Decision and Reasons for Decision

Administrative Review Tribunal

Applicant/s:	Hui Li
Respondent:	Minister for Immigration and Citizenship
Tribunal Number:	2025/4787
Tribunal:	Senior Member L Nicholls
Place:	Sydney
Date:	25 November 2025
Decision:	The Tribunal affirms the decision under review.

Senior Member L. Nicholls

Statement made on 25 November 2025 at 2:03pm

Catchwords

MIGRATION- Cancellation of a Class BB, Subclass 155 Five Year Resident Return visa under s 501 (3A) of the Migration Act 1958 (Cth)- where the applicant does not pass the character test-whether there is another reason to revoke the cancellation-Direction No 110-Protection of the Australian Community-Best Interests of Minor Children in Australian, Expectations of the Australian Community- legal consequences of decision under review-impediments

Legislation

Crimes Act 1900 (NSW)
Crimes (Sentencing Procedure) Act 1999 (NSW)
Migration Act 1958 (Cth)
Migration Regulations 1994 (Cth)

Cases

Dayananda v Minister for Immigration, Citizenship and Multicultural Affairs [2022] FCA 1050
Pavey and Minister for Home Affairs [2019] AATA 4198
FYBR v Minister for Home Affairs [2019] FCAFC 185
Gaspar v Minister for Immigration and Border Protection (2013) 153 ALD 337; [2016] FCA 1166.
Ismail v Minister for Immigration, Citizenship and Multicultural Affairs [2024] HCA 2
Minister for Immigration, Citizenship and Multicultural Affairs v HSRN [2023] FCAFC 68
Rano v Minister for Home Affairs, Minister for Cyber Security [2024] FCA 1003
Stoneley v Minister for Immigration and Multicultural Affairs [2025] FCA
XXBN v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FCAFC 74

Secondary Materials

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

Statement of Reasons

BACKGROUND

1. This is an application for review of a decision of a delegate of the respondent dated 28 August 2025 not to revoke the mandatory cancellation of the applicant's Class BB, Subclass 155 Five Year Resident Return visa pursuant to S501CA (4) of the *Migration Act 1958* (Cth) (**the Act**).

2. The applicant and her witnesses gave evidence at a Tribunal hearing held on 6 and 7 November 2025. The applicant, her elder son AL[1] and her partner Mr Martin Johnston gave evidence in person. AL's paternal grandparents gave evidence by teleconference and her younger son's paternal grandmother gave evidence by teleconference.

3. The evidence before the Tribunal indicates that the applicant is 46 years old and was born in China. She was born and grew up in a rural village in northwest China where she lived with her family until she moved to a local city to attend a training course in textile management when she was 15 years old. She worked in a textiles factory for a few years until she moved to Beijing where she worked as a receptionist in a travel agency.

4. Her parents continue to live in the rural village in which she grew up. She stated that her parents were, and are, supportive and she has regular contact with them. She has one sister and one brother living in China. She stated that she has less contact with her siblings.

5. She arrived in Australia in February 2004 with her then husband and young son, AL, shortly after their marriage in China. She and her husband's relationship lasted for about five years. The applicant's evidence is that the relationship was poor due to her husband's infidelity and gambling problems. After separation from her husband, she assumed the major care of AL.

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[1] The Tribunal will refer to the applicant's eldest son as AL throughout this decision. Although he is no longer a minor the Tribunal considers that it is preferable if his identity is kept confidential for reasons of privacy. His identity is not necessary for the Tribunal's findings or cogency of the reasons for decision.

6. She formed other relationships after her marriage broke down including a relationship with Joshua B who is the father of her younger son. Her younger son NB is now 15 years of age. NB is living with his paternal grandmother in Sydney.

7. After the applicant arrived in Australia, she was initially involved in caring for AL but later found work as a cleaner in a laundrette for several years. She then found work as a receptionist in a massage parlour/brothel and worked there for about 14 years before opening her own massage parlour in 2019 which experienced business difficulties due to the COVID pandemic in 2020.

8. The applicant stated she met Mr Phu Minh Dang in 2016 while she worked in the massage parlour. He was customer and supplier of drugs. They formed a relationship in 2019, and the couple became involved in the use and supply of drugs (HB 184). Mr Dang was the applicant's co-offender in proceedings before the District Court in 2022.

9. On 27 May 2022, the District Court of New South Wales sentenced the applicant for multiple drug related offences. The applicant was initially sentenced to seven years imprisonment with a non-parole period of 5 years with the sentence commencing on 3 February 2022. (HB 49-58).

10. On 24 May 2025 the NSW Court of Criminal Appeal granted leave to appeal, allowed the appeal and substituted a sentence of seven years imprisonment commencing 3 February 2022 with a non-parole period of 4 years and 6 months (HB 63-80). The applicant is currently serving a custodial sentence and the earliest date for parole eligibility is 2 August 2026.

11. The applicant's Class BB Subclass 155 Five Year Resident Return visa was cancelled under 501(3A) of the Act on 15 November 2024. The delegate decided not to revoke the cancellation under s.501CA (4) on 28 August 2025.

Material before the Tribunal

12. The Tribunal has before it the documentary material which is included in the Hearing Book and is exhibit "HB" together with the oral evidence of the applicant and her witnesses. The Tribunal has also considered the Statement of Facts, Issues and Contentions (**ASOFIC**)

filed by the applicant and the Statement of Facts, Issues and Contentions filed by the respondent (**RSOFIC**) and the oral submissions of the applicant and respondent.

13. The applicant provided a copy of a psychological report relating to the applicant (HB 271-281) and one which deals with her son AL (HB 282-285). The respondent requested the reporting psychologist to be available for cross examination, but he was not available. Notwithstanding the Tribunal has considered the contents of the reports in its determination.

14. There was also a statement made by Mr Roger B who was described as the paternal grandfather of NB. He did not give evidence, and no submissions were made as to the contents of his statement.

Legislative Framework

15. Section 501CA provides

> *(1) This section applies if the Minister makes a decision (the original decision) under subsection 501(3A) (person serving sentence of imprisonment) to cancel a visa that has been granted to a person.*
>
> *…*
>
> *(4) The Minister may revoke the original decision if:*
>
> *(a) the person makes representations in accordance with the invitation; and b) the Minister is satisfied:*
>
> *(i) that the person passes the character test (as defined by section 501);*
>
> *or*
>
> *(ii) that there is another reason why the original decision should be revoked.*

16. The 'character test' is defined in s 501(6) of the Act. Relevantly, a person will not pass the character test if they have a *'substantial criminal record'*: s 501(6)(a) of the Act. The phrase '*substantial criminal record'* is defined in s 501(7) of the Act and includes circumstances where a person has been sentenced to a term of imprisonment of 12 months or more.

17. In exercising the power under s 501CA(4) of the Act, the Tribunal must comply with Ministerial Direction No.110 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA ('**Direction 110'**) which requires decision makers to take into account 'primary' and 'other' considerations where relevant.

18. The 'primary' considerations are:

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

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

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

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

(e) expectations of the Australian community.

19. The 'other' considerations include, but are not limited to:

(a) legal consequences of the decision;
(b) extent of impediments if removed; and
(c) impact on Australian business interests.

Consideration

20. The issues to be determined in this review are whether the applicant passes the character test and, if not, whether there is another reason why the original decision should be revoked.

Does the applicant pass the character test?

21. It is not in dispute that the applicant does not pass the character test.

22. Section 501(6)(a) provides a person will not pass the character test if they have a '*substantial criminal record'*: s 501(6)(a) of the Act. The phrase '*substantial criminal record'* is defined in s 501(7) of the Act and includes circumstances where a person has been sentenced to a term of imprisonment of 12 months or more.

23. The evidence before the Tribunal includes:

District Court of New South Wales Criminal Jurisdiction - Sentencing and Sentencing Remarks 27 May 2022 (HB 49-62).

NSW Department of Corrective Services – Conviction, Sentences and Appeals 7 June 2022. (HB 81-83).

Check Results Report – Criminal Intelligence Commission 14 March 2023 (HB 44-48).

Court of Criminal Appeal Supreme Court of New South Wales Judgment 24 May 2023
(HB 63-80)

24. The documents record that the applicant was convicted of: *Supply a prohibited drug in excess of a commercial quantity; Supply prohibited drug, being more than the indictable quantity; Supply prohibited drug, being more than the indictable quantity; Deal with property, being the proceeds of crime; Possess or use a prohibited weapon without a permit* and; *Knowingly direct activities of a criminal group*.

25. The evidence before the Tribunal is that, on appeal to the NSW Court of Criminal Appeal, the applicant was sentenced to seven years imprisonment with a non-parole period of 4 years and 6 months.

26. The applicant conceded that she did not pass the character test both in the applicant's ASOFIC and at the Tribunal hearing.

27. The Tribunal finds that the applicant does not pass the character test set out in s 501(6) of the Act.

Is there another reason why the cancellation decision should be revoked?

28. Given the applicant does not pass the character test set out in s.501(6) of the Act, the issue for the Tribunal is whether there is another reason why the cancellation decision should be revoked for the purposes of s 501CA(4)(b)(ii), having regard to the primary and other considerations contained in Part 2 of Direction 110 (**the Direction**).

29. This involves an evaluative process, requiring the Tribunal to examine factors for and against revoking the cancellation, and an assessment and evaluation of those factors leading to the formation of a view as to whether the cancellation should be revoked: *Gaspar v Minister for Immigration and Border Protection* (2013) 153 ALD 337; [2016] FCA 1166 at [38] per North ACJ.

30. The applicant contends that there is another reason to revoke the mandatory cancellation decision and the matters which the applicant submits are relevant to the Tribunal's consideration are set out in the ASOFIC (HB 173-181).

31. The respondent contends in the RSOFIC (HB 286-298) that the considerations that weigh against revocation of the cancellation of the applicant's visa outweigh the considerations in favour of revocation. The respondent contends that the Tribunal should not be satisfied that there is another reason why the decision to cancel the applicant's visa should be revoked. The respondent contends that the decision under review should be affirmed.

32. The Tribunal has considered each consideration in Direction 110 in turn, having regard to the principles in 5.2 of the Direction.

8.1 The Protection of the Australian Community.

33. This consideration requires the Tribunal to keep in mind, when considering the protection of the Australian community, that 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. In this respect, the Tribunal should have particular regard to the principle that entering or remaining in Australia is a privilege that Australia confers on non-citizens in the expectation that they are, and they have been, law abiding, will respect important institutions, and will not cause or threaten harm to individuals or the Australian community.

34. The Tribunal has considered the nature and seriousness of the applicant's conduct to date and the risk to the Australian community, should the applicant commit further offences or engage in other serious conduct.

8.1.1 The nature and seriousness of the conduct.

35. The circumstances of the index offences are set out in the District Court's remarks on sentence (HB 48 – 52) and in the judgment of the NSW Court of Appeal (HB 64 -80).

36. The District Court noted the agreed facts which related to the offences of the applicant and the applicant's co- offender Mr Dang.

37. With respect to the applicant the Court observed that

> *Hui Li pleaded guilty on 18 February 2022 at Sydney District Court to six charges, namely, one of supply a prohibited drug in excess of a commercial quantity, being*

methylamphetamine, carrying a maximum penalty of 20 years' imprisonment with a standard non-parole period of ten years. That charge relates to the supply of 351 grams of methylamphetamine in May and June of 2020. A further charge of supply cannabis in the amount of 814 grams, which was in possession of the offender is to be taken into account on a form 1 when sentencing in respect of that count.

The further charge involves a count of supply prohibited drug, being more than the indictable quantity, carrying a maximum penalty of 15 years' imprisonment, and relates to the possession by the offender of 74.9 grams of methylamphetamine. A further count of supply prohibited drug, being greater than the indictable quantity with a maximum penalty of 15 years' imprisonment relates to the possession by the offender of 8.4 grams of MDMA. A further charge of deal with property, being the proceeds of crime, carrying a maximum penalty of five years' imprisonment relates to the seizure of approximately$240,000 in cash.

A further charge of possess or use a prohibited weapon without a permit, carrying a maximum penalty of 14 years' imprisonment and a standard non-parole period of five years relates to the seizure from the offender's vehicle of an electric Taser device. And finally, a charge of knowingly direct activities of a criminal group, carrying a maximum penalty of 15 years' imprisonment relates to the offender's activities with respect to the enterprise I am about to outline.

38. The Court set out an outline of the applicant's activities which gave rise to the convictions. It noted

> *In short, the agreed facts detail the offender's role as a principal of an enterprise which distributed methylamphetamine to buyers in the Hurstville area, using this offender's business activities, namely prostitution, as a conduit for that supply. The enterprise was commercially successful, as evidenced by the seizure of a total of $240,000 in cash from premises associated with the offender and her co-offenders.*
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> *The offender was recorded directing the supply of various quantities of drugs and the price for these drugs to the manager of her brothel, Mr Lin, and to her then-partner, Mr Dang, and to Mr Lowe. The offender is also recorded instructing Mr Lowe to bring her phones from time to time and to source more drugs for the purposes of supply. The evidence establishes the offender's control and management of all aspects of the enterprise. To all intents and purposes, the offender was conducting the business of drug supply. The fact that the offender was also a user of drugs does little, if anything, to mitigate her offending.*

39. The Court commented on the gravity of the offences noting they were variously described as close to mid-range to below mid-range. The Court noted that the possession of a Taser was invariably a feature of drug operations, and the prevalence called for distinct punishment. Its gravity fell just below the mid-range. The Court noted that Count 6, that is '*Knowingly direct activities of a criminal group',* fell at the mid-range of objective gravity given that the applicant's activities demonstrated a reasonably well organised and efficient distribution network.

40. The Court in the sentencing remarks referred to the applicant's personal circumstances noting her age and the fact that she had no prior convictions. It referred to a report by a psychologist which outlined the applicant's personal circumstances and a history of dysfunctional personal relationships leading her to personal abuse of drugs, exposure to domestic violence and a major depressive disorder(HB 56). The Court noted that the applicant pleaded guilty to the offences but noted that the plea was entered when the trial was imminent, and the conduct alleged against the offender was the same. The Court accepted that the Applicant was remorseful and had reasonable prospects of rehabilitation.

41. On appeal the NSW Court of Appeal referred to the agreed facts provided to the Court. It noted that

> *8…..In May and June 2020, the applicant supplied a commercial quantity of methylamphetamine in the Hurstville area as the principal of the criminal enterprise (**count 1**). The applicant also directed a criminal group, comprising herself and three co offenders, Phu Minh Dang (**Dang**), Ryan Lin (**Lin**) and Michael Lowe (**Lowe**)(**count 6**) in the drug supply enterprise.*
>
> *8 The applicant employed Lin to manage a makeshift brothel from an apartment in Hurstville and to conduct drug sales on her behalf. The applicant operated the brothel, through which customers were supplied with amounts of methyl amphetamine which varied between 1.75 grams to 28.4 grams. The enterprise was profitable.*
>
> *9. The applicant was in an intimate relation with Dang, who assisted her with aspects of the prostitution and drug supply operations. They were also users of methylamphetamine.*
>
> *10 Lowe facilitated the storage of money and drugs for the applicant and obtained supplies of methylamphetamine on her behalf.*
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> *11 Police lawfully intercepted telephone calls and text messages made and received by the applicant and Dang in May and June 2020. Code words were used when the two spoke about drugs, often sounding as though they were referring to prostitution related matters, such as using the words "girls" or "special girls", when they were in fact referring to methylamphetamine. Other terms were used to reference prohibited drugs. The calls also recorded the applicant directing Lin, Lowe and Dang in the supply of prohibited drugs and the collection of money.*
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> *12 The applicant occasionally arranged for customers to come to her unit for the supply of drugs, or alternatively, referred them to Lin for the drug supply or for collection of payment. She also delivered drugs to customers depending on her availability and convenience.*
>
> *13 Police executed three search warrants on 18 June 2020. At a property at Oatley, police found a safe under the floorboards of the dining room which contained $200,750 in cash. Telephone intercepts recorded discussions between the applicant and Lowe, who had access to the safe and purchased methylamphetamine using the money from the safe at the applicant's request.*

*14 At the applicant's unit in Hurstville, police found $40,000 in cash in a bedroom drawer. A total of $240,750, including the money located at the Oatley property, constituted the offending captured in count 4. Police also located 74.9 grams of methylamphetamine (**count 2**), 8.4 grams of MDMA (**count 3**) and 814.8 grams of cannabis (**Form 1 to count 1**)[2].*

*15 A taser, which was in working order, was located in the applicant's vehicle (**count 5**). On 12 May 2020, the applicant was recorded speaking with Lowe. She admitted possession of an electric baton and stated that the taser was dangerous due to the electric shock being strong. The applicant also stated that she needed a charger for the taser.*

16 The lawfully intercepted telephone calls on the applicant's mobile telephone established that she had engaged in the supply of not less than the commercial quantity, namely 351.32 grams, of methylamphetamine.

42. The Court of Appeal found that in sentencing the District Court had failed to consider separately the applicant's likelihood of re-offending as well as the issue of the prospects of rehabilitation. The Court undertook afresh the exercise of sentencing discretion and found there was no challenge to the sentencing judge's findings in respect of the objective seriousness of the offences noting:

> *The applicant was the principal of a commercially successful drug supply operation. General deterrence, denunciation and the protection of the community are relevant and weighty considerations in the sentencing exercise.*
>
> *I have already set out the relevant subjective factors. I adopt her Honour's finding that the applicant has reasonable prospects of rehabilitation. In light of the opinions expressed by Mr Borkowski, I find that the applicant is unlikely to re-offend.*

43. The Court of Appeal found that the indicative sentence of seven years was warranted by the objective seriousness of the offences. The Court however found that the non-parole period should be reduced by six months due to the distress caused by the total separation from her minor son (HB).

44. With respect to the applicant's co offender, Mr Dang, the Court observed:

> *The agreed facts disclose that the offender was part of a small criminal group that organised and managed the supply of methylamphetamine in the Hurstville area in May and June of 2020. The offender was in a relationship with Hui Li, the principal of the enterprise, in that she operated a brothel through which customers were supplied with amounts of methylamphetamine, varying between one ounce, namely 28 grams, 3.5 grams and 1.75 grams.*

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[2] Form 1 offences are not part of the Tribunal's consideration.

The enterprise was profitable in that a quantity of cash, namely $200,000, was secreted in a safe under the floorboards of premises in Oatley to which the co-offender, Lowe, had access to purchase methylamphetamine for on supply by this offender, and by Li. A further $40,000 in cash was seized from Ms Li's premises in Hurstville.

Without canvasing the agreed facts in full, it is conceded that this offender was directed by Li to supply methylamphetamine and to collect monies on her behalf.

45. The applicant submits that the applicant's criminal offending could not be characterised as violent or sexual crimes, crimes of a violent nature against women or children or acts of family violence and thus did not fall squarely within 8.1.1 (a)(i)-(iii). There is no suggestion of forced-marriage conduct, offences against vulnerable persons or government officials, opinion-based character test matters, or crimes connected with immigration detention/escape. The applicant concedes the offending was serious for other reasons (scale of drug supply; criminal-group direction; possession of a prohibited weapon) but does not engage 8.1.1(b)(i)-(iv). The applicant noted the Court imposed a sentence of seven years with a non-parole period of 4 years six months.

46. The applicant noted that the judgment does not record any victim impact statements or specific harm to identified victims and the offending is framed in terms of drug distribution, money, and weapon possession. The agreed facts show sustained offending across May to June 2020 which is evidence of repeated criminal conduct over that period rather than a one-off incident. The sentencing structure reflects the cumulative seriousness of multiple drug supplies, proceeds of crime dealing involving $240,750 and possession of a working taser.

47. The applicant notes there is no evidence of false or misleading information given to the Department, no suggestion of prior departmental warnings and there is no question of overseas conduct.

48. The respondent contends that the offending is "very serious" for the purpose of paragraph 8.1.1(1)(a) of Direction 110. The respondent contends that although the offending does not come within any of the deemed instances of "very serious" conduct at paragraph 8. 1.1(1)(a) of the Direction these instances are non-exhaustive examples and are expressed to be without limitation. The respondent submits that conduct is very serious for several reasons. The applicant was the principal of the group indicating a significant level of deliberateness

and premeditation in her conduct which heightens the moral turpitude. The scale of the operation was significant, and the amounts of money and drugs involved was substantial.

49. The respondent submits that the offences for which the applicant was convicted carry lengthy maximum sentences which highlights the seriousness with which the New South Wales Parliament regards this sort of conduct. The respondent submitted "While the Court (at first instance and on appeal) did not think it appropriate in the circumstances to impose these maximum sentences, given the conduct was variously at, or just below, the mid-range of objective seriousness, this does not detract from the inherently serious nature of the crimes themselves: *Dayananda v Minister for Immigration, Citizenship and Multicultural Affairs* [2022] FCA 1050 at 39". The respondent provided an extract from the government's national drug strategy which refers to the illicit supply of methamphetamines and the importance of dismantling or disruption of distribution networks (HB 302-308).

50. The respondent submitted that the applicant received a lengthy prison sentence which is a key indicator of the objective seriousness of the applicant's offending because the imposition of a custodial sentence should be viewed as a reflection of the objective seriousness of the offences involved. see *Pavey and Minister for Home Affairs* [2019] AATA 4198 (Pavey) at [44] per Senior Member Tavoularis. It is uncontroversial that incarceration is the penalty of last resort in the sentencing hierarchy: paragraph 8.1.1(1)(c) of Direction 110.

51. In the statement made by the applicant (HB 183-185) she stated that she was first introduced to illicit drugs by her partner Mr Joshua B who had covertly added drugs to her food and drinks on several occasions to facilitate sexual relations. She claimed that she later became partners with Mr Phu Dang in 2019 and he supplied her with various drugs, and she became drug dependent. She also claimed that she was the victim of family violence at the hands of Mr Joshua B and Mr Phu Dang. She claimed that she agreed to sell drugs within her massage business for Mr Phu Dang and that in 2020 he introduced her to a drug supplier known to her as "Fat Boy". She claimed she started selling in February 2020 to regular customers and staff and assisted with distribution to prior buyers. She continued operations after the massage parlour closed and arranged drug deals until she was arrested on 18 June 2020. It is, however, noted in the sentencing remarks of the Courts that the applicant was described as the principal of the enterprise and the co-offenders

including Mr Dang as being directed by her in the enterprise. She also received a longer sentence than Mr Dang.

52. In her oral evidence the applicant admitted that her offending was very serious and stated that she wanted to sincerely apologise to the Australian society and the community. She stated that she wanted to send her appreciation to those in government, the police and the people who helped her. She acknowledged she had made a mistake.

53. When questioned by the respondent the applicant admitted that a lot of money could be made in the supply of methamphetamines and that it was a fast and easy way to make money. It was put to her that she had opened her own brothel in 2019 but due to the COVID pandemic she was not able to operate it and consequently she moved it to her own residence in Hurstville. She agreed that part of the reason she got into the drug supply business was due to the financial strain suffered by her business. She stated that when she was arrested, she had savings of over $200,000 which was partly as a result of the drug supply business. She agreed the drug supply business was commercially successful.

54. The respondent questioned the applicant about her previous statements that her offending could be partly explained by becoming involved in a bad work environment surrounded by the wrong people and in which there was a drug culture. She had made written claims that she “lost herself” for some time. The respondent pointed to the applicant’s evidence that she had been using amphetamines at work since 2016 and that she had been exposed to that drug culture in the brothel business since at least since 2016. The applicant explained that when she made that statement, she was trying to explain why she had got into the drug supply business just prior to her arrest. She was not trying to explain her substance abuse issues.

55. The respondent put it to the applicant, and she agreed, that in terms of her offending she was directing the supply of various quantities of drugs and the prices for the drugs through text messages and telephone calls. She would use code words for the amounts she was going to sell and used those code words with her co- offenders. She agreed that she directed her co-offenders to sell the drugs. She stated that it did not require a large degree of planning because her customers would contact her if they wanted to buy drugs and told her how much they wanted. She also occasionally delivered the drugs to her customers if her co- offenders were not available. The respondent put it to her that the business was

quite sophisticated and that she was able to manage the business while addicted to methamphetamine.

56. The Tribunal has considered the evidence regarding the nature and seriousness of the criminal offending and other conduct. The Tribunal considers that the offending is very serious.

57. The Tribunal accepts that the offending did not involve those matters set out 8. 1.1(1)(a) but considers that list is not exhaustive. It also accepts that the applicant has no previous criminal history and there is no evidence of false or misleading evidence given to the Department. The applicant submitted there were no victim impact statements or specific harm to identified victims and the offending is framed in terms of drug distribution, money, and weapon possession. However, even though there is no evidence of the impact of the offending on any individual the Tribunal considers that drug supply and distribution causes serious harm to members of the Australian community as set out in the Natural Drug Strategy 2017-2026 (**Drug Strategy**) document (HB 306).

58. The sentencing remarks of the District Court and the NSW Court of Appeal, the agreed facts relied upon by the Courts, the evidence of the applicant that the offending was very serious together with the sentence imposed on the applicant leads the Tribunal to the conclusion that the criminal offending is very serious.

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

59. The Tribunal has had regard to the Government's view that the 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, so serious that any risk that it might be repeated may be unacceptable. In assessing the risk that may be posed by the non-citizen to the Australian community, the Tribunal must have regard to, cumulatively, the nature of the harm to individuals or the Australian community should the applicant engage in further criminal or other serious conduct; and the likelihood of the applicant engaging in further criminal or other serious conduct.

60. The applicant concedes that if the applicant's conduct was repeated the likely harms would include the distribution of large quantities of illicit drugs into the community, organised

offending with others, and the inherent safety risks associated with the possession of a prohibited weapon.

61. The respondent submits that the nature of the harm to the Australian Community should the applicant commit similar offending is serious referring to the devastating effect drugs inflict on the community which is further emphasised in the National Drug Strategy prepared by the Department of Health (HB 302-308). Any future offending of a similar nature would have the potential to cause considerable physical, psychological and economic harm to those who ultimately purchase and consume those drugs and to members of the Australian community as a whole: paragraph 8.1.2(2)(a) of Direction 110.

62. With respect to the likelihood of the applicant engaging in further criminal or other serious conduct the applicant contends that the applicant is unlikely to re-offend. The respondent, on the other hand, contends that there is a real ongoing risk that the applicant will re-offend.

63. The applicant points to the Court of Appeal's finding that the applicant was unlikely to re-offend and to the applicant's involvement with various rehabilitation programs in prison. Mr Johnston who describes himself as the applicant's partner and her son AL both state that she has expressed remorse, and both consider she is unlikely to offend again. The applicant stated she has not used drugs whilst in prison, is working in the prison library and has completed rehabilitative programs (TRiP, HIPU, Seasons for Growth, Kairos). Mr Johnston describes her as a model prisoner and states she has accepted responsibility for practical support on release.

64. The applicant submits the potential harm from any repetition of the index conduct is serious given the scale of drug supply, organised direction of others, and a prohibited weapon; however, the best available evidence on likelihood, that is, the Court of Appeal's express finding that the applicant is not likely to reoffend, bolstered by sustained rehabilitative engagement in custody and robust post-release support from Mr Johnston and Mr Chen indicates a low risk of further serious conduct.

65. The respondent points to certain factors which indicate there is a risk the applicant will re-offend. It was submitted that that the motivation for the offending appeared to primarily be financial gain, and the applicant will face financial pressures which will confront her if she is released into the community as she may find it difficult to secure well paid employment

given her time out of the workforce and criminal record. Further there is evidence that her offending was related to poor mental health and use of methamphetamines. The applicant has engaged with some rehabilitative programs in prison but there is no record of how these programs might have addressed mental health issues and what impact they have had on the applicant. The applicant has not provided any satisfactory explanation for her offending other than she bought into a business in the wrong industry with a drug culture and lost herself for a short period. The respondent submits that the Court of Appeal's assessment that the applicant is at low risk of re-offending does not identify what scale low risk refers to or how the conclusion was reached. In any event, the respondent submits that given the serious nature of offending that even a low risk is unacceptable.

66. The evidence before the Tribunal is that the NSW Court of Criminal Appeal has assessed the applicant's risk of re-offending as low. Even though there is no material before the Tribunal which shows how the conclusion was reached, the Tribunal accepts that the assessment was made in the context of sentencing the offender.

67. The Tribunal also accepts that the applicant has undergone several programs while in prison which relate to drug and alcohol abuse, anger management, financial management, child safety, parenting, religion and a driving course. The certificates provided by the applicant include Theory in Hygiene Operations 2022, Seasons of Growth 2022, Keeping Us Together 2022, High Intensity Program Unit 2023(**HIPU**), TRIP Program 2023 and Kairos Short Course 2023. The applicant gave evidence that she has undertaken programs to help her deal with family violence. She has learnt that she must walk away from family violence rather than tolerating it and she believes this will ensure that she is not subject to coercive control or violence in her relationships.

68. While the Tribunal accepts the assessment of the Court that the risk of re-offending is low the Tribunal considers that given the nature and seriousness of the offending even a low risk of offending is not acceptable.

69. The Tribunal considers this factor weighs against revocation. Paragraph 7(2) of the Direction provides that this factor should be given greater weight than other relevant primary considerations.

8.2 Family violence committed by the non-citizen.

70. There is no evidence that the applicant has engaged in family violence and this consideration is not relevant and should not be given any weight.

8.3 The strength, nature and duration of ties in Australia.

71. Paragraph 8.3(1) of Direction 110 requires the Tribunal to have regard to 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.

72. Paragraph 8.3(2) of Direction 110 requires the Tribunal to consider the strength, nature and duration of any other ties that the non-citizen has to the Australian community and in doing so have regard to:

(a) the length of time the non-citizen has resided in the Australian community, including whether the non-citizen arrived as a young child, noting that:

(i) less weight should be given where the non-citizen began offending soon after arriving in Australia; and

(ii) more weight should be given to time the non-citizen has spent contributing positively to the Australian community.

(b) the strength, duration and nature of any family or social links with Australian citizens, Australian permanent residents and/or people who have an indefinite right to remain in Australia.

73. The evidence before the Tribunal is that the applicant has been living in Australia since February 2004, that is, over 20 years and she arrived in Australia as an adult. The applicant submits that she has only rarely returned to China for short family related visits. However, the movements records kept by the Department (HB 139-142) show numerous trips outside Australia between 2004 and 2019, the latest being between the 4 and 19 July 2019. The applicant gave oral evidence that overseas visits were for the purpose of visiting family in China.

74. The evidence indicates that the applicant came to Australia with her first husband, and they have since separated and divorced. She has one child from this relationship, AL, and he is now 22 years old, and is an Australian citizen. In 2008 she commenced a relationship with Joshua B and there is one child of this relationship, NB, and he is now 15 years of age and is an Australian citizen. In 2013 the applicant met and married Xinggrui Shao and that relationship broke down and the couple divorced in 2018. The relationship was noted in the report prepared by Kelvin Chong, Registered Psychologist on 2 November 2025. The applicant met her co-offender Phu Dang in 2016 and they commenced a relationship in 2019. They are no longer in a relationship. She stated she is currently in a de facto relationship with Martin Johnson who is an Australian citizen.

75. The applicant submits that her immediate family in Australia includes her partner, Martin Johnston, her elder son AL and her younger son NB. She does not make any submissions about other family in Australia or social ties to the Australian community.

76. Mr Johnston provided a statement to the Department, to the Tribunal and gave oral evidence in person at the Tribunal hearing. He is aware of the applicant's criminal offending.

77. He stated he and the applicant met in 2015 and developed a friendly connection. He stated that they formed a relationship at the end of 2021 during the COVID 19 pandemic. The applicant was on bail at that time and the applicant was living in Ingleburn and he was living in Penshurst, so their contact was regular but limited by restrictions. Since the applicant's imprisonment the relationship has been maintained electronically. They have teleconferenced every weekend and she calls him twice a week and he writes about once a month. He stated it is difficult to have a meaningful relationship while the applicant is in prison.

78. In his statement and in oral evidence he stated that he is currently living in Hobart and that he moved there from Sydney about three years ago. He moved there after he ceased employment in Sydney and to help his mother who needed assistance following a fall.

79. He is currently working for a regulatory government agency and commenced employment in July 2025. He is currently on work probation. He works at his Hobart workplace two days per week and works from home on other days. He stated if the applicant is returned to the Australian community, their plan is to re-establish their life together in Sydney.

80. After he completes his period of work probation, he will explore options to work from Sydney although he has not discussed this with his employer as he does not want to jeopardise his employment. When asked if he would move to Sydney if he could not get permission to move from Hobart he stated that remote work is common and he could not foresee it being a problem and there was always a way to sort out these issues.

81. He stated he is also caring for his 83-year-old mother who has Parkinson's disease and has mobility issues. He stated that at the moment he is provides the most care because his Hobart based sister cannot provide full care because she has family responsibilities and some members of her family have eating disorder issues.

82. With respect to plans for the future he stated that he was aware that a property or residence is required about six months prior to a release on parole. This means he would have to secure a property in about February 2026 but due to the uncertainty over the applicant's visa he has not made any plans regarding a move to Sydney although he is saving money for that purpose. When he looks at housing he will try and find something near a train line in Sydney. If the applicant was released, he would try to provide her with a stable environment.

83. He stated he would be devastated if the applicant was removed from Australia. He stated that if the applicant's visa was cancelled, he could not see himself going to live in China with the applicant and believes that their relationship would not continue.

84. He stated that he had previous problems with depression in 2019. Things became harder when his father died in 2015, he was made redundant from a job he loved in 2020, some people close to him had died, he also found it difficult to cope during the COVID 19 pandemic and he was affected by the applicant's imprisonment. He also stated that finding a job at his age was not easy and it took him 3 years before he found work while in Hobart. He stated that at the moment he has a positive outlook on life but if the applicant went back to China it would be extremely painful for him.

85. He stated that he was aware that the applicant was a Christian and while he was not a practising Christian he respected her beliefs. He could not recall the name of the church she had previously attended but thought it was an Anglican church.

86. The Tribunal's formed the view that Mr Johnston was committed to helping the applicant as much as he could, given his own circumstances. He presented as a kind and caring person and focussed on the applicant's best interests. The evidence is that he had a connection with the applicant from 2015 but they did not form a relationship until 2021 when the applicant was on bail. The couple did not live together and the limited personal contact they had during the COVID pandemic ceased when the applicant was taken into custody in May 2022. Since May 2022 their relationship has been by way of video conference, telephone calls and correspondence. The applicant also provided evidence that Mr Johnston had been making monetary deposits to her prison account each week (HB 114-136).

87. The Tribunal considers that Mr Johnston has limited capacity to provide necessary supports to the applicant if she were released into the community.

88. The Tribunal considers that, while he has expressed an intention to move to Sydney and support the applicant if she were released into the community, there are several barriers to him being able to achieve that outcome. Firstly, he is employed in Hobart and when questioned about whether he could relocate to Sydney he stated that he had not raised the subject with his employer due to him being on probation. He stated it should not be a problem but there is no evidence that he will be able to relocate without losing his employment and given his difficulties in finding work the Tribunal considers he would not jeopardise his current employment if he could not get permission to relocate. He claimed he had savings to assist with the relocation and establishment of a household but did not provide any financial details which might support the level of his financial capacity. Further, it appears that his mother has early Parkinson's disease and some mobility issues and he provides her with care and support as his sister has limited capacity. He also did not explain how he would provide physical support for his mother if he relocated to Sydney.

89. The Tribunal accepts his evidence he would not accompany the applicant and establish a joint life together in China if she was removed. It accepts that he would be very unhappy if the applicant went back to China and that he may become depressed but the Tribunal notes that he has accessed mental health care for his depression and alcohol issues in the past and it considers he would do so if he were faced with the applicant's removal to China. Further he would be able to maintain electronic and telephone contact with the applicant if she went back to China and there is no evidence he could not visit on a regular basis.

90. The applicant's elder son AL provided a statement and gave oral evidence in person at the Tribunal hearing. A psychologist's report dated 2 November 2025 was also provided which contained an assessment of his mental health (HB 282-285). The psychologist who prepared the report was not available to give oral evidence at the Tribunal hearing.

91. The history set out in the report notes that AL is a 22 year old man who lives with a friend in Sydney. He was born in China and relocated to Australia with his family when he was 11 months old.

92. AL reported to the psychologist that ongoing uncertainty, since 2020, has had a significant effect on his mental health. He has sleep problems, has anxiety and distress, low mood and motivation and difficulties with concentration.

93. Prior to his mother's arrest, AL was studying Business at the University of Technology Sydney. The stress of his mother's incarceration however resulted in him dropping out of university in 2022. Since then, he has continued to struggle in managing his mental health. He does not know what he will do if his mother is not allowed to remain in Australia. The report notes that his history and scores on a quantitative assessment tool is consistent with severe situational anxiety and depression. It was recommended that the visa situation be resolved as soon as possible, and that AL would benefit from having his mother with him in Sydney. It recommended he may benefit from Cognitive Behaviour Therapy.

94. He has managed to attain intermittent casual employment which has enabled him to "just stay afloat" financially. AL's parents separated when he was four years of age and he has not seen his father in some ten years, and his mother has been the predominant parent in his life.

95. In his statement he stated he was unemployed but at the Tribunal hearing he gave evidence that he is working casually as a food delivery driver whilst looking for full time work. He is living in rented accommodation with a house mate.

96. In his statement he stated that he and his mother have a close relationship and that he contacts his mother regularly by telephone and they also have contact by video or in person from time to time. He stated if she is returned to the Australian community, he would provide her with any support he could give. He claimed that he is hoping to return to his university

studies at UTS. If the applicant was returned to China he would be heartbroken and he is concerned that she would have little support from her family in China as she has been in prison in Australia.

97. In his statement he stated that his mother has parents, a brother and sister living in the northwest of China. In his statement he did not demonstrate any familiarity with his family members or where they lived despite oral evidence given by the applicant that he had accompanied her to China on various visits. It may be that he was trying to minimise the applicant's family ties in China. On the other hand, it is possible he was young when he visited and had no clear recollection of the places and people he visited during those visits.

98. He stated that his younger half-brother NB is 15 years old and is living with his paternal grandparents in Windsor. Since her arrest in 2020 he has had no contact with the applicant as his grandparents have prevented any contact. He claimed that NB told him that he still cares about his mother and her situation. He stated that as far as he is aware the applicant wishes to rebuild her connection with NB. At the hearing he stated that he believed that his brother wishes to have a relationship with the applicant, although it was not clear how he formed this opinion. His evidence suggested that he had contact with his brother and they spoke to each other from time to time.

99. In his oral evidence AL stated that he was living in rented premises in Casula and that the cost of living makes his housing situation volatile. He stated if his mother returned to China, he would be very upset because his mother has been the main support in his life and is the person he relies on the most. AL also gave evidence that he had previously had a very strong relationship with Bill, the former partner of his paternal grandmother (**Lisa**). Bill has recently passed away and this caused much distress to AL because he stated Bill was his main mentor and carer when the applicant was working.

100. He stated that he and his mother had travelled to China several times on special occasions such as holidays. He visited other family members while in China. The last time they visited together was in 2019. He gave evidence that if his mother returned to China he does not know if he would visit her because it would depend on his financial situation. He claimed that he does not have much contact with his mother's family in China other than for a cousin who understands his situation. He claimed that his cousin is the only person who knows about the applicant's situation and that they have not told the rest of the family. The

respondent pointed out that the applicant had given evidence earlier that her brother and sister did not know about the applicant's criminal offending. He stated he had no knowledge of that.

101. Ke Qin Huang and Da Zhong Chen provided a statement to the Tribunal. They stated that they were AL's paternal grandparents and knew the applicant from 2001. They stated she had always been responsible for the care of her children. This evidence is not consistent with other evidence before the Tribunal. They stated her conviction and imprisonment had greatly impacted AL who was a bright prosperous university student who was not able to continue his studies into adulthood. They observed he lost confidence and became depressed. They stated that if the applicant was released into the community, they would support her the best they could.

102. In his oral evidence AL's grandfather stated that he was aware of the applicant's offending and imprisonment. He stated that the applicant had the care of her two children but that when she was taken into custody her younger son was cared for by his paternal grandmother. He stated that if the applicant is allowed to remain, she can play a positive role in his grandson's life. AL's grandmother (**Lisa**) gave evidence that the applicant has two children, AL and her younger son. She did not know NB's name and stated that the last time she had contact with him was about 7 years ago. She did not appear to be aware that NB had been in his paternal grandmother's care for the last 13 to 14 years. She stated that as far as she was aware the applicant looked after him when she was not working.

103. The Tribunal accepts that AL has a good relationship with the applicant and would be upset if his mother returned to China. The evidence indicates that he has had a continuing parental relationship with his mother and that in the past she provided some care for him when she was not working. However the evidence is that Bill, the person he described as his step grandfather, also provided a significant amount of care for AL when the applicant was not available. It was apparent at the hearing that AL had a strong emotional connection with Bill before he passed away.

104. The Tribunal also accepts the evidence that the applicant's conviction and imprisonment has had a damaging effect on his psychological and emotional health. The Tribunal accepts that AL would be very unhappy if the applicant returned to China and that it would be difficult for him to sustain a strong relationship with her if she returned. However, AL is 22 years old

and has been living independently in rented accommodation with a flat mate since the sale of the family home in Casula. He is working casually, and the Tribunal notes he has regular electronic and telephone contact with the applicant. If she returned to China, he could continue to have this level of contact and he could visit her in China once his financial situation improves.

105. His paternal grandparents gave evidence on the applicant's behalf which indicates that AL could access a certain level of support from them.

106. The applicant provided evidence that she has had a challenging relationship with NB since her imprisonment. She claimed she used to spend as much time as possible with him but because of hardships in her life, NB's paternal grandmother has helped her tend to him while she has been working. She stated that when she was on bail the paternal grandmother forced her to tell NB she was in China. Once she was imprisoned, she was not able to contact NB until very recently. Since she was arrested in 2020 NB has been living full time with his paternal grandmother without contact with her. NB's paternal grandmother provided a statement and gave oral evidence to the Tribunal by teleconference.

107. In her statement NB's grandmother stated she is 74 years old and has care and control of NB. She stated that NB has lived with her on a full-time basis since for the last 13 to 14 years. He is in Year 9 and doing well at school. She stated that NB has been told his mother may be removed from Australia to China. She stated he took the news hard and became quiet. When asked if he wanted to visit her, he stated "not at the moment". He recently had telephone contact with the applicant and spoke with her. He appeared subdued and distressed by the call. In her statement she stated he would be deeply saddened if the applicant was removed. She stated that he has not seen his mother for some years but once used to speak to her when she called. However, he has not spoken with her for some years until the recent telephone call. She stated if the applicant was returned to the Australian community, she would not prevent communication between them.

108. In her oral evidence she stated that NB had been living permanently with her "off and on" for the last 13 years. When asked what she meant by "off and on" she stated the applicant saw him for a weekend now and then. The paternal grandmother stated that she had been responsible for NB's daycare, kindergarten, primary and high schooling and he was now in Year 9. She lives in the household with a friend, John and NB. She stated that NB and the

applicant have not had a relationship for quite a few years after she went into prison. At first he thought she was in China but he later found out she was in prison. The first time they spoke recently was a few weeks ago when she telephoned him. She stated that NB told her he does not want to talk to her anymore. When they found out that the applicant may have to return to China they spoke to NB about it, and he was very quiet and made no comment. He has not spoken about it since then. After some difficulty getting her to answer questions about the contents of paragraph 5 of her statement it was read out to her and she agreed with the contents. She stated that if the applicant was released NB would continue to live with her and John, but she would let NB see the applicant.

109. If the applicant returned to China she stated it was hard to tell what impact it would have on NB; he kept things bottled up but she thought he would be upset.

110. Mr Johnston gave oral evidence that the applicant had told him she wanted to rebuild the relationship with NB if she was released into the community.

111. The applicant has given evidence that she has previously worked in cleaning services, in a warehouse and in reception in a massage parlour. The Tribunal accepts this evidence which shows that she has been employed for significant periods of her time in Australia.

112. The Tribunal accepts that the cancellation decision will have an impact on AL, NB and Mr Johnston as set out above. The Tribunal also accepts that the applicant has lived principally in Australia since 2004 apart from family related visits to China between 2004 and 2019. The Tribunal notes that she first came to Australia as an adult and the wife of an Australian citizen, and they have since separated and divorced and that her former husband does not have any contact with her. Since she arrived in 2004 she has worked and has established a life in Australia.

113. The Tribunal considers that this consideration weighs slightly in favour of revocation.

8.4 The best interest of minor children in Australia affected by the decision.

114. Paragraph 8.4 of Direction 110 provides that decision-makers must make a determination about whether non-revocation is in the best interests of a child affected by the decision.

115. Clause 8.4 (4) goes on to outline the factors that a decision maker must consider when determining the best interests of a child affected by the decision where relevant. These factors include:

> 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

116. As set out above, there is one minor child who would be affected by the cancellation decision, that is, NB who is the child from her relationship with Joshua B. The evidence is that NB is 15 years old and living with his paternal grandmother and her partner/friend.

117. There is very little evidence before the Tribunal as to what is in the best interests of NB and how he would be affected by the cancellation.

118. The applicant gave oral evidence that there are no Family Court orders relating to NB and that his care has been arranged by mutual agreement out of necessity. NB's grandmother gave evidence that NB does not have regular contact with his father and that she and her partner/friend are, and have been, his prime carers. She stated that NB has essentially lived with her full time for the last 13 to 14 years.

119. The applicant gave evidence that she had the care of NB from time to time although there was no clear evidence of those time periods. The Tribunal prefers the evidence of NB's grandmother who stated in her oral evidence that she has been mainly responsible for NB through his childcare, primary school and high school years although the applicant did see him on some weekends.

120. In AL's statement he stated that NB told him he cares about the applicant and would like to re-establish a relationship with her. The Tribunal accepts the applicant would like to re-establish a relationship with NB on her release.

121. With respect to the nature of the relationship between the applicant and NB the Tribunal accepts that prior to her arrest the applicant saw NB from time to time, but it is not clear how often or in what circumstances. The evidence of NB's paternal grandmother is that apart from the recent telephone contact NB has not spoken with the applicant for some years.

122. The evidence before the Tribunal is that NB will be 16 years old when the applicant will be first eligible for parole in 2026. The Direction provides that this consideration should take account of the extent to which the applicant will be likely to play a positive parental role in the future including the length of time until the child turns 18 years. Given the lack of contact between the applicant and NB and no suggestion that he has visited or contacted her, the Tribunal considers there is little likelihood that she will play a positive parental role in the future until he reaches the age of 18 years. The Tribunal accepts that the lack of contact may have been out of the control of NB but nevertheless there is no evidence of the nature of the relationship and no evidence as to how the applicant proposes to reconnect with him in the foreseeable future. There are no Family Court orders as to parental access and care arrangements and no suggestion that the current care arrangements will change in the foreseeable future.

123. The Tribunal considers that if NB wishes to re-establish a relationship with the applicant he will do so and that his paternal grandmother will not prevent such a relationship. She gave evidence to this effect and the Tribunal notes that as NB gets older he will have greater agency over decisions about contact with the applicant. While the Tribunal accepts that the applicant has a genuine desire to re-connect with NB there is little evidence as to how this process will take place or who might facilitate the process. AL gave evidence that he has spoken with NB but again there is little clear evidence as to how often or the how such contact has taken place in the past. There is no evidence that the contact between the half brothers has been in person or by telephone.

124. There is no evidence before the Tribunal as to the impact on NB of the applicant's criminal offending or her conduct.

125. With respect to the impact of separation the Tribunal considers there is little evidence as to the impact of separation on NB other than for the opinions of the applicant, AL and the paternal grandmother. While the Tribunal accepts that personal contact between children and their parents is generally desirable there are many other modes of contact including social media contact, electronic contact and telephone contact. These modes of contact may be utilised to keep in contact even if the applicant was not in Australia. Further if the applicant returned to China NB could visit her in China and seek contact with his maternal grandparents and other relatives.

126. With respect to the other matters set out in in 8.4 (4) the Tribunal has little evidence as to the known views of NB other than for the evidence of AL and the paternal grandmother.

127. There is no evidence that NB has been exposed to family violence perpetrated by the applicant or that he has been abused or neglected by the applicant or that he has suffered or experienced any physical or emotional trauma from the applicant's conduct. It appears that the parental role taken on by his paternal grandmother has removed NB from the impact of the applicant's substance abuse, contact with her co-offenders or other persons involved in the drug culture which she claimed pervaded the massage parlour business and her criminal offending.

128. The Tribunal considers that the best interests of NB weigh slightly in favour of revocation.

8.5 Expectations of the Australian Community.

129. Paragraphs 8.5 (1) and (2) of Direction 110 outlines the expectations of the Australian community. Paragraph 8.5(1) sets out the government's view of the expectations of the Australian community as follows:

> (1) The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has engaged in serious conduct in breach of this expectation, or where there is an unacceptable risk that they may do so, the Australian community, as a norm, expects the Government to not allow such a non-citizen to enter or remain in Australia.

130. Paragraph 8.5(2) states

> (2) In addition, visa cancellation or refusal, or non-revocation of the mandatory cancellation of a visa, may be appropriate simply because the nature of the character concerns or offences is such that the Australian community would expect that the person should not be granted or continue to hold a visa.

131. Paragraph 8.5 (2) also states that the Australian community expects that cancellation is appropriate if a non-citizen's conduct raises serious character concerns in Australia or elsewhere of the kind of conduct set out in 8.5(2) (a) to (f). These include acts of family violence, offences relating to forced marriages, commission of serious crimes against women, children or other vulnerable members of the community, commission of crimes against government representatives or officials, involvement in people smuggling, human trafficking, war crimes against humanity and slavery and worker exploitation. The Tribunal finds that the applicant has not engaged in the kinds of conduct set out in paragraph 8.5 (2) (a) to (f).

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

133. The respondent submits that it is not for the Tribunal to determine for itself the expectations of the Australian community by reference to the applicant's circumstances or evidence about those expectations. Rather, the Tribunal must give effect to the *'norm'* stipulated

above: *FYBR v Minister for Home Affairs* [2019] FCAFC 185 at [68] per Charlesworth J and at [92]–[93], [100]–[104] per Stewart J; see also paragraph 8.5(4) of Direction 110. This deeming effect has recently been affirmed in *Minister for Immigration, Citizenship and Multicultural Affairs v HSRN* [2023] FCAFC 68, at [32]–[35] per Moshinksy, Stewart and Jackman JJ.

134. The respondent contends that this primary consideration weighs in favour of non-revocation. The applicant committed a very significant breach of Australian law and the community would expect the Australian Government not to allow her to remain in Australia: paragraphs 5.2(2) and (4) of Direction 110. The Minister contends that non-revocation is appropriate because the nature of the applicant's offences is such that the Australian community would expect that she should not continue to hold a visa: paragraph 8.5(2) of Direction 110. These expectations apply regardless of whether the applicant poses a measurable risk of causing physical harm to the Australian community: paragraph 8.5(3) of Direction

135. The Tribunal accepts the applicant's commission of the offence, her criminal offending and the breach of law in Australia means the expectation of the Australian community is that the cancellation of the visa should not be revoked. This consideration weighs in favour of affirming the non-revocation of the cancellation.

Other considerations

136. There are three other relevant considerations, being the legal consequences of the decision, the extent of any impediments the applicant may face if removed from Australia to New Zealand and impact on Australian business interests.

9.1 Legal consequences of the decision.

137. The applicant submits that Section 501E bars a non-citizen who is in Australia from lodging any new visa application while a s 501, 501A, 501B or 501BA refusal or cancellation remains on foot and has not been set aside or revoked.

138. The prohibition applies even if the earlier visa application was made on the person's behalf or without their knowledge (for example, due to mental impairment or minority) and covers refusals or cancellations deemed to arise automatically under the Act or regulations.

139. Exceptions permit applications for protection visas or any visa class prescribed by regulation, and the bar is lifted if the Minister personally grants the person a permanent visa; it also does not block further applications for a visa already obtained under those specific exceptions.

140. The applicant submits and the Tribunal accepts that, subject to the exceptions referred to above, the general effect of a non-revocation decision is permanent exclusion from Australia. Upon release from prison the applicant will be subject to immigration detention until removed as per s 189 of the *Migration Act 1958* (Cth*)*. These are serious adverse legal consequences.

141. The respondent submits and the Tribunal accepts that a consequence of the Tribunal affirming the decision under review is that the applicant: will remain an unlawful non-citizen; be liable for removal from Australia as soon as reasonably practicable (ss 189 and 198 of the Act); will not be able to apply for another visa while in Australia (with the exception of a protection visa) in accordance with s 501E of the Act; and would be unable to satisfy special return criteria in cl 5001(c) of Schedule 5 to the *Migration Regulations 1994* (Cth), which is applicable to most visa grants: *Rano v Minister for Home Affairs, Minister for Cyber Security* [2024] FCA 1003 per Feutrill J at [12]–[14].

142. The respondent submits that while the Tribunal must consider those legal consequences under this consideration, in circumstances where the applicant's exclusion from Australia is an intended purpose of the statutory scheme, and that purpose underlies the considerations in Direction 110, the Tribunal should afford the consideration neutral weight: *Stoneley v Minister for Immigration and Multicultural Affairs* [2025] FCA 143 per Charlesworth J at [37].

143. The Tribunal considers that the legal consequences of cancellation are serious adverse legal consequences and will have an impact on any future applications the applicant may wish to make, excluding protection visa applications. This aspect of the consideration weighs slightly in favour of revocation.

144. The respondent notes that the applicant has not submitted that Australia's non refoulment obligations have been enlivened and that issues raised in the applicant's statement that she fears criminal gangs in China and being targeted as a Christian are not to be agitated under this consideration. The applicant gave oral evidence regarding her religious beliefs and practices but there were no submissions made at the hearing that these should be considered as part of Australia's non refoulment obligations.

145. In any event, the Tribunal notes that para 9.1.2 deals with non-citizens not covered by a protection finding. The Direction states that where it is open to a non-citizen to apply for a protection visa it is not necessary at the character cancellation stage to consider non refoulment issues in the same level of detail as those types of issues are considered in a protection visa application. While the applicant has touched on evidence which possibly might give rise to non-refoulment obligations the Tribunal considers that if the applicant seeks to seek protection these issues will be better dealt with in a protection visa application process. As set out in paragraph 9.1.2 a refusal, cancellation or non-revocation will not necessarily result in removal of a non-citizen to the country which the non-refoulment obligation exists.

9.1.2 Extent of impediments if removed.

146. Paragraph 9.2 of Direction 110 relevantly provides that a decision-maker must consider the extent of any impediments the applicant would face if removed to China including:

> (a) the non-citizen's age and health;
>
> (b) whether there are substantial language or cultural barriers; and
>
> (c) any social, medical and/or economic support available to them in that country.

147. The applicant is 46 years old. The evidence indicates that the applicant was previously diagnosed with a major depressive order and has had significant methamphetamine addiction.

148. The applicant submits she has ongoing health needs. She has been treated for depression in custody and has a heart condition requiring continuing treatment; her partner corroborates episodes of irregular heart rhythm leading to at least one, possibly two, overnight hospital admissions while in custody. The evidence is that she is taking

medication for her heart condition and requires regular checkups. In her oral evidence she stated that she is no longer taking medication for her depression.

149. The applicant submits that her conditions indicate a need for reliable, ongoing medical care that she doubts she could access appropriately if returned to China and this weighs in favour of impediments being significant.

150. There is no submission that she would face language or cultural barriers if she returned to China. She stated she has lived predominantly in Australia since 2004 and has only rarely returned to China for short visits. However, the movements records referred to earlier in this decision show that between 2004 and 2019 she travelled overseas on 21 occasions. She gave evidence that overseas travel to China were family related visits.

151. It is submitted that the applicant identifies as a Christian and has built her faith and social life in Australia and that she would have difficulties re-integrating into life in China and may expose her to harm in China. She fears she would not be able to re-establish basic living standards if she returned.

152. At the hearing she stated that she would have limited practical support if she returned. While her parents are supportive, they are elderly and while they could offer her accommodation and emotional support, they would not be able to provide much financial or other practical support if she returned. She explained that they live in a rural village in northwest China where there are limited employment opportunities.

153. She also stated that her brother and sister are not supportive due to her criminal offending in Australia. They consider she has brought shame on the family. However, the Tribunal notes that in his evidence AL stated that other than for his cousin the applicant's family in China are not aware of her current situation. There is some conflict in the evidence of the applicant and her son which is difficult to reconcile. The Tribunal is prepared to accept that, for the purpose of this decision, that the relationship of the applicant and her siblings may be strained and they may not be able or willing to provide her with any significant support.

154. The applicant submits that in Australia she has a committed partner prepared to relocate to Sydney to support her, and an adult son offering day-to-day social support–supports that would not be available in China. Taken together, the balance of evidence points to a paucity

of accessible social and economic support in China and significant impediments to reestablishing basic living standards if removed. However, as set out earlier in this decision, the Tribunal considers the practical support which the applicant could access from Mr Johnston is limited. With respect to AL it accepts that he could provide companionship and emotional support to the applicant but the evidence does not indicate that he is in a strong position to provide accommodation, financial or other practical support.

155. The respondent submits that while the applicant may face practical, financial, and emotional hardship upon return, as a Chinese citizen she would have access to the same social, medical, and economic support as other citizens. The applicant also has a history of employment in Australia, including vocational training in hygiene operations and previous experience in the cleaning industry, which may assist her in securing employment in China after a period of adjustment: paragraph 9.2(1)(c) of Direction 110.

156. The Tribunal notes that the applicant has provided evidence of health conditions which she claims can be better managed in Australia than China. She refers to a history of depression and a heart condition. The evidence regarding her heart condition indicates that she requires medication and medical monitoring.

157. The most recent DFAT report on China (HB 195) notes in paragraphs 2.33 to 2.43 that China has a functioning health care system which was generally comparable to international standards. Medications are available for physical and mental health conditions. The Tribunal considers that, as a Chinese citizen, the applicant could access medical care in China and that she could continue to take medication to manage her conditions. With respect to depression the applicant stated at the hearing that she has stopped taking medication for depression as she was hoping to be able to seek work release in prison and thought this might prevent her access to such a program. With respect to her previous methamphetamine addiction, she stated that she has not taken any drugs since she has been in prison. On the evidence before it, the Tribunal considers that while there are some health conditions which require some monitoring and continued medical advice, she would have access to adequate medical care in China.

158. The Tribunal finds that the applicant will not face language or cultural issues if she returned to China. The evidence is that she grew up and was educated in China and that she migrated to Australia as an adult. She has returned to China on several occasions for family

related visits and has had regular contact with her parents. The Tribunal accepts she has some health conditions which need medical attention from time to time but it considers that she can seek medical advice and treatment through China's health care system.

159. The Tribunal accepts the applicant may face some employment and income related difficulties if she returns to China. The Tribunal finds that initially the applicant will be able to live with her parents in their home and that they are supportive. It accepts that she may find it difficult to obtain employment in China given her absence for the last 20 years. She has worked in the cleaning industry and has English language skills which may assist in gaining employment.

160. The Tribunal finds that the extent of impediments weighs only slightly in favour of revocation.

9.3 Impact on Australia's business interests.

161. No claim has been made, and none arises on the evidence, which might indicate that there would be any impact on Australia's business interests if the applicant's visa is cancelled. There is no evidence that the cancellation of applicant's visa would compromise the delivery of a major project, or delivery of an important service in Australia.

162. The Tribunal considers that this consideration is neutral and does not weigh for or against revocation.

Additional considerations

163. The applicant has raised two further considerations for assessment. The first is the applicant's Christian beliefs and practices, the second being the victim of family violence.

164. The applicant stated she is a Christian and that if she returned to China her practice of her faith would be limited due to the restrictions placed on the practice of Christianity in China by the Chinese Communist Party. The respondent refers to the current report of the Australian Department of Foreign Affairs (HB 195) which outlines the restrictions and limitations place on Christian adherents in China. Practice outside those constraints may result in a moderate ongoing risk of official discrimination and coercive pressure. The applicant claims this is relevant to impediments because if she is subject to such discrimination, it would be difficult to re-establish basic living standards.

165. The respondent submits that, apart from the applicant's declaration that she is a Christian and was baptised in 2011 (applicant's statement dated 20 September 2025), there is no other evidence before the Tribunal to demonstrate that she is a practicing Christian, nor that her form of practice would be prohibited or otherwise restricted in China. The applicant does not, identify what denomination of Christianity she practices. There is no evidence to suggest that the applicant has, or would, distribute Bibles, or would otherwise engage in any form of activism that may attract adverse attention from the Chinese authorities. The respondent submits the information extracted from the DFAT report is generic and unsupported by evidence particular to the applicant.

166. The evidence is that the applicant joined a church in Sydney in 2011 and she claimed that she continues to hold Christian beliefs. However, the Tribunal considers is no evidence of continuing church attendance or involvement and while AL and Mr Johnston talked about her Christian beliefs, they were not able to provide any details of the level of her involvement in a Church or Christian activities. DFAT's report on China discusses religion in China including religious demography and the treatment of Christians in China. Estimates of the number of practising Christians in China vary from 38 million to over 100 million adherents.

167. DFAT reports (HB 224 p3.61) that "Overall, an individual's ability to practise religion is dependent on whether they worship in registered or unregistered institutions, whether they practise openly or privately, and whether an individual's religious expression or the religion itself is perceived by the CCP to be closely tied to other ethnic, political and security issues."

168. On the evidence before it, the Tribunal does not consider that the applicant's Christian beliefs would result in any official or social discrimination which would make it difficult for her to re-establish basic living standards in China.

169. The applicant also submitted that she has been the victim of family violence at the hands of Joshua B and Phu Dang and these experiences are circumstances which weigh heavily in favour of revocation. The submission is that they also explain the context of the offending, show that she has previously required police and court protection in Australia, and support the conclusion that, notwithstanding the mandatory cancellation trigger, there is "another reason" to set the cancellation aside.

170. The respondent submits that if it can be established on the evidence that the applicant's history of domestic violence was a reason for her offending, the Tribunal may take this into account. However, these circumstances are fundamentally relevant to the applicant's risk of reoffending and should be dealt with under that heading. The respondent submits the applicant was the principal offender and her attempts to externalise responsibility should be treated cautiously. In any event, the Tribunal is not required to refer to matters, and take them into account, repetitiously in different parts of its decision: *XXBN v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 74 at [53].

171. Accordingly, the Minister contends that no weight should be afforded to this 'other' consideration. To do so would be to erect a standalone consideration covering the same ground as primary consideration one, thereby inviting the Tribunal to engage in an exercise of double-counting: *Ismail v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 2 at [42]–[44] per Gageler CJ, Gordon, Edelman, Gleeson and Jagot JJ.

172. The Tribunal accepts that the applicant was a victim of family violence and that she has had a history of dysfunctional partner relationships. However, she gave evidence that the rehabilitative programs she has undertaken have helped her to understand how to deal with family violence in relationships in the future. This factor may have been part of the complex mix of circumstances which may have led to her offending. The recent psychological report refers to the impact of family violence and coercive control and that these factors may have influenced her offending, but the author of the report could not be questioned on the statements made in that report. While the Tribunal has considered the report it does not draw a conclusion that family violence has been a major factor in the reason for the applicant's offending in the absence of oral evidence from the author of the report. The Tribunal does not consider previous family violence and coercive control has any other separate relevance in the overall consideration of the review.

Conclusion

173. The applicant does not pass the character test under s.501 of the Act and the Tribunal must consider whether there is another reason why the decision to cancel her visa should be revoked having regard to the primary and other considerations in the Direction.

174. There has been significant judicial consideration on the exercise of balancing and weighing considerations contained in the relevant ministerial directions, including a number of ministerial directions preceding Direction 110.

175. In determining the weight to be applied to each consideration the Tribunal has considered the primary and other considerations and weighed them in light of the evidence and findings using the guidance provided by the Direction.

176. The Tribunal notes that its consideration involves an evaluative process, requiring the Tribunal to examine factors for and against revoking the cancellation, and an assessment and evaluation of those factors leading to the formation of a view as to whether the cancellation should be revoked.[3]

177. Greater weight must generally be given to the protection of the Australian community than other primary considerations. Greater weight will also generally be given to the primary considerations.

178. The Tribunal has considered that the protection of the Australian community weighs heavily in favour of cancellation. The Tribunal has assessed the applicant's offending as very serious. While the Tribunal notes the evidence of the low risk of re-offending it has considered this in the context of the nature and seriousness of the criminal offending. The applicant was convicted of several serious offences including the supply of both commercial and indictable quantities of methamphetamine. She also had possession of a prohibited weapon and was convicted of knowingly directing the activities of a criminal group. The offending took place over a period of time and the sentencing remarks indicate that she was the principal of the group which included her co-offenders. The applicant has tried to characterise part of the reason for her offending was the influence and coercive control of her co-offender Phu Dang however the sentencing of the applicant and co-offender does not reflect this. Phu Dang received a lighter sentence. Further the applicant admitted that the motivation for the offence was to make money and that the sale of methamphetamine

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[3] *Gaspar v Minister for Immigration and Border Protection* (2016) [2016] FCA 1166 at [38].

was very profitable. The Tribunal has also found that the Australian community expects that the cancellation of the applicant's visa is not revoked.

179. For reasons set out above the Tribunal considers that the length of time the applicant has lived in Australia, her ties to Mr Johnston and her child AL weigh slightly in favour of revocation. The evidence indicates that AL will be upset if the applicant is removed to China but he will be able to contact her through social media, video and telephone contact. He is an adult, is working on a casual basis and is looking for full time work. With respect to ties to Mr Johnston, the Tribunal considers that it may not be possible for Mr Johnston to resume personal day to day contact with the applicant if she were released into the community at the end of her sentence. The Tribunal is not satisfied that he has the employment or financial capacity to relocate to Sydney and provide support for the applicant in the event she was released into the community. Further he still has responsibility for his elderly mother, and this will restrict his ability to relocate.

180. With respect to the interests of her 15-year-old son, NB, there is little evidence to determine his best interests. However, the Tribunal accepts that his best interests may weigh slightly in favour of revocation on the basis that, if there is ever to be an opportunity to reconnect with the applicant, then it would be easier if the applicant remained in Australia. However, there are many other ways in which relationships can be re-established, for example, through social media, video and audio contact and the prospect of visits overseas. It may be in NB's interests to meet his maternal relatives in China and explore his Chinese cultural background if that were possible.

181. The legal consequences of cancellation effectively mean that the applicant will be unable to apply for another visa other than for a protection visa and she will not be able return to Australia unless the visa bar is lifted. This factor weighs slightly in favour of revocation. There is no submission that the applicant is owed non refoulment obligations but the Tribunal notes that it is open to the applicant to apply for a protection visa.

182. There are impediments the applicant will face if she is removed to China. She will have to re-establish herself and find employment in China. However, there are no language or cultural barriers to re-establishing herself and the evidence indicates that her parents are supportive and can provide her with accommodation. This will initially assist her in re-establishing herself. She has some health issues but the evidence before the Tribunal

indicates that she will be able to access China's healthcare system and will be able to obtain medications for her conditions. This consideration weighs very slightly in favour of revocation.

183. The Tribunal has taken account of the considerations which weigh in favour of revocation, but the Tribunal considers they are outweighed by the considerations of the protection of the Australian community and the expectations of the Australian community. These weigh heavily in favour of affirming the decision under review whereas the strength, nature and duration of ties in Australia, the best interests of minor children, the legal consequences of cancellation and extent of impediments if removed, only weigh slightly in favour of revocation and even considering them cumulatively they do not outweigh the other considerations.

Date(s) of hearing:	6 and 7 November 2025
Date final submissions received:	3 November 2025
Counsel for the Applicant:	Dr J. Donnelly
Solicitors for the Respondent:	Ms S. Edmondstone, Minter Ellison Lawyers