the Tribunal that he had never been in the military and that the only reason that the case was dealt with in a military court, was because one of his friends, who was also there, was in the military.
149. In February 2021, RA and the Applicant's son, Child B, travelled to Lebanon to be with the Applicant.<sup>86</sup> This was the first time that the Applicant had met Child B.<sup>87</sup>
150. Between 16 March and 23 July 2022, RA sent a series of Emails to the Respondent, requesting the Visa application to be granted.<sup>88</sup>
151. On 6 June 2022, the Applicant's sister-in-law, Ms.NA, had a son (Child C).<sup>89</sup>
152. On 21 July 2022, RA and Child B returned to Australia because of safety concerns in Lebanon.<sup>90</sup> Child B was 2 ½ years old.
153. On 3 March 2023, the Applicant's brother-in-law, (KA), had a son (Child D).<sup>91</sup>

---

<sup>84</sup> HB 390-396.

<sup>85</sup> HB 401.

<sup>86</sup> HB 139-141.

<sup>87</sup> HB 141.

<sup>88</sup> HB 405-409.

<sup>89</sup> HB 835-838.

<sup>90</sup> HB 140.

<sup>91</sup> HB 140.

154. On 19 November 2023, the Applicant's sister-in-law, Ms.NA, had a son (Child E).<sup>92</sup>

155. On 30 August 2024, RA sent an email to the respondent in the following terms:

*"To whom it may Concern,*

*I am writing to you in reference to the above file number for Mr Mehieddine Hamze. I [RA] am currently facing a very difficult time, due to a number of factors. I am currently in Lebanon (war torn country), I made the decision in coming here after numerous announcements from the government to not do so, though I had to weigh it up and take a risk which I am currently living with.*

*I am in a country that is very unsafe, due to the tensions in the Middle East, I have bought my son along with me due to the fact his father has been in Lebanon for 5 years currently awaiting a decision on his application, we are a family being apart and separated due to his pending application, my son is emotionally and mentally distressed due to the fact his father can not be with us as a normal family and I can not make regular trips to Lebanon to be with him due to my deteriorating health condition.*

*I have a kidney/renal failure health issue and am at a risk of dialysis due to my neglect in my health being here in Lebanon, some might call me stupid for taking this risk, but I call it family commitment and dedication to fulfil my sons wishes in being with his dad as a family for the little time that I can be. I have financially put myself in debt for this trip also as I can no longer keep my son and myself away from Mehieddine.*

*Medieddine and I would love to continue to grow our little family but can no do so due to the distance and can't afford to bring another child into this world with his father being miles apart.*

*My son [Child B] is having separation anxiety, due to the fact that he will be apart from his father soon and I can't afford to keep him here as it's not safe, and his schooling back in Australia, my health, finances, the tension in the country and a lot whole more as you can imagine this isn't the safest country.*

---

<sup>92</sup> HB 140.

*I am pleading and urging you to please look into our case and consider it under special circumstances, as I am not sure how much I can take, deal and keep my son safe and protect him the way we currently are. We just want to be a family all together and continue our lives in normal conditions with a family bonding not just over FaceTime and phone calls.*

*Kind regards,*

*RA.*<sup>93</sup>

156. RA was in Lebanon with Child B for 6 weeks from August to September 2024.<sup>94</sup> But for this visit, the Applicant has not been physically with Child B since he was 2 and a half.
157. On 23 October 2024, the Applicant was sent a notice of intention to consider refusing the Visa application.<sup>95</sup>
158. On 6 November 2024, RA prepared another statement in support of the Applicant.

*"I, [RA] do solemnly and sincerely declare that:*

*According to direction 110. I am an Australian born with an Australian born child which makes him a second generation Australian. My husband Mehieddine Hamze, and I have been married for 7 years, with an almost 5-year- old son together.*

*My son and I have been away from my husband and not in a normal family dynamic due to the waiting of my husband's visa decision by the department this has caused great pain for us all.*

*My son [Child B] asks for his father every single day, especially with what is happening overseas now, and asks me if he will ever see his father again, this hurts us so much as we don't have any answers for him, and this is affecting my health more then what I am already affected.*

---

<sup>93</sup> HB 431.

<sup>94</sup> HB 43.

<sup>95</sup> HB 433-437.

*[Child B] and I took a trip this year to Lebanon to be with Mehieddine but unfortunately had to return due to the current situation. I am needing my husband to be by my side as I am currently not well and want to be a complete family.*

*Mehieddine made a mistake in 2010 when he was 19 years young, and single and for this resulted in court which occurred in 2017, that was 14 years ago, he took responsibility for his past actions, and justice was served, he has since learnt from his mistake and has made positive changes in his life and others life's. Mehieddine has changed from this and has not had any reoccurrence of problems or trouble since.*

*My son will be dramatically affected by this decision and so will I as we both need him very much in our lives. Mehieddine deserves a chance to have this looked past as he is a changed family man, he cares for us and wishes nothing less than to be with us for ever so we can start our life together as a complete family.*

*My son and I are both Australians, this is our home, this is our country, this is all my son knows and would love for him father to be with us through all we do. My son looks at other kids and always tells me that he wishes he was like them with a normal family dynamic and not knowing/ talking to his dad through a screen/phone.*

*My son needs his dad to be by his side and see all the milestones that are to come without having to miss out anymore then what he already has. My son has no one but his father as a male figure in his life, and this is from a distance, my son is missing out on his father presences and touch which has resulted in my son being emotionally distressed, my son is almost 5 years and already has started to take the responsibility of looking after me due to my health, this is not fair my son deserves to be a kid .*

*My son and I are so worried and concerned for Mehieddine due to the current situation in Lebanon. and all we want is to be a happy and complete family.*

*I ask you to please seek leniency in my husband's visa decision and not base it on a mistake he made over 14 years ago, which he has not re occurred. Mehieddine was remorseful, and deeply regrets and ashamed for*

*what has happened in his past and was not expecting it to affect his future, and the future of myself and our son.”<sup>96</sup>*

159. On 6 November 2024, the Applicant responded to the notice of intention by email.<sup>97</sup>
160. On 10 January 2025, the Respondent decided to exercise the discretion under s501(1) to refuse to grant the Visa.<sup>98</sup> The Respondent decided that the Applicant failed the character test in that if he was allowed to enter Australia, “*there is a risk that he would engage in criminal conduct.*”<sup>99</sup>
161. On 27 January 2025, RA’s sister, HA, provided a statement in support of the Applicant.<sup>100</sup>
162. On 27 January 2025, the Applicant’s wife’s younger sister, NA, provided a statement in support of the Applicant.<sup>101</sup>
163. On 27 January 2025, the Applicant’s wife, RA, provided a statement in support of the Applicant.<sup>102</sup>
164. RA suffers from a congenital kidney issue, hypertension, anxiety and depression. She says in her statement of 27 January 2025, that this means that she requires support:

***“My Medical Condition and Resulting Hardship***

*14. I have lived with a congenital kidney issue (nephrotic syndrome) since birth. Although initially managed with medications, my kidneys began to deteriorate more seriously in the last few years. My doctors warn that I may eventually require dialysis if my condition continues to worsen.*

*15. This looming possibility affects every aspect of my life. I worry about who will care for [Child B] if I suddenly need hospitalisation or dialysis. While my*

---

<sup>96</sup> HB 137-138.

<sup>97</sup> HB 97.

<sup>98</sup> HB 99.

<sup>99</sup> HB 100; section 501(6)(d)(i) of the Act.

<sup>100</sup> HB 818-820.

<sup>101</sup> HB 827-828.

<sup>102</sup> HB 821-826.

parents and siblings do their best to help, they each have their own obligations, financial constraints, and health concerns. I desperately need my husband's presence and support during this vulnerable time.

16. Financially, I rely on a single parenting payment from Centrelink. Most of my funds go toward rent, groceries, my son's basic needs, and sometimes my own medication. I have had to forego personal expenses and rely on my mother to cover my medical costs on more than one occasion. Securing stable employment is difficult because I cannot be certain my health will allow me to work consistently.

17. In an attempt to address my growing health concerns, I previously applied for a visitor visa for my husband so he could be present to help. That application was unfortunately refused, leaving me without the critical assistance I had hoped to receive."<sup>103</sup>

165. RA has the benefit of a large extended family in Australia. She says in her statement of 27 January 2025:

***"Extended Family in Australia***

18. My family is large and close-knit, all of them Australian citizens. We place a high value on family unity and caring for each other in times of need. My mother and father, [Mr AA – Parent 1] (redacted DOB) and [Mrs KA – Parent 2] (redacted DOB), live at [redacted address], where some of my siblings also reside. Both my parents suffer from conditions like diabetes and high blood pressure but do not have kidney disease.

19. I have four siblings:

I. KA [Sibling 1] (redacted DOB): Married to N (redacted DOB) and father to a two-year-old son, [Child D]. KA owns a tree-logging business and has offered my husband a job if he comes to Australia.

II. HA [Sibling 2] (redacted DOB): A single mother of an eight-year-old son, also named [Child A], who has undergone a kidney transplant. HA

---

<sup>103</sup> HB 823 at [14-[17]. See also for example: HB 157-164, HB 414-422, 866-899.

*visited Lebanon in the past, and my husband spent time with her and her son.*

*III. NA [Sibling 3] (redacted DOB): My twin sister, married to M. They have two boys, Child C (approximately three years old) and Child E (one year old). My husband met these nephews when NA visited Lebanon in mid-2022.*

*IV. NA [Sibling 4] (redacted DOB): Currently single, living with our parents. She has known my husband since her early teens and is saddened by our ongoing separation.*

*All of my siblings and parents recognise how difficult this situation has been for me. While they provide emotional support, none can fully replace the day-to-day partnership and co-parenting role my husband would fulfill if he were here.”<sup>104</sup>*

166. RA says that there are significant emotional and practical reasons for the visa application to be granted. She says in her statement of 27 January 2025:

***“Emotional and Practical Reasons for Reunification***

*21. The separation has significant emotional implications for my son, who is now old enough to see that other children have two parents physically present. Every day, he asks me when his father is coming. This conversation often ends in tears, and I have little reassurance to offer him.*

*22. From a practical standpoint, having my husband in Australia would alleviate many of the financial and caregiving burdens that currently rest on me alone. He could earn an income, help raise our son and offer stability and reassurance amid my medical uncertainties.*

*23. My husband is determined to make a positive contribution if granted a visa, whether through direct employment with my brother or by pursuing his own business ventures in painting and construction. I believe granting him this opportunity would not only unite our family but also bring about tangible benefits to our community.*

---

<sup>104</sup> HB 823-824 at [18]-[20].

24. *There is also a broader family dynamic at play, as my relatives wish to see us thrive and remain cohesive. My parents especially feel sorrow watching me navigate single parenthood under challenging health conditions. They, too, hope for my husband's arrival so that our family can be complete and more supportive of one another.*

### **Conclusion**

25. *I respectfully ask the Administrative Review Tribunal to consider the severe personal and family hardships stemming from my husband's visa refusal. The impact on our young child's emotional development, my urgent medical concerns, and our genuine commitment to being a united family all weigh strongly in favour of allowing him to come to Australia.*

26. *My husband has shown clear remorse for his past mistakes. Over the past seven years of our relationship, he has lived a calm, law-abiding life and remains resolved to continue doing so. If permitted to settle in Australia, he will work diligently, support our child, and share in the responsibilities of our household.*

27. *I trust that by granting my husband a visa, the Tribunal would enable a loving family to reunite, support a young child's best interests, and afford me the necessary medical and emotional support required during a very uncertain time. I believe this decision would serve not only our personal interests but also the humanitarian considerations that arise from my medical condition and our son's developmental needs.*"<sup>105</sup>

167. On 28 January 2025, the Applicant's sister-in-law NA, provided a statement in support of the Applicant. She is a twin sister of Applicant's wife, RA.<sup>106</sup>
168. On 28 January 2025, the Applicant's wife's brother KA provided a statement in support of the Applicant.<sup>107</sup>
169. On 6 February 2025, the Applicant provided a statement to the Tribunal. This states:

---

<sup>105</sup> HB 824-825 at [21]-[27].

<sup>106</sup> HB 829-831.

<sup>107</sup> HB 832-834.

### ***“Personal Background***

*1. I was born on [redacted] in Lebanon. I am 34 years old and a citizen of Lebanon. I am the applicant in proceedings currently before the Administrative Review Tribunal.*

*2. I am married to Ms. RA, an Australian citizen who resides in Sydney, Australia. We have one child together, [Child B], who was born on [redacted] and is also an Australian citizen.*

*3. I currently reside in Lebanon.*

### ***Past Criminal Conduct***

*4. In 2010, when I was 19 years old, I was involved in a criminal incident in Lebanon. I deeply regret my actions and take full responsibility for them.*

*5. The incident involved entering a nightclub with a group of friends where a confrontation occurred. I acknowledge that my conduct was unlawful and that I should not have participated in the events of that night.*

*6. I was convicted in the Military Court of Lebanon and received a custodial sentence of one month, a fine, and an order to surrender an unlicensed firearm.*

*7. Since that time, I have not engaged in any further criminal conduct. I have lived a law-abiding life for nearly 15 years, which I submit is compelling evidence of my rehabilitation and good character.*

### ***Rehabilitation and Personal Growth***

*8. My actions in 2010 were a result of youthful immaturity, poor decision-making, and the influence of negative peer groups. With time, I have matured significantly and recognise the seriousness of my past conduct.*

*9. I have expressed genuine remorse for my past actions and have reflected deeply on the consequences of my behaviour, not just for myself but for the victims, my family, and my future.*

*10. I have maintained strong family ties and have actively contributed to my community by assisting in my family’s business and supporting charitable initiatives where possible. I am committed to abiding by all Australian laws and standards of conduct if permitted to enter Australia.*

### ***Family and Community Ties in Australia***

*12. My wife, RA, suffers from chronic kidney disease, anxiety, and depression. She faces significant medical challenges and has a limited ability to work.*

13. Due to my visa refusal, she is raising our child, [Child B], as a single parent. She relies on Centrelink benefits and family support to cope with daily struggles.

14. My son, [Child B], has suffered emotional distress due to my absence. He frequently asks about me and expresses sadness over our separation. If I am granted entry to Australia, I will play an active role in raising my son, supporting my wife through her medical conditions, and contributing to our household.

15. I also have strong family support in Australia, including my sister [SH] and my wife's extended family, who have provided letters of support attesting to my good character and the hardship my absence has caused.

#### **Change in Circumstances**

17. Since the offence, my life circumstances have changed significantly. I am no longer an impulsive teenager but a responsible husband and father.

18. My motivations are entirely different now, as my focus is on my family, stability, and ensuring that my son has a strong parental presence in his life.

19. I understand that my future in Australia depends on my compliance with all laws, and I am fully committed to being a law-abiding resident.

#### **Risk to the Australian Community**

20. I pose no more than a minimal or remote risk of reoffending. My 15 years of crime-free living, deep remorse, and changed personal circumstances are clear evidence of my rehabilitation.

21. I have no intention of engaging in any conduct that would put my visa status or my family at risk.

22. I am acutely aware that any criminal conduct would lead to my removal from Australia, permanently separating me from my wife and child.

#### **Best Interests of My Child**

23. My son, [Child B], is an Australian citizen who deserves to grow up with both of his parents present.

24. *Prolonged separation from his father has caused him emotional distress, and I worry about the long-term psychological impact of being raised without a father.*

25. *The Australian Government's policy prioritises the best interests of children, and I respectfully submit that it is in [Child B]'s best interests for me to be reunited with him in Australia.*

26. *I have close relationships with my nieces and nephews in Australia. For [Child A] (DOB: [redacted]), son of Ms. HA, I share a strong uncle–nephew bond, acting like a father figure. My presence would greatly assist HA, a single mother, by easing her caregiving responsibilities.*

27. *With [Child C] (DOB: [redacted]), son of Ms. NA, I showed genuine care during visits overseas. There is no evidence that my past offences pose any risk to him; our interactions have been positive and nurturing.*

28. *Regarding [Child E] (DOB: [redacted]), also NA's child, I have been able to engage through online and face-to-face contact. I would welcome the chance to form a close bond from his earliest years.*

29. *As for [Child D] (DOB: [redacted]), son of Mr. KA, the family wishes for him to know me as part of a broader network of support, and my historical conviction poses no threat to his well-being.*

30. *Extended family is culturally significant to us, and my regular involvement would offer each child emotional and developmental support. Being barred from Australia denies them a consistent relationship with me and may cause them emotional strain.*

31. ***Although I accept responsibility for my past wrongdoing, I emphasise that it happened well before I was involved in these children's lives, and I have not reoffended since. All available statements confirm I have never harmed or threatened any of these children.***

32. *In my view, allowing me to reside in Australia would best serve these children's interests, giving them another caring adult who can help reinforce family bonds. It is especially important for HA, who is raising her son on her own and needs the support of extended family.*

33. *I am committed to a law-abiding life and intend to abide by all legal and visa conditions, contributing positively to both my family and the broader community.*

**Humanitarian Considerations**

26. *Lebanon is currently experiencing severe security and economic crises. The Australian Government advises against travel to Lebanon due to the ongoing risks of armed conflict, political instability, and crime.*

27. *If my visa remains refused, I will be forced to remain in an unstable country, unable to provide for my family or ensure my own safety.*

28. *I am ready and willing to comply with all Australian laws and visa conditions.*

**Conclusion**

29. *My past mistakes do not define who I am today. I have worked hard to change my life, and I am committed to being a responsible, law-abiding, and productive member of Australian society.*

30. *Granting my visa would allow me to fulfil my responsibilities as a husband and father, reunite with my family, and contribute positively to my community.*

31. *I declare that the contents of this statement are true and correct to the best of my knowledge and belief.*<sup>108</sup>

170. This statement makes no attempt to explain his nearly 3 years as a prohibited non-citizen in Australia. It also concedes that he did offend in the past. This is contrary to his evidence to the Tribunal, in which he claimed to have been merely in the wrong place at the wrong time, but not an active participant.

171. This statement does not adequately explain how and why he came to leave Lebanon in March 2013, and how this related to his then pending criminal charges in Lebanon.

---

<sup>108</sup> HB 835-838.

172. The Applicant has kept in regular contact with his family and friends in Australia by electronic means.
173. There is no legal impediment preventing the Applicant's Australian connections, including RA and Child B, traveling to Lebanon to be with him.
174. I accept that RA may hold legitimate general safety and other concerns about returning to Lebanon, with or without Child B, at the present time. I also accept that her medical condition may make such travel difficult, or even practically impossible in the future.
175. The Applicant's record of convictions is annexed hereto and marked "B".
176. The Applicant's closing submissions are marked "Exhibit 3".
177. The Respondent's closing submissions are marked "Exhibit 4".
178. In forming my opinion, I have had regard to Exhibits 2, 3 and 4, the materials contained in the hearing book and the other evidence received by the Tribunal.

## **LEGISLATIVE FRAMEWORK**

### **Does the Applicant Pass the Character Test?**

179. The Applicant was sentenced by the Permanent Military Court in Lebanon for multiple offences relating to assault, breaking and entering, property damage and carrying a military weapon without a license. He was sentenced to 1 month in prison and fined 200,000 LBP.<sup>109</sup>
180. The Respondent considered that the relevant limb of the character test in this case was s501(6)(d)(i), namely that if the Applicant were allowed to enter or to remain in Australia, there is **a risk** that he would "*engage in criminal conduct*".<sup>110</sup>

---

<sup>109</sup> HB 114.

<sup>110</sup> HB 100.

181. The Tribunal must make its own independent evaluative judgement as to whether there is such a risk.<sup>111</sup>
182. The threshold in s501(6)(d)(i) for a finding that a person does not pass the character test, is a low one. It is enough that there is “**a risk that the person would engage in criminal conduct in Australia**”.<sup>112</sup>
183. The assessment of “a risk” is not qualified by any adjective such as “*significant*”, “*substantial*” or “*real*”.<sup>113</sup>
184. Such “a risk” of the Applicant engaging in criminal conduct, is in my view raised by various factors set out in detail above, including:
- (a) the Applicant’s attempts to trivialise or deny the seriousness of his offending in Lebanon.
  - (b) The serious nature of his offending and the presence of military firearms.
  - (c) His failure to declare criminal charges to the Respondent.
  - (d) His failure to declare his previous marriage and the first Partner Visa application to the Respondent.
  - (e) The Applicant’s lengthy unlawful presence in Australia.
185. I am satisfied, having regard to all of the evidence, that there is “a risk”, that the Applicant, if allowed to remain in Australia would engage in criminal conduct. This risk more than a minimal, trivial or a remote risk.
186. Although it may be strictly unnecessary to do so, given the finding above, I also accept the Respondent’s submissions concerning s501(6)(c).<sup>114</sup>

---

<sup>111</sup> See *Minister for Immigration and Border Protection v Sabharwal* (2018) FCAFC 160.

<sup>112</sup> See re *QQYJ and Minister for Home Affairs* (2019) AATA 770.

<sup>113</sup> See: re *QKVH and Minister for Home Affairs* (2018) AATA 1855.

<sup>114</sup> See Respondent’s closing submissions at paras 8-12

187. I am also satisfied, for all of the reasons set out above, in particular his history of knowingly seeking to conceal relevant information from the Respondent, that the Applicant would also fail the character test under s501(6)(c).
188. The Tribunal finds that the Applicant does not pass the character test.
189. The Tribunal must therefore consider whether the discretion to refuse to grant the Visa pursuant to s 501(1) of the Act, should be exercised.

**Should the discretion to refuse to grant the Visa pursuant to s 501(1) of the Act, should be exercised?**

190. In considering whether to the original decision should be revoked, the Tribunal is bound by s 499(2A) to comply with any directions made under the Act. In this case, *Direction No 110 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* (“the Direction”) has application.<sup>115</sup>
191. The Direction contains several principles that must inform a decision maker’s application of the considerations where relevant to the decision.
192. The principles, found in paragraph 5.2 of the Direction may be briefly stated as follows:
- (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.**

---

<sup>115</sup> On 21 June 2024, the former applicable direction, *Direction No. 99 – Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA*, was revoked and was replaced by Direction 110.

- (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.**
- (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. However, 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.
- (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 noncitizen'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 non-citizen does not pose a measurable risk of causing physical harm to the Australian community.

193. Paragraph 6 of the Direction provides that:

Informed by the principles in paragraph 5.2, a decision maker must take into account the considerations identified in sections 8 and 9, where relevant to the decision.

194. Paragraph 7(2) of the Direction requires that protection of the Australian community (Primary Consideration 8.1), is generally to be given greater weight than other primary considerations.
195. Paragraph 8 of the Direction sets out five Primary Considerations that the Tribunal must take into account and they 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.
196. Paragraph 9 of the Direction sets out three Other Considerations which must be taken into account. These considerations are:
- a) Legal consequence of the decision;
  - b) extent of impediments if removed;
  - c) impact on Australian business interests
197. I note the importance of the Other Considerations being “*other*” considerations, as opposed to “*secondary*” considerations. As noted by Colvin J in *Suleiman v Minister for Immigration and Border Protection*:<sup>116</sup>

*“...Direction 65 [now Direction 110] makes clear that an evaluation is required in each case as to the weight to be given to the 'other considerations' (including non-refoulement obligations). It requires both primary and other considerations to be given 'appropriate weight'. Direction 65 does provide that, generally, primary considerations should be given greater weight. They are primary in the sense that absent some factor that takes the case out of that which pertains 'generally' they are to be given greater weight. However, Direction 65 does not require that the other considerations be treated as secondary in all cases. Nor does it provide that primary considerations are 'normally' given greater weight. Rather, Direction 65 concerns the appropriate weight to be given to both 'primary' and*

---

<sup>116</sup> [2018] FCA 594.

*'other considerations'. In effect, it requires an inquiry as to whether one or more of the other 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."*<sup>117</sup>

### **Offending History**

198. The Applicant's criminal record is set out above.

### **Primary Consideration 1 – Protection of The Australian Community**

199. In considering this Primary Consideration 1, paragraph 8.1 of the Direction requires decision-makers to keep in mind **the safety of the Australian community is the highest priority of the Australian Government**. To that end, the Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens. 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.

200. In determining the weight applicable to Primary Consideration 1, paragraph 8.1(2) of the Direction requires decision-makers to 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.

### **The Nature and Seriousness of the Applicant's Conduct to Date**

201. When assessing the nature and seriousness of a non-citizen's criminal offending or other conduct to date, paragraph 8.1.1(1) of the Direction specifies that decision-makers must have regard to a number of factors. I will now turn to addressing these considerations.

202. **Sub-paragraph (a)** of paragraph 8.1.1(1) of the Direction provides that without limiting the range of conduct that may be considered **very serious, violent** and/or sexual **crimes**;

---

<sup>117</sup> Ibid [23].

crimes of a violent and/or sexual nature against women or children (regardless of the sentence imposed); or acts of family violence (regardless of whether there is a conviction for an offence or a sentence imposed) are viewed very seriously by the Australian Government and the Australian community.

203. The Applicant's offending is serious. The use of violence and the possession of military firearms, as set out in the court record, is particularly serious.

204. The Applicant's attempts to both trivialise his offending and at the same time to express remorse, is inconsistent and demonstrates a lack of sincerity. He has failed to take responsibility for his actions.

205. If this conduct occurred in Australia, it would be a very serious criminal offence.

206. **Sub-paragraph (b)** of paragraph 8.1.1(1) of the Direction provides that without limiting the range of conduct that may be considered serious, the types of crimes or conduct described below are considered by the Australian Government and the Australian community to be serious:

- (i) causing a person to enter into or being party to a forced marriage (other than being a victim), regardless of whether there is a conviction for an offence or a sentence imposed;
- (ii) crimes committed against vulnerable members of the community (such as the elderly and the disabled), or government representatives or officials due to the position they hold, or in the performance of their duties;
- (iii) any conduct that forms the basis for a finding that a non-citizen does not pass an aspect of the character test that is dependent upon the decision-maker's opinion (for example, section 501(6)(c));
- (iv) where the non-citizen is in Australia, a crime committed while the non-citizen was in immigration detention, during an escape from immigration detention, or after the non-citizen escaped from immigration detention, but before the non-citizen was taken into immigration detention again, or an offence against section 197A of the Act, which prohibits escape from immigration detention.

207. The Applicant's behaviour is such that he does not pass the character test.

208. I also note clause 4 (2) of the Direction, which provides *inter alia* that a “*history of serious breaches of immigration law*” is deemed to be “*serious conduct*”.
209. The Applicant has spent years illegally in our community. He has been in immigration detention because of being in Australia illegally.
210. I am satisfied that the Applicant left Lebanon in the full knowledge that he was still facing criminal charges, whether he deliberately breached bail, or not. He certainly did not return home to face the charges, when he found out that they were still pending.
211. **Sub-paragraph (c)** of paragraph 8.1.1(1) of the Direction requires a decision-maker (with the exception of the crimes or conduct mentioned in sub-paragraphs (a)(ii), (a)(iii) or (b)(i) of paragraph 8.1.1(1)) to have regard to the sentence(s) imposed by the Courts for a crime or crimes of a non-citizen/applicant. The imposition of a custodial term is regarded as the last resort in any reasonably and correctly applied sentencing process. Custodial terms are viewed as a reflection of the objective seriousness of an applicant’s offending.
212. The Applicant was sentenced to a term of imprisonment. This is indicative of the serious nature of the offending.
213. **Sub-paragraph (d)** of paragraph 8.1.1(1) of the Direction requires a decision-maker to have regard to the impact of the offending on any victims offending or other conduct and their family, where information in this regard is available and the non-citizen whose visa is being considered for refusal or cancellation, or who has sought revocation of the mandatory cancellation of their visa, has been afforded procedural fairness;
214. There is no evidence about this.
215. **Sub-paragraph (e)** of paragraph 8.1.1(1) of the Direction requires a decision-maker to have regard to the frequency of a non-citizen’s offending and whether there is any trend of increasing seriousness.
216. This apparently is an isolated offence.

217. **Sub-paragraph (f)** of paragraph 8.1.1(1) of the Direction requires a decision-maker to have regard to the cumulative effect of an Applicant's repeated offending.
218. There is no evidence of this.
219. **Sub-paragraph (g)** of paragraph 8.1.1(1) of the Direction requires a decision-maker to have regard to whether a non-citizen has provided false or misleading information to the Department, including by not disclosing prior criminal offending.
220. I am satisfied that the Applicant has knowingly provided false information to the Respondent on numerous occasions, as discussed above.
221. **Sub-paragraph (h)** of paragraph 8.1.1(1) of the Direction requires a decision-maker to have regard to whether the non-citizen has re-offended since being formally warned about the consequences of further offending in terms of the non-citizen's migration status ( noting that the absence of a warning should not be considered to be in the non-citizen's favour).
222. There is no evidence of this.
223. **Sub-paragraph (i)** of paragraph 8.1.1(1) of the Direction requires a decision-maker to have regard, where the offence or conduct was committed in another country, to whether that offence or conduct is classified as an offence in Australia.
224. The offending occurred in Lebanon. It would certainly constitute serious criminal offending in Australia.
225. I do not consider factors (d), (f) and (h) of paragraph 8.1.1(1) of the Direction apply to the Applicant's offending or circumstances. The rest of the relevant sub-paragraphs of paragraph 8.1.1(1) of the Direction, in their totality, weigh very heavily against the Applicant and support exercising the discretion to refuse to grant the visa.

**The Risk to the Australian Community Should the Applicant Commit Further Offences or Engage in Other Serious Conduct**

226. Paragraph 8.1.2(1) provides that in considering the need to protect 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 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.

227. Paragraph 8.1.2(2) provides that in assessing the risk that may be posed by the non-citizen to the Australian community, decision-makers must have regard to, cumulatively:
- a) the nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal or other serious conduct;
  - 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 their most recent offence; and
  - 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.

**Nature of harm should the Applicant engage in further criminal or other serious conduct**

228. **Assessing the nature of the harm to individuals or the Australian community that may occur if the Applicant were to engage in further criminal or other serious conduct, is informed by the nature of his offending to date**, including any escalation in his offending. This assessment also notes that the Direction provides that the Australian community's **tolerance for harm becomes lower as the seriousness of the potential harm increases. Some conduct and the harm that would be caused, is so serious that any risk that it may be repeated may be unacceptable** (Paragraph 8.1.2(1)).
229. If the Applicant were to repeat his Lebanese criminal offending conduct here, it would be extremely serious.

230. The violent and threatening nature of the Applicant's conduct is such that any risk of it being repeated is unacceptable.

231. The Applicant has also engaged in serious conduct here, in the form of breaches of immigration law as discussed above.

#### **Likelihood of engaging in further criminal or other serious conduct**

232. The Applicant has not reoffended, in the sense of being charged or convicted of a criminal offence since 2010.

233. He has however, otherwise demonstrated serious character concerns which reflect very poorly on his prospects of behaving within the law. These are set out above in the context of the discussion of s501(6)(d)(i).

234. It is especially concerning that the Applicant knowingly spent years here, unlawfully.

235. I am satisfied that the Applicant has been knowingly dishonest in his disclosures to the Respondent.

236. I am not satisfied that that the risk of the Applicant reoffending is minimal or trivial.

237. Even if I were so satisfied, the harm that may be caused if the Applicant were to reoffend is so serious, that any risk of that conduct being repeated is unacceptable.

#### **Conclusion: Primary Consideration 1**

238. Primary consideration number one weighs very heavily in favour of exercising the discretion to refuse to grant the visa.

#### **Primary Consideration 2: Family Violence**

239. There is no evidence of this.

#### **Conclusion: Primary Consideration 2**

240. This consideration is neutral.

### Primary Consideration 3: Ties to Australia

241. Paragraph 8.3 of the Direction provides:
242. (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.
243. (2) Where consideration is being given to whether to cancel a non-citizen's visa or whether to revoke the mandatory cancellation of their visa, the decision-maker must also consider the strength, nature and duration of any other ties that the non-citizen has to the Australian community. In doing so, decision-makers must have regard to:
244. 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
245. 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.
246. The Applicant has provided a schedule detailing all of the ties that he claims to have in Australia. This is marked "Exhibit 2".
247. To the extent that he relies upon the connection to minor children in Australia, this is discussed in more detail in the context of Primary Consideration 4. I refer to that discussion.
248. Aside from the Applicant's sister and her family, whom he initially came to visit in March 2013, the Applicant has no other significant **long-term** connections here.
249. The Applicant's connection to his first wife, SD is zero. The Applicant only met his second wife, RA, a few months before he was arrested and detained as an illegal non-citizen, on

25 March 2017. He only came to know her family after that, mainly through electronic means from Lebanon.

250. The Applicant concedes that for most of the time that he was here, he was an illegal non-citizen. In my view it would be a perverse application of the direction, if time he spent here illegally, should be weighed in the Applicant's favour, in the context of this Primary Consideration.
251. The Applicant's connection in Australia to RA's family was limited to a brief period between 20 December 2016 and 25 March 2017. He was here illegally throughout this period.
252. I accept that since 2017, he has developed some connection to various of RA's family members. He has been visited by some of them in Lebanon, but this connection has been almost exclusively electronic. It can continue to be so.
253. The Applicant's second wife (RA) and his son, Child B, live in Australia and are Australian citizens.
254. The Applicant has only spent a few months in Australia with RA, between the time that they first met on 20 December 2016 and the time that he was placed in immigration detention on 25 March 2017. He has been visited by RA and Child B in Lebanon. They have spent some time there, but their connection has also been predominantly electronic. It can continue to be so.
255. The Applicant has never spent any time in Australia with Child B. He has never performed a parental role **in Australia**, with any child.
256. The Applicant has made submissions about his wife's serious medical condition. These submissions are corroborated by RA and by Professor Wong.
257. I accept that an adverse outcome in this matter would have a negative emotional, and possibly a contingent financial impact on RA and Child B. The Applicant is not currently employed and his job prospects, if he were to be in Australia, are a matter of conjecture.

258. I accept that RA has serious health concerns and that it would be very beneficial for her and Child B, to have the Applicant's practical support.
259. I note that RA and Child B have however, been supported by the Applicant's sister, SH, and RA's family in his absence. RA told the Tribunal that she expected that this would continue, although she was unhappy about being a burden on them. She is in receipt of Centrelink payments and has social housing.
260. I note that the Applicant being present in Australia, may also present an opportunity for RA to receive a kidney transplant from him. This, however, would be contingent upon both his ongoing willingness to do so, and medical advice.
261. I accept that RA's medical condition may make it difficult, if not totally impractical for her to travel to Lebanon, with or without Child A, for the foreseeable future.
262. On the other hand:
- (a) RA and Child B have previously lived with the Applicant in Lebanon. Subject to RA's medical condition and treatment requirements, they could do so again.
- (b) The Applicant has provided little if any financial support for RA and Child B in the past. He could do this, if he wished to do so, without being in Australia. He has never been lawfully employed in Australia.
263. Child B is discussed further, along with other minor children in the context of Primary Consideration 4. I refer to that discussion in this context.
264. The Applicant last resided in Australia, and even then, illegally, in 2017
265. The Applicant's family and RA's family here, have **never** been dependant on his presence in Australia. They will not be deprived of anything that they **presently have** from the Applicant, if he remains where he is.

266. It may be perhaps argued that they may be deprived of what may be characterised as a “*loss of a chance*” to have him present in their daily lives, but this is a matter that carries little relative weight in my view.
267. The Applicant can communicate with his Australian connections electronically, or they can visit him, as has been the case since 2017.
268. The Applicant has some ties to RA’s family and others in Australia. This however, is contact that has not been in this country since 2017 and even then, illegally since 2014.
269. There is no evidence that the Applicant has made any positive contribution to the Australian Community, and indeed most of his time spent here was as an illegal alien. He can have no credit for this time. He worked without permission to do so and presumably, paid no tax.
270. I have also had regard to the Applicants detailed submissions in relation to this Primary Consideration.<sup>118</sup>

**Conclusion: Primary Consideration 3**

271. This consideration weighs at best slightly against exercising the discretion to refuse to grant the visa.

**Primary Consideration 4: The best interests of minor children in Australia**

272. Paragraph 8.4(1) of the Direction requires a decision-maker to make a determination about whether cancellation or refusal under section 501, or non-revocation under section 501CA is in the best interests of a child affected by the decision. Paragraphs 8.4(2) and 8.4(3) respectively contain further considerations. The former provides that for their interests to be considered, the relevant child (or children) must be under 18 years of age at the time when a decision about whether or not to refuse or cancel the visa or not to revoke the mandatory cancellation decision is being made. The latter provides that if there are two or more relevant children, the best interests of each child should be given individual consideration to the extent that their interests may differ.

---

<sup>118</sup> See Exhibit 3: Applicant’s Written Closing Submissions at [71]-[79].

273. Paragraph 8.4(4) of the Direction sets out a number of factors to take into consideration with respect to the best interests of minor children in Australia. Those include, relevantly:

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

274. The relevant minor children in Australia are (as per Exhibit 2):

- (a) Child A (Aged 8) – Applicant's Nephew (HA's Son)
- (b) Child B (Aged 5) – Applicant and RA's Son
- (c) Child C (Aged 3) – Applicant's Nephew (NA's Son)
- (d) Child D (Aged 2) - Applicant's Nephew (KA's Son)

(e) Child E (Aged 1) - Applicant's Nephew (NA's Son)

275. I repeat the commentary above about the Applicant's very limited lawful connection to the Australian community. This includes all of these minor children.
276. The Applicant has **not** performed a parental role for **any** child, **in Australia**.
277. The Applicant's connection with Child B is discussed above. He has performed a parental role during the period of Child B's visits, but it has been **entirely** in Lebanon, or by electronic means.
278. If the Applicant were to be granted the Visa, he may perform a parental role for Child B in Australia. This may be beneficial to Child B.
279. I accept that if the Applicant does not get the Visa, Child B will lose the **chance** of have a practical daily connection with the Applicant in Australia. That connection could however, be resumed at any time, in Lebanon, if the Applicant and his wife so chose.
280. None of the children are old enough to have any memory of the Applicant living in Australia.
281. To the extent that Child A may have been aware of the Applicant, he was an infant between 3 and 6 months old.<sup>119</sup> Even then, the Applicant was here unlawfully.
282. The children's only contact with the Applicant has been by electronic means or during visits to Lebanon. Both modes of contact can continue, even if the Applicant does not get the Visa.
283. If the Applicant does not get the Visa, all of the minor children to whom he has referred in his evidence, may at most be deprived of what may be characterised as a loss of a **chance**, to get to interact with him personally, in Australia.
284. None of them, including Child B, would be deprived of a **current** relationship, in Australia, with the Applicant.

---

<sup>119</sup> Between December 2016 and March 2017.

285. I have also had regard to the Applicants detailed submissions in relation to this Primary Consideration.<sup>120</sup>

#### **Conclusion: Primary Consideration 4**

286. Having regard to all of the above, primary consideration 4 weighs at best slightly against exercising the discretion to refuse the Visa.

#### **Primary Consideration 5 – The Expectations of The Australian Community**

287. In making the assessment for weight to be allocated to Primary Consideration 5, paragraph 8.5(1) of the Direction provides that the Australian community expects non-citizens to obey Australian laws while in Australia. I should consider whether the Applicant has breached, or whether there is an unacceptable risk that he would breach, this expectation by engaging in serious conduct.

288. Paragraph 8.5(2) of the Direction directs that a visa cancellation or refusal, or non-revocation of the mandatory cancellation of a visa, may be appropriate simply because the nature of the character concerns or offences 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:

- (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

---

<sup>120</sup> Exhibit 3: Applicant's Written Closing Submissions at [80]-[99].

including, but not limited to, war crimes, crimes against humanity and slavery;  
or

(f) worker exploitation.

289. Paragraph 8.5(3) of the Direction provides 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.

290. Paragraph 8.5(4) of the Direction provides guidance on how the expectations of the Australian community are to be determined. This paragraph states:

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.

291. Paragraph 8.5(4) is consistent with the decision of the Full Court of the Federal Court in *FYBR v Minister for Home Affairs* [2019] FCAFC 185 which affirmed the approach established in previous authorities that it is not for the Tribunal to determine for itself the expectations of the Australian community by reference to an Applicant's circumstances or evidence about those expectations. The Tribunal is to be guided by the Government's views as to the expectations of the Australian community, which are to be found in the Direction.<sup>121</sup>

292. Paragraph 8.5 contains a statement of the Government's views as to the expectations of the Australian community, which operates to ascribe to the whole of the Australian community an expectation aligning with that of the executive government which the decision maker must have regard to.

### **Analysis – Allocation of Weight to Primary Consideration 5**

293. Accordingly, in assessing the weight attributable to Primary Consideration 5, it is necessary to have regard to the following matters:

a. the Applicant's criminal record as set out in Annexure B

---

<sup>121</sup> See *Ueese v Minister for Immigration and Border Protection* [2016] FCA 348; *Afu v Minister for Home Affairs* [2018] FCA 1311; *YNQY v Minister for Immigration and Border Protection* [2017] FCA 1466 and *FYBR v Minister for Home Affairs* [2019] FCA 500.

- b. the other matters set out above
- c. The Applicant's knowingly dishonest dealings with the Respondent.
- d. The Applicant's demonstrated contempt for the immigration laws of this country.
- e. The Applicant's closing submissions generally, but in particular paras 100-102

**Conclusion: Primary Consideration 5**

294. Primary consideration 5 weighs very heavily in favour exercising the discretion to refuse the Visa.

**Other Considerations**

295. It is necessary to look at the Other Considerations listed at paragraph 9 of the Direction.

**(a) legal consequence of the decision:**

296. There has been a determination as set out above, that the Applicant was not owed protection.

297. He is in any event, not in Australia.

298. There are no other legal consequences raised in this case, other than the legal effect of a refusal. This is a matter shared by all unsuccessful applicants.<sup>122</sup>

299. This is accepted by the Applicant.<sup>123</sup>

300. I note however, the Applicant's other submissions at paragraphs [150]-[161] of his Statement of Facts, Issues and Contentions concerning "*Miscellaneous Considerations*".<sup>124</sup>

---

<sup>122</sup> Exhibit 3: Applicant's Written Closing Submissions at [103].

<sup>123</sup> HB 23 at [147]-[148].

<sup>124</sup> HB 23-25; Exhibit 3: Applicant's Written Closing Submissions at [105]-[109].

301. I have considered them.
302. In my view they generally seek to agitate under another guise, matters which have been dealt with elsewhere. For example, arguments which might, if the Applicant were in Australia constitute grounds for a new protection claim, or matters already addressed in the context of ties to Australia, or impediments if removed.
303. To be clear, I accept that if the Visa is not granted that the Applicant will suffer disappointment and emotional distress. He has consistently set his sights on being able to reside in Australia and his wife and Child B are here.
304. There was no evidence that the Applicant is unable to survive and access essential services in Lebanon.<sup>125</sup>
305. I am not satisfied, that there is any addition weight attaching to the characterisation of these claims as Other Considerations or "*Miscellaneous Considerations*".
306. This Other Consideration (a) is neutral.

**(b) Extent of Impediments if Removed**

307. 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 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.
308. The Applicant is not facing removal because he is not in Australia, and he has not been since 2017.

---

<sup>125</sup> See also Exhibit 4: Respondents Written Closing Submissions at [21]-[26].

309. For most of the time that he was here, he was here illegally.

310. Other Consideration (b) is neutral.

**(c) Impact on Australian business interests**

311. The Applicant accepts that this Other Consideration is not relevant.

312. Other Consideration (c) is neutral.

**CONCLUSION**

313. It is necessary to weigh up all of the primary and other considerations.

314. I note that the status quo since July 2017, will remain undisturbed, if the subject decision is affirmed. The Applicant's position for some years prior to that, was that he was here unlawfully.

315. Primary consideration 1 weighs heavily in favour of exercising the discretion to refuse grant the Visa.

316. Primary consideration 2 is neutral.

317. Primary consideration 3 weighs at best slightly against exercising the discretion to refuse to grant the Visa.

318. Primary consideration 4 weighs at best slightly against exercising the discretion to refuse to grant the Visa.

319. Primary consideration 5 weighs very heavily in favour of exercising the discretion to refuse to grant the Visa.

320. Other consideration (a) is neutral.

321. Other consideration (b) is neutral.

322. Other consideration (c) is neutral.<sup>126</sup>
323. I note that paragraph 7(2) of the Direction requires that protection of the Australian community is generally to be given greater weight than other Primary Considerations, and that Primary Considerations should generally be given greater weight than the Other Considerations.
324. The Applicant has been convicted of a serious violent crime involving firearms. The details are discussed above.
325. The Applicant has shown disregard for our laws by making false representations to the Respondent and having knowingly remained in this country unlawfully.
326. It was only a matter of chance, that his unlawful presence here was discovered by police. Primary Considerations 1 and 5 weigh very heavily in favour of refusing to grant the Visa.
327. The Applicant does have some connections to Australia as discussed above. This includes some minor children.
328. His most significant Australian anchors are RA and Child B. It would be in their interests for the Visa to be granted. However, Primary Considerations 3 and 4, at best each weigh only slightly against refusing to grant the Visa.
329. I am satisfied that the overwhelming weight of evidence conclusively favours refusing to grant the Visa.
330. I am satisfied that the discretion to refuse to grant the Visa under s501(1) should be exercised.

## **DECISION**

331. The decision under review is affirmed.

---

<sup>126</sup> Find in the above paragraphs.

*I certify that the preceding three hundred and thirty (330) paragraphs are a true copy of the reasons for the decision herein of Senior Member Hon J Rau SC.*

.....[sgnd].....

Associate

Dated:	20 October 2025
Date of hearing:	22 September 2025
Advocate for the Applicant:	Dr J. Donnelly of Latham Chambers
Advocate for the Respondent:	Mr B. Kaplan of Nine Wentworth Chambers Mr T. Aviram of Clayton Utz

**ANNEXURE A – LIST OF EXHIBITS**

<b>Exhibit no.</b>	<b>Lodged by</b>	<b>Document</b>
1	Respondent	Hearing Book
2	Applicant	Applicant's Family Ties to Australia
3	Applicant	Applicant's Written Closing Submissions
4	Respondent	Respondent's Written Closing Submissions

**ANNEXURE B – APPLICANT'S OFFENDING HISTORY**

<b>Court</b>	<b>Court Date</b>	<b>Offence</b>	<b>Court Result</b>
Military Court of Lebanon	26/07/2017	Entering by breaking to Caligola night club and causing damage to others' properties and to the night club staff by harming and humiliating them. Holding and transporting arms without legal permit.	Convicted – 1 month jail, surrender pistol and pay one million LBP.