Decision and Reasons for Decision

Administrative Review Tribunal

Applicant/s:	Andy SAMUEL
Respondent:	Minister for Immigration and Citizenship
Tribunal Number:	2025/6376
Tribunal:	Senior Member M Sripathy
Place:	Sydney
Date:	29 January 2026
Decision:	The Tribunal sets aside the decision not to revoke the cancellation of the applicant's Global Special Humanitarian Class BA Subclass 202 visa under s501CA (4) and in substitution decides that the cancellation of the Class BA Class BA Subclass 202 visa is revoked under s501CA (4)

..... Senior Member M. Sripathy

Statement made on 29 January 2026 at 7:32am.....

Catchwords

MIGRATION – *Cancellation of a Global Special Humanitarian Class BA Subclass 202 visa under s 501CA(4) of the Migration Act 1958* (Cth) – *where the applicant does not pass the character test – whether there is another reason to revoke the cancellation – Direction No 110 - protection of the Australian Community – expectations of the Australian Community – strength, nature and duration of ties to Australia – best interests of minor children - legal consequences of decision under review - impediments*

Legislation

Crimes Act 1900 (NSW)

Criminal Law Consolidation Act 1935

Migration Act 1958 (Cth)

Migration Regulations 1994 (Cth)

Cases

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

Suleiman v MIBP [2018] FCA 594

*FHHM v MICMSMA [*2022] FCAFC 19

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

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

Luckman v MICMSMA (2024) FCA 851

Secondary Materials

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

Statement of Reasons

BACKGROUND

1. This is an application for review of a decision of a delegate of the Minister dated 7 November 2025 under s 501CA (4) of the *Migration Act 1958* (Cth) (the **Act**) not to revoke the mandatory cancellation of the applicant's Global Special Humanitarian Class BA Subclass 202 visa (**visa**).

2. The applicant is a 31-year-old Iraqi citizen. He arrived in Australia on 20 June 2002 with his family as the holder of a subclass 202 Humanitarian visa, at the age of 8 years.

3. On 19 March 2025 the applicant was convicted in the District Court of South Australia in Adelaide of an offence of *knowingly engage in money laundering* and received a custodial sentence of 2 years, 3 months, 7 days. On 27 March 2025 the applicant was notified that his visa was mandatorily cancelled pursuant to s 501(3A) of the Act on the basis that he had been sentenced to a term of imprisonment of more than 12 months and was serving a sentence of imprisonment on a full-time basis in a custodial institution.

4. On 28 April 2025 the applicant made representations to revoke the cancellation.

5. On 7 November 2025 a delegate of the Minister made a decision under s 501CA (4) not to revoke the mandatory cancellation of the visa.

6. On 18 November 2025 the applicant sought review of that decision.

7. The Application was heard on 15 and 16 January 2026. Dr J Donnelly, Counsel, instructed by Hanna Legal, appeared for the applicant and Ms C Cloudsdale of Mills Oakley represented the Minister. The applicant appeared and gave evidence by video conference from Yongah Hill Immigration Detention Centre. Evidence was also given by the applicant's sister and brother.

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

9. A Hearing Book in 2 volumes included the following documents, marked as exhibits as follows:

   (a) H1 Respondent's Statement of Facts Issues and Contentions" (RSFIC) filed 9 January 2026

   (b) H2 Applicant's Statement of Facts Issues and Contentions (ASFIC) filed 22 December 2025

   (c) H3 G documents filed 5 December 2025

   (d) H4 Respondent's Additional Documents (R-Documents) filed 9 January 2025

   (e) H5 Documents filed by the applicant filed 22 December 2025

   (f) H6 Additional Documents filed by applicant 12 January 2026

10. For the following reasons, the Tribunal has decided set aside the decision under review and substitute a decision that the cancellation of the Global Special Humanitarian Class BA Subclass 2020 visa is revoked under s501CA (4).

RELEVANT LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) expectations of the Australian community.

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

a) legal consequences of the decision;

b) extent of impediments if removed;

c) impact on Australian business interests.

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

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

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

DOES THE APPLICANT PASS THE CHARACTER TEST?

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

25. On the evidence of the National Criminal History Check [2] the Tribunal finds on 19 March 2025 the applicant was convicted on a charge money laundering and sentenced to a term of imprisonment of 2 years, 3 months, 7 days, with a non-parole period of 1 year, 1 month, 20 days.

[2] H3, G6, p 94

26. The applicant concedes that he does not meet the character test on the basis of his criminal record.[3.]

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

IS THERE ANOTHER REASON WHY THE CANCELLATION SHOULD BE REVOKED?

28. The remaining issue before the Tribunal is whether there is another reason why the cancellation should be revoked. In making its decision on this issue the Tribunal has considered each of the primary and other considerations in accordance with matters referred to in Direction 110 as relevant to the facts of the applicant's case.

Primary Consideration 1: Protection of the Australian Community

29. In considering protection of the Australian community, paragraph 8.1(1) of the Direction requires decision makers to keep in mind that the safety of the Australian community is the highest priority of the Australian Government and that the Australian Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens.

30. The Tribunal is directed to have particular regard to the principle that entering or remaining in Australia is a privilege that this country confers on non-citizens in the expectation that they are, and have been, law abiding, will respect important institutions and will not cause or threaten harm to individuals or the Australian community.

31. Paragraph 8.1(2) states that decision makers should also give consideration to:

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

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

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[3] H2, ASFIC, p 23

32. The majority of the Full Federal Court in *BNY23 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* observed that the phrase 'nature and seriousness of the conduct' should be understood as a composite phrase. This is because the nature of criminal offending may affect its seriousness, and the seriousness of the offending may affect its nature. It was also observed that the risk to the Australian community should the non citizen commit further offences or other serious conduct must be considered in light of that assessment of the nature and seriousness of the conduct to date.[4]

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

The Applicant's criminal offending history

Criminal conviction

33. The offending which led to the cancellation of the applicant's visa relates to the applicant's conviction on 19 March 2025 for money laundering (index offending) for which he was sentenced to 2 years and 8 months imprisonment. This was reduced by 15% to take into account his guilty plea.[5]

34. The Tribunal has considered the circumstances of the offending as set out in the sentencing remarks[6] and RSFIC,[7] substantially drawn from the Prosecution Proposed Factual Basis for Sentencing.[8] The salient elements are as follows. On 15 June 2023, while travelling on route to Sydney from Perth in a truck the applicant and the co-accused were stopped by police, just out of Port Augusta. Two weeks prior (28 May 2023), the applicant and the co-accused, who was the applicant's employee and driver of the vehicle, came to police attention while speeding. The driver was subjected to a drug test and returned a positive result for cannabis. In the context of seeking to issue an expiation notice, the police came to know the truck had changed plate number since the encounter.

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[4] *BNY23 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2025] FCAFC 14.
[5] H3, G7 p107
[6] H3, G7, pp96-97
[7] H1, p 5
[8] H3, G12, pp 200-203

This led police to notify the Heavy Vehicle Enforcement Section and review the Safety Camera network.

35. When he was pulled over by police on 15 June the applicant told the police a story about the transportation of furniture and the movement of the truck that raised suspicions as the truck had been observed on route to Perth with false registration plates attached and his account of their movements did not match observations police had made.

36. The truck was searched on the basis of these suspicions, and among items found were three black sports bags, each locked with a small padlock. The applicant told police the bags belonged to his client and denied having a key to the padlocks. No keys were located. The locks were removed and the bags were found to contain cash in bundles in vacuum sealed bags, totalling the sum of $2,200,070.00.

37. The applicant was sentenced based on the following agreed facts: that the applicant organised the travel to Perth for the purpose of conveying cash back to Sydney; the money did not belong to him; he was aware of the cash in the truck, but not the specific amount. He was aware of its tainted nature, but not the specific source of cash. Investigations did not reveal the original source of the cash or its intended destination. The sentencing judge noted that whilst the applicant did not know the specific amount of cash, having regard to the vast distance to be travelled and that there were three bags, he must have realised it was a significant quantity but accepted it was an isolated instance of offending.

38. The sentencing judge characterised money laundering as a serious offence. The applicant's offending was considered by the judge not to be at the lowest end of seriousness, given the sum of money involved, but neither was it at the highest, having regard to his role, akin to being a courier of drugs.

39. The Tribunal places weight on the sentencing judge's characterisation together with the agreed facts of the offending on which the judge based the sentence.

Other offending or conduct

40. In addition to the index offending, the applicant has a criminal record spanning from 2013 to 2022. His history includes a range of offences mostly relating to driving, traffic and minor

drug possession/drug driving offences. As identified in the RSFIC, this includes two convictions for drive while suspended (8 July 2013, 12 April 2017) and drive while disqualified (21 October 2014; 7 September 2022); two convictions for drive with illicit drug present (4 November 2020; 3 March 2022); and one for possess prohibited drug (7 September 2022) as well as numerous traffic infringements including speeding, unlawful U-turn, not stopping at red arrow.[9] He was sentenced to non-custodial penalties including fines, periods of disqualification, and in 2022 in respect of the last set of offences prior to the index offending, a community correction order and order to undertake a traffic offenders program.[10]

41. The applicant's evidence is that much of his prior offending occurred in the context of his work and financial pressure on him. He provided explanations for specific offences in his Affidavit dated 23 September 2025. Regarding the 2013 and 2014 offences he referred to his young age and pressures on him when he was undertaking his apprenticeship. He noted he was offence-free between 2014 and 2017. He explained the circumstances relating to the offences after 2017 which arose in the context of running his business and conceded that he had made some "foolish decisions".[11] In his oral evidence at hearing, he stated several times that most of his offending was due to financial pressures and had occurred in the context of his work. The respondent submitted that under cross examination the applicant conceded that this contradicted statements in his Affidavit where he gave non-work related reasons for certain offences including that he was young and reckless and that his life was somewhat chaotic.

42. While in prison, the evidence reveals two records of incidents of the applicant having a prohibited drug (suboxone) found in his cell in February 2024 and April 2025 and one positive urinalysis (buprenorphine and cannabinoids) in January 2025.[12] At hearing the applicant denied any drug use while in prison and immigration detention. Under cross examination he accepted that he admitted ownership of the drug when confronted by officers, but sought to explain that he made the admission for the sake of his own security in prison, as he was conscious of being in an unfamiliar environment in a different

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[9] H1, p 6
[10] H2, p 24, H3, p 94-95
[11] H3, G21, pp266-267
[12] H4, pp 361- 362, H4, p367

jurisdiction and did not want trouble with his cell mate. He said he was aware his cell mate was a drug user because he used drugs in his presence. He offered no further explanation for the record of a positive urinalysis result in January 2025, other than to suggest that they these tests were the results of internal analysis, they were not sent to external labs for results and therefore could be unreliable. The applicant maintained that he did not consume drugs in prison or detention.

43. The Tribunal has considered the evidence and the applicant's explanations regarding being found with/using drugs in prison. Apart from the incident report recording these incidents, limited other detail is provided in the records of Department of Corrective Services. While it is mentioned that the applicant would appear before 'the Visiting Tribunal' in relation to the charges, no evidence of such as process is before the Tribunal. The applicant also has provided no other evidence to support his claim of not having used or consumed drugs.

44. On balance, having regard to principle 7(1) of the Direction, directing the Tribunal to give appropriate weight to information from independent and authoritative sources, the Tribunal finds the applicant was found with prohibited drugs in his cell on two occasions based on Department of Corrective Services records, and had one positive urinalysis test during his incarceration. Apart from these three recorded incidents, there is no other evidence of adverse prison or detention behaviour or conduct before the Tribunal nor is there any information to support that he was formally charged with any specific offence in relation to these matters.

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

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

46. Dr Donnelly conceded in his ASFIC[13] and oral submissions that the index offending is properly characterised as serious, having regard to the custodial sentence, large amount of

[13] H2, p 28, paragraph 41

cash involved and the applicant's role in conveying "tainted money" together with the frequency and cumulative impact of his broader offending history.

47. The respondent contended the offending is *very* serious, having regard to the circumstances of the index offence, sentence imposed, and the broader context of his extensive, frequent and increasing in seriousness offending history.[14]

48. The Tribunal below addresses the factors set out in the 8.1.1(1) having regard to the evidence and submissions made by the parties.

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

50. Subparagraph (c) directs the Tribunal to take into consideration the sentence imposed by the courts. The sentencing remarks indicates the count of money laundering contrary to s.138(1) of the *Criminal Law Consolidation Act 1935* is an offence punishable by a maximum penalty of 20 years imprisonment. The applicant was sentenced to 2 years and 8 months imprisonment, reduced by the maximum discount of 15% for the guilty plea. The Tribunal accepts, as conceded by Dr Donnelley for the applicant, that the sentence imposed is materially significant and the imposition of a custodial sentence of itself is an objective measure of seriousness. As stated above, the sentencing judge described the offence of money laundering as a serious offence and referred to the applicant's role that involved using his truck and arranging the travel, as 'crucial', notwithstanding that the expected reward was relatively small compared to the risks he was taking. The quantity of cash being transported was also mentioned in this context. On the other hand, the Tribunal observes and takes into consideration in its assessment of seriousness that the 2 year, 8 month sentence imposed in the context of a 20 year maximum penalty is indicative that the sentencing judge placed the applicant towards the lower end of the range of custodial sentence that could be imposed.

[14] H1, pp 5-6, paragraphs 19-33

51. Subparagraph (d) requires consideration of the impact of the applicant's offending on any individual or specific victim(s). There is no information from a specific victim in the material. In this regard the Tribunal accepts, as referred to in both the ASFIC and RSFIC, money laundering entails many victims and has diffuse societal harms rather than a single named victim. There is no disagreement between the parties of the broader social consequences of the crime of money laundering, including enabling criminals to spend illicit profits from criminal activity including drug dealing, and incentivising illegal activity. Reference is made by the respondent to the Australian Institute of Criminology Report, *Impacts of money laundering and terrorism financing: Final Report* to which the Tribunal has had regard.[15] However, for the purposes of consideration of this mandatory factor, the Tribunal agrees with the applicant's contention this subparagraph is referring to consideration of information about the impact on a specific victim where the applicant has been invited to comment or respond to that information. There is no indication that any such information was provided or put to the applicant for comment in this case.

52. Subparagraphs (e) and (f) require the Tribunal to take into consideration the frequency of the offending and any trend of increasing seriousness, and the cumulative effect of repeated offending.

53. There is no disagreement between the parties that the applicant's criminal offending history spanning from 2013 to 2023 demonstrates increasing frequency and seriousness.[16] The ASFIC notes his criminal record includes multiple entries in 2013, 2014, 2017, 2020, and several in 2022, predominantly comprised of driving offences, together with a number of drug driving and drug possession offences. It is accepted that repeated engagement with the criminal justice system is a relevant seriousness consideration under 8.1.1(e) reflecting, as it does, patterns of non-compliance with legal obligations. It is acknowledged the index offending which occurred in 2023 represents a considerable escalation in seriousness when compared with the earlier history and that objectively, the shift from regulatory and traffic offences to a conviction for money laundering resulting in a sentence exceeding two years' imprisonment is capable of supporting a conclusion of an increasing seriousness trend.[17]

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[15] H4, pp562 -588
[16] H1, p 6 and H2, p26-27
[17] H2, AFSIC, p26-27

54. The respondent submitted that the applicant's extensive record of driving offences and frequency has had a cumulative effect and has caused the police, traffic authorities and courts to invest significant resources addressing the applicant's non-compliance.[18]

55. Having regard to the evidence of the applicant's criminal history and the parties' submissions, the Tribunal finds that the applicant's criminal history from 2013 to 2022, prior to the index offending, predominantly comprising traffic and driving offences, and including drug driving and drug possession, demonstrates increasing frequency and seriousness over the years. The material in the record shows one offence in each of 2013 and 2014 relating to driving while suspended/disqualification, another similar offence in 2017, increasing to three offences in 2020, including driving with illicit drug present. In March and September 2022, the applicant incurred further convictions for driving with illicit drug present and drug possession. The sentencing outcomes also reflect the increasing seriousness of his offending with the imposition of a community corrections order, together with an order to undertake a Traffic Offenders Program in 2022, an escalation from the fines and disqualifications previously imposed.

56. In his oral evidence under cross examination the applicant acknowledged his driving offence history and sought to explain it as mostly work related. In relation of the drug offences, he admitted to using cannabis since his teenage years, and that he came to be a daily user, although he denied using cannabis during work. The Tribunal finds that the criminal offence record appears to contradict that evidence, as it shows that he was charged and convicted more than once over the years with drug driving and possession offences.

57. The Tribunal finds that that the applicant's traffic and driving offences, including involving drugs, placed other road users at risk, and is particularly serious given his line of work as a removalist who was frequently on the road.

58. The Tribunal finds the applicant's record of offending from 2013 until the index offending in 2023 demonstrates conduct of increasing frequency and seriousness.

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[18] H1, RSFIC, p6

59. In relation to the consideration in subparagraph (g), there is no evidence in the material that the applicant provided false or misleading information to the Department by not disclosing prior criminal offending so this consideration is not relevant.

60. Regarding subparagraph (h), the index offending is the first custodial sentence the applicant has received. He has not been subject to a formal warning or otherwise been made aware of the consequences of further offending, although the Tribunal notes that the Direction states that the absence of a warning should not be considered to be in his favour.

61. The applicant's offending and conduct was committed in Australia, so subparagraph (i) is not relevant.

62. On the evidence and considerations referred to above the Tribunal considers the applicant's criminal and other conduct would be viewed by the Australian government and community as serious, and so finds.

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

63. The Tribunal must consider the risk to the community, should the applicant reoffend. Paragraph 8.1.2(1) provides that in considering the need to protect the Australian community (including individuals, groups or institutions) from harm, decision-makers should have regard to the Government's view that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases. Some of the conduct and the harm that would be caused, if it were to be repeated, is so serious that any risk that it may be repeated may be unacceptable.[19]

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

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[19] cl.8.2.2(1)

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

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

66. There is no dispute between the parties, and the Tribunal has found above, that money laundering conduct is serious.

67. In reaching this conclusion, the Tribunal has had regard to the Australian Institute of Criminology Report, *Impacts of money laundering and terrorism financing: Final Report,*[20] and accepts the summary of impacts as set out in the RSFIC:

> *It enables criminals to spend illicit profits from criminal activity, such as drug dealing, in the legitimate economy (R 257); incentivises illegal activity, by enabling funds derived from criminal activities to be deployed in the legitimate economy; increases the economic power and influence of offenders (R 266); directly contributes to the funding of criminal networks, which cause significant and immediate social and economic harm; leads to tax avoidance and fraud; and conceals the end point to which funds travel, such as to criminal syndicates or terrorist networks (R 261).*[21]

68. In the context of the applicant's conduct in the offending, the sentencing judge noted the significant quantity of the money involved was indicative that it was part of a much larger, sophisticated criminal enterprise. but sentenced him on the basis that while he knew it was tainted he did not know the amount, it was not his money and it was an isolated act of offending on his part.[22] Nothing in the material before the Tribunal suggests any basis to find the applicant had any other involvement than to organise the travel to convey the tainted cash.

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[20] H4, pp 562-588
[21] H1, p 7 paragraph 36
[22] H3, p 202

69. The applicant's criminal conduct other than the index offence is limited to traffic, driving and minor drug possession offences dealt with by way of fines and non-custodial penalties, which although increasing in frequency and seriousness over time, did not include any violent or sexual offending.

70. Dr Donnelly argued for the applicant that paragraph 8.1.2(a) is not concerned with seriousness in the abstract but requires attention to the likely type of harm arising from the particular person's prospective conduct. He submitted that, accepting the gravity of the money laundering offence, the case on the evidence is that the feared harm is indirect (facilitation of a third-party enterprise) rather than direct interpersonal violence. This is relevant because the question becomes whether there is evidence that the applicant is likely to re-enter or remain connected to organised criminality such that facilitation type harm is a real prospect and the material does not establish that there is such connection in respect of the applicant. Dr Donnelley contended the applicant's offending was a serious but bounded episode in circumstances of acute financial and personal stress, rather than a continuing embedded criminal identity.[23] For this reason it was contended by Dr Donnelly that though there are serious adverse outcomes if the applicant were to engage in the index offending again, he does not present an unacceptable risk of that occurring.

71. The respondent, on the other hand submitted that the Australian community has a very low risk of tolerance for the serious offence of money laundering, and should the applicant again engage in money laundering, the Australian community would find it unacceptable.

72. The Tribunal has considered the submissions and the material and its task of consideration of the primary consideration of protection of the Australian community. It accepts as contended by the applicant that the Direction does not require the Tribunal to proceed on the basis that any person convicted of a serious offence poses an unacceptable risk. The assessment of whether there is *an unacceptable risk* requires consideration of not only the likelihood of it occurring but also the seriousness of the consequences if it does: *Tanielu v Minister for Immigration and Border Protection* (2014) FCA 673 at [95] per Mortimer J.

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[23] H2, p 30, paragraphs 48-49

73. In this case, the Tribunal accepts that money laundering is a serious offence but finds there is no evidence to suggest the applicant played a role beyond that for which he was sentenced, being as the courier of the tainted funds. There is nothing in the material to suggest he was otherwise connected with the underlying criminal enterprise. In these circumstances the Tribunal is not satisfied, having regard to the nature and seriousness of the harm of the applicant's offending, the risk to the community should he reoffend is of itself unacceptable.

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

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

75. The information and evidence relevant to the applicant's risk of re-offending in the material before the Tribunal are the Sentencing remarks, the Psychologist report of Mr Balfour dated 19 February 2025 and the Parole Report dated 2 May 2025.

76. The applicant and respondent concurred in their AFSIC and RSFIC and submissions that each of these documents assess the applicant as posing a low risk to the Australian community of serious reoffending. However, the respondent contended that a closer examination of the basis for these views cast doubt on several of their foundations and on this basis argued there remains a strong prospect that the applicant will commit further offences of this nature.[24]

77. The sentencing judge formed the view that the risk of the applicant reoffending was low and he had good prospects of rehabilitation based on factors including he had shown remorse, had family support, prospects of employment and lack of prior offending. The sentencing judge relied upon the report of Mr Balfour that was prepared for the sentencing as well as the applicant's counsel's submissions, a letter of apology from the applicant and references from his mother and brother in assessing the applicant's risk of reoffending.

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[24] H1 pp 7-12

78. Mr Balfour placed the applicant in the low range of risk for further legal conflict based on his view of the applicant's criminogenic profile. From his two-hour interview with the applicant, Mr Balfour concluded the applicant did not have any of the traditional core criminogenic risk factors that lead to offending behaviour, such as drug and alcohol abuse or anger management problems. He opined that the applicant had good prospects for ceasing offending for reasons including his observation that the applicant had an overwhelming sense of responsibility for his mother and siblings that had led him to resort to the offending and did not otherwise have an entrenched prior offending history and he did not suffer from a comorbid psychopathology that would complicate rehabilitation. He was of the view that the type of psychosocial problems that led to the applicant's offending behaviour would be responsive to strict community supervision and assertive case management and he was likely to be compliant. Mr Balfour opined that the applicant valued his relationship with his mother and younger siblings; had learned valuable lessons from his offending behaviour and hardships it caused his family and was highly motivated to make amends and be a good role model. Mr Balfour referred to the applicant's personal protective factors including normal intelligence, strong work ethic, and family support and that the risk of deportation is a deterrent.

79. The Parole Report noted the applicant's risk score (RoR) of 7 in April 2025, which meant no further risk/need assessments were undertaken as the cut off score was not reached. However, the report records that despite this result from a Departmental assessment tool, the case officer disagreed with this assessment and expressed an opinion that it be changed and, if released on parole additional conditions be imposed including electronic monitoring , curfews and he be required to undertake substance abuse counselling .[25] The case officer recorded their opinions that the applicant had a history of cannabis, cocaine and buprenorphine abuse, did not demonstrate appropriate victim insight and presented with antisocial/pro criminal attitudes manifesting through a disregard for the law, authority, rules, and a disregard for the impact of his offending on society. The report indicates reliance on police records that led the officer to suspect the applicant was not forthcoming about the extent of his involvement with pro criminal peers, noting a reference to the applicant having been a victim of a recent shooting where shots were fired into his residence, and a note that this would appear to be 'highly irregular and suggests involvement with organised crime'.

[25] H4, p 379

80. In his oral evidence before the Tribunal the applicant confirmed he was the victim of a shooting incident, directed at his family home some 6 or 7 years prior to the index offending. This timeline is consistent with material provided under summons by NSW Police on 16 January 2026 recording a firearms incident at the applicant's address on 7 February 2016. The Tribunal observes this incident took place more than 7 years prior to the index offending. There were no records of any other shooting incidents in the NSW Police records.

81. The Tribunal observes the applicant was released on parole on 14 May 2025 by the Parole Board, and the decision did not include additional conditions suggested by the case officer.[26]

82. The Tribunal has considered the content and basis for the parole case officer's expressed views and finds it is not supported by the criminal history, documentation relevant to the index offence, police records produced under summons included in the evidence, applicant's evidence or the final Parole Board decision.

83. On the weight of the material before it, the Tribunal accepts that the applicant has a history of drug use. Although he denies using buprenorphine, Corrective Services records indicated suboxone was detected in his cell on two separate occasions. He acknowledged in his own evidence he has in the past been a daily cannabis user and, less frequently, used cocaine, and this is consistent with his criminal history record and interactions with NSW Police as documented in the COPS records provided under summons.

84. Neither the sentencing judge nor psychologist characterised the applicant's drug history as significantly serious or problematic as such. The Tribunal relies on the evidence before it, and does not concur with the parole officer's view on this matter.

85. On the question of remorse, the respondent contends the Tribunal cannot be satisfied the applicant is meaningfully remorseful on the basis that he only referred to having let down and disappointed down his mother and siblings rather than the community at large by his offending. Reference is also made to a similar comment made to the parole case officer,

[26] H4, R5, p367-368

that he only cares about what his family think of him and not the community. The applicant reiterated this sentiment to the Tribunal.

86. The Tribunal considers the applicant's expression of remorse by reference to disappointing his family does not diminish his regret or remorse. It is prepared to accept that from his perspective his family is his community and his expression of remorse by reference to them is significant and relevant in his circumstances.

87. Consistent with the sentencing judge and psychologist the Tribunal accepts the applicant understands the gravity of the offending, its impact both on his immediate family and the community more generally and that he is genuinely remorseful for and regrets his actions. His generally favourable behavioural record while incarcerated (excluding the two incidents of detection of drug in his cell) and detained is also consistent with this.

88. On the question of rehabilitation achieved to date, the evidence before the Tribunal is that the applicant has undertaken and completed several courses before and during his period of incarceration and detention.

89. The Tribunal accepts on the evidence that the applicant completed a Traffic Offender's program twice over the years, most recently as a result of being ordered to do so in September 2022. The criminal history records shows no further driving offence since then, although the applicant in his oral evidence acknowledged that the completion of the course initially did not stop him from committing further traffic and driving offences.

90. Since the index offending he completed a Making Changes on the Inside program, involving two hour group therapy sessions for 6 weeks. While in immigration detention he has undertaken several online courses, for which certificates have been submitted, addressing topics and issues including Drug and Alcohol-Awareness and Prevention: Domestic Violence and Abuse Awareness; Effective Cashflow Management in a Crisis; and Social Crime Awareness and Prevention. The Tribunal accepts he has undertaken these courses as evidenced, however it acknowledges and accepts the submission by the respondent that these courses are by their nature and scope limited and superficial in substance. While demonstrative of an initiative to address gaps and issues in his understanding of the stresses and underlying causes for his offending behaviour the Tribunal does not place great weight on these courses and programs, alone, on reducing the likelihood of risk of re-

offending. On the other hand, it finds that he his responsibility to family, employment prospects and remorse are far greater factors in favour of his prospects for rehabilitation.

91. The applicant has not been in the community at all since the index offending, as he was released into immigration detention upon release from prison, and therefore no weight can be given to time spent in the community since the most recent offence.

92. Overall, having regard to the seriousness of the offending and the level of risk posed by the applicant, which it considers is low, the consideration of the protection of the Australian community weighs against revocation of the cancellation of the applicant's visa, but is tempered in the Tribunal's view by the low risk of reoffending.

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

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

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

94. Paragraph 8.3 of the Direction provides:

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

The applicant's family in Australia

95. The applicant has all his immediate family, comprising his mother and five siblings, including two minor brothers in Australia who are all Australian citizens. His father is also in Australia, but the applicant's evidence is that he has no relationship with him.[27] Prior to his arrest and incarceration in June 2023 the applicant lived with his mother and younger siblings. He only ever lived with his mother and siblings since his arrival in Australia.

96. The applicant's oral evidence and written evidence in his Affidavits and Statements[28], and as recorded in the reports of the psychologist and parole officer referred to above, consistently describes the background and nature of his relationship with is immediate family in particular. The Tribunal accepts on this evidence that he witnessed, and was himself a victim of, domestic violence at the hands of his father. It accepts that, with his younger brother, as a young adult he stood up to his father and effected his removal from the family home. The Tribunal accepts that because of the circumstances of family violence and his father's alcohol and gambling addictions he was forced to step into a father figure role from a young age, particularly in relation to his younger brothers.

97. This account of his family composition and history is corroborated and supported in the Affidavits of his mother, sister and brother before the Tribunal.[29] It is also consistent with the history provided to the psychologist and parole officer as recorded in their reports.[30]

98. The applicant's sister in her written and oral evidence spoke of the closeness of her relationship with the applicant and that he was a father figure to her when she was young. She told the Tribunal he came to all of her school and dance events and encouraged her to work hard. She said that everyone in the family went to him for their needs, and he was the financial provider for the family. She gave evidence about the struggle and hardship experienced by the family since he has been in custody and detention and the adverse impact the absence of the applicant has had on her younger brothers. She also spoke of the impact on her personally because she was more close to him than to any of her other brothers. She gave evidence that she had recently started her own café business and is

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[27] H2, p34, ASFIC, paragraph 73
[28] H3, pp 234-240, H 5 p 594 -598
[29] H3 pp242-264
[30] H3 p178- and H4 p 61-

under her own financial pressures from that. The witness told the Tribunal that the whole family is struggling and recently had to move because they were unable to afford the rent. The applicant will be able to contribute income if he is released from detention and this would ease the financial pressure for the family. He would also be able to provide guidance and discipline for her youngest brothers, which has been lacking since his absence.

99. The applicant's brother gave written and oral evidence. In his oral evidence he spoke of the significant role the applicant played as financial provider for the family as well as providing emotional support. He said he has tried to step in provide financial support to his mother and brothers but it has been very difficult. He confirmed that if the applicant is released he has a job for him in his business and his business is doing well and there is plenty of work. He considers the applicant not only as his brother but also his best friend and he will be fundamentally affected by the decision not to revoke cancellation of his visa.

100. The Tribunal finds on the evidence that the applicant's entire immediate family is in Australia. It accepts that, as a result of a history of family violence and abuse, the applicant stepped into the head of family role, providing emotional, practical and financial support to the family from a young age. Given this, it is overwhelmingly apparent on the evidence that the impact of the revocation of cancellation decision on his immediate family members is substantial. The Tribunal accepts that it will impact his immediate family emotionally, practically and financially. They will lose a substantial financial provider, and the effective family head. The applicant's mother who is a survivor of long-term family violence will lose a significant emotional and practical support in her eldest son.

101. The respondent concurs in their submissions that there will be a clear emotional, practical and financial impact on the immediate family which is a demonstrably close-knit family.

102. The Tribunal finds that the impact on immediate family members is significant and this weighs strongly in favour of revocation of the cancellation of the visa.

Strength, nature and duration of other ties

103. Paragraph 8.3(2)(a) requires the Tribunal to have regard to the length of time the non-citizen has resided in Australia and give less weight where the offending began soon after arrival;

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

104. The applicant in this case has been in Australia since he was 8 years of age, over 23 years. As submitted by Dr Donnelly that is ¾ of his life. He has all of his immediate family and a substantial extended family here in Australia. He has not departed Australia since his first arrival. His entire education and work history is here. His evidence is that he has worked consistently since leaving school at the age of 16 years and established and ran his own business from 2014 until he was taken into custody. In his Affidavit evidence, and interviews with the psychologist and parole office, he provided substantially consistent evidence of the trajectory of his employment and business history.

105. The ASIC Current and Historical Company Extract records an initial registration of business in February 2014, and a change of name in 2021.[31] His oral evidence was that he left school to take up a cabinet making apprenticeship prior to that, which he did for some 3 years before leaving to work for a friend for a higher wage. The respondent notes that there is no supporting evidence of his employment and business history.

106. Despite the absence of supporting evidence or character evidence from employers or relating to his business, the Tribunal is satisfied that the material supports a finding that the applicant has been working or engaged in business consistently from the age of 16 years and was the primary financial provider for his family since leaving school. The sentencing judge was satisfied with the history recounted in Mr Balfour's report of his background and work history and the ASIC Company Extract records registration supports the timeline recounted by him. In his oral evidence he referred to employing up to 6 employees in his business. The Tribunal acknowledges that no documentary evidence supporting this claim is before it, other than the evidence in the sentencing remarks that his co-offender was employed by him.

107. The respondent contends that the applicant's offending history commencing in 2013 with general traffic and driving infringement offences and this history shows a clear disregard for

[31] H4, p 251

Australian road rules and laws and is a basis for affording less weight than would otherwise be given to the duration of residence.

108. The Tribunal has considered this contention, but does not accept it. It finds that the circumstances of the applicant having arrived in Australia in childhood and having resided continuously here since then for 23 years is a substantial duration of residence. His criminal offending commences from 2013, but was initially one relatively minor driving and traffic infringement respectively in the years 2013 and 2014, and not another until 2017. Taken in the overall context of his residency since childhood, the Tribunal does not find that this earlier driving and traffic offending history warrants less weight to be given to this consideration. While the frequency and seriousness of his driving offences increased over time and cumulatively demonstrate a concerning disregard for Australian rules and laws, the Tribunal finds that this cumulative assessment of seriousness occurs at a later point in time.

109. The Tribunal takes into consideration that since leaving school at 16 years, the applicant contributed positively to the Australian community by engaging in gainful employment and supporting his mother and younger siblings in the face of the destructive impact and harm of family violence they all experienced. Furthermore, the Tribunal considers his role in protecting his mother and providing emotional, practical and financial support enabling the family to stay together warrants favourable consideration as a positive contribution under this consideration as directed in subparagraph 8.3.(2)(a)(ii).

110. Paragraph 8.3(2)(b) requires the Tribunal to have regard to the strength, duration and nature of any family or social links with Australian citizens, Australian permanent residents and/or people who have an indefinite right to remain in Australia.

111. In addition to his immediate family, the evidence indicates the applicant has extended family members in Australia including 3 grandparents, 8 aunts and uncles and more than 30 cousins.[32]

112. Although no supporting statements were provided addressing the impact of the decision on these family members, the Tribunal accepts that his substantial extended family,

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[32] H3, p 228

including grandparents and elderly aunts and uncles will be impacted by the permanent exclusion of the applicant from Australia if the cancellation is not revoked.

113. Overall considering the evidence and findings above, the Tribunal places significant weight on the applicant's strength duration and ties to Australia and particularly the substantial and profound emotional, practical and financial impacts on the applicant's immediate family of a decision not to revoke the cancellation and the substantial duration and contribution of his residency in Australia prior to the index offending.

114. The Tribunal weighs this factor strongly in favour of revoking the cancellation of the visa.

Primary Consideration 4: Best Interests of Minor Children in Australia

115. Paragraph 8.4 of the Direction requires a decision-maker to consider whether a decision to refuse or not revoke cancellation of a visa is in the best interests of a child (under 18) affected by the decision. The Direction requires that the best interests of each child must be considered individually if there are more than one minor child/ren identified.

116. Relevant children for the purposes of this primary consideration are the applicant's two youngest brothers who are still minors, now aged 15 and 17 years. The applicant has no children of his own and has not provided details of any other relevant minor children.

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

118. Paragraph 8.4(4)(a) refers to the nature and duration of the relationship between the child and the applicant. It provides that less weight should generally be given where the relationship is non parental and/or there is no existing relationship, long periods of absence, or limited meaningful contact. The applicant is the older brother of the relevant minors in this case and therefore the relationship is not biologically parental. The respondent contends that the minors are parented by their mother and also have other older siblings who support them. Dr Donnelly in his submissions points to the evidence in the material that supports the parental role the applicant has long played in his family and with regard to the relevant minors in particular, including attending parent teacher interviews, taking them to soccer training and being their main financial provider.

119. The applicant's sister and mother have also given in their Affidavits, evidence of the significant father figure role the applicant has and has had in the family. His mother referred to the boys struggling in school in the applicant's absence.[33] His sister's Affidavit spoke of the reliance of her younger brother's on the applicant for guidance and his father-son relationship with them as a result of the absence of their own father.[34] In her oral evidence she spoke about the how her younger brothers need the guidance only the applicant can provide in the family, because of the position of respect he holds. The applicant's brother in his oral evidence agreed that he has stepped in for the applicant, and tries to fulfil the role that he played, including as financial provider for the family.

120. The Tribunal accepts that the applicant has lived with, and been a father figure, in both relevant minors' lives for many years and his mother and sister have provided evidence of the impact of his absence on them. This role has been taken up at least in some part by the applicant's brother in his absence. The Tribunal accepts the applicant has a longstanding significant role in his younger brothers' lives as a father figure and is likely to continue to have this role if his visa is reinstated and on this basis it gives weight to this factor.

121. Subparagraph (b) relates to the extent to which the applicant is likely to play a positive parental role in the future. The evidence before the Tribunal is that the applicant intends to return to live with his mother, sister and younger brothers and it is likely he will return to his previous role in respect of each of them. However, given that the elder of the two brothers is now 17 years and has left school, notwithstanding the significance of this age in the transition to adulthood, for the purposes of this assessment the Tribunal gives less weight to this factor in respect of him. The younger of the two is 15 years, and still has several years before he turns 18 and completes his schooling, and so this factor is given some weight.

122. In respect of the factor in subparagraph (c), concerning the impact of the applicant's prior conduct, and any likely future conduct, and whether the conduct has or will have a negative impact on the child. The Tribunal observes there is no evidence before the Tribunal what knowledge either of the two boys have of the applicant's prior conduct or

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[33] H3, p 247, paragraph 48
[34] H3, p253, paragraph 33

offending history, nor evidence of what impact it may have on them. Accordingly, the Tribunal gives no weight to this factor.

123. Subparagraph (d) requires the Tribunal to consider the effect that any separation from the non-citizen would have on the child, taking into account the child's or non-citizen's ability to maintain contact in other ways. Dr Donnelly points the Tribunal to the evidence of his mother that the boys have been struggling at school in the applicant's absence[35] as an indicator that the separation has had an adverse impact to date. Having accepted that the applicant has played a significant parental – type role in his younger brother's lives, in practical, financial and emotional ways, it is difficult to see how this kind and level of support can be sustained by contact in other ways were he to be excluded from Australia if the cancellation is not revoked. While he can still offer emotional support and guidance by other means of communication, he is likely to have less effect and relevance in their lives from afar. The Tribunal gives this factor some weight, particularly in respect of the younger of the two boys.

124. In respect of subparagraph (e), the information before the Tribunal indicates both minor children live with their mother and older sister and their other brother provides support, including financial and practical assistance. Dr Donnelly, in his submissions argues that this factor is directed to whether others fulfil the parental role such that separation from the applicant is of little consequence and it is not in this case. The Tribunal accepts that the evidence indicates the minors continue to be supported by their mother, sister and other brothers, but that they are all struggling, financially and emotionally due to the applicant's absence because of the particular and significant 'family head' role he played in the family. The oral evidence of the sister and brother support this. This factor is given some weight accordingly.

125. There are no known views of either of the relevant minors before the Tribunal (subparagraph (f)), nor is there any evidence that either of the minors have been or is at risk of being exposed to family violence, abuse or neglect by the applicant, or suffered any trauma (subparagraphs (g) and (h).

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[35] H3, p247, paragraph 48

126. The Tribunal has considered the evidence and considerations above in respect of each of the minors, and concludes that, given the significant parental role the applicant played in the family, the best interests of both the children weigh in favour of revocation of the cancellation in this case. However, the ages of the minors, being 17 and 15 respectively, moderates the weight it gives this factor somewhat.

Primary Consideration 5: Expectations of the Australian Community

127. This consideration makes clear that the Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has engaged in serious conduct in breach of this expectation, or where there is an unacceptable risk that they may do so, the Australian community, as a norm, expects the Government to not allow such a non-citizen to enter or remain in Australia. Subparagraph 8.5 (4) goes on to state that this consideration is about the expectations of the Australian community as a whole, and in this respect, decision-makers should proceed on the basis of the Government's views as articulated above, without independently assessing the community's expectations in the particular case.

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

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

130. The Tribunal finds that the applicant's offending does not come within any of the specified conduct set out in subparagraph (2) of 8.5. However, as discussed and accepted above under the protection of the Australian community consideration, the applicant's conviction for *knowingly engage in money laundering* particularly involving a substantial sum and the nature of his particular role in the offending, constitutes serious conduct and the Australian community would expect that the applicant not be allowed to remain in Australia.

131. There is no dispute between the parties regarding this consideration.[36]

132. The Tribunal weighs this consideration of expectations of the Australian community against revocation of the cancellation of the visa.

Other considerations

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

9.1 Legal consequences of the decision

Legal consequences

134. The Tribunal accepts that a legal consequence of the decision not to revoke the cancellation of the visa is that the applicant will remain in immigration detention as an unlawful citizen and will be liable for removal from Australia as soon as reasonably practicable: s198 of the Act.

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

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

137. The Tribunal considers that the above legal consequences of the decision, are significant, and weighs in favour of revocation.

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[36] H2, Applicant's SFIC pp 42-43 and H1, Respondent's SFIC p 17

Non-refoulement obligations

138. The Direction also sets out considerations specific to circumstances involving protection obligations and/or non-refoulement obligations, where an applicant has been found to be owed protection through a protection visa application and where there is not a protection finding and the applicant has raised claims that may give rise to non-refoulement obligations.

139. In the present case the applicant has not been found to be owed protection though a protection application. He has raised claims of fear of persecution in Iraq for reasons of his religion, being Christian (Catholic).[37] In his written evidence[38] and confirmed in his oral evidence, the applicant stated that he is Catholic and his family were and are practising Christians in Iraq and in Australia. His mother goes to church regularly and took them to church as children. He gave evidence that he has a tattoo of a Christian cross on his back. Under cross examination he conceded that he does not now go to church often but says he prays.

140. The respondent submitted that the extent that the applicant would be persecuted for his religion would need to be carefully assessed having regard to the genuineness of his religion claim, relevant country information and the protection criteria. Noting that the applicant foreshadowed that he may lodge a protection visa application, it is contended the appropriate course is for the Tribunal to proceed on the basis that it is open for the applicant to apply for protection and have his protection claims assessed in that context.

141. Dr Donnelly argued that the applicant's fear of persecution on the basis of his Christian religion is objectively supported by country information, citing the DFAT Country Information Report on Iraq and other more recent articles and materials that have been put forward. He contends that while it is open to the Tribunal to defer consideration of his protection claims to an assessment under that process, it is still open to the Tribunal to find that the applicant may face risk of some harm or discrimination if returned, outside of non-refoulement obligations, not necessarily rising to the level of serious or significant harm.

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[37] H2, Applicant's SFIC, p 49 paragraphs 152-154

[38] H3, p 239 paragraphs 6 and 52 and H5, p 597 paragraphs 38-41

142. Paragraph 9.1.2 of the Direction provides that where claims giving rise to non-refoulement obligations are raised in a request to consider revocation of cancellation they must be considered. This is the case even if it is open to the applicant to apply for a protection visa, although it is not necessary to consider non-refoulement obligations in the same level of detail as those issues may be considered in a protection visa application.

143. The applicant has raised claims giving rise to non-refoulement obligations in this matter. The Tribunal accepts that the applicant is from a Catholic Christian family, and that prior to coming to Australia in 2002, his family left Iraq for Greece for reasons of religious persecution. Although on his evidence at hearing he is not presently actively practising his religion, the Tribunal accepts he is still affiliated to the Christian religion by his long family history. Although it has not sighted his tattoo on his back, and no evidence of this is before the Tribunal, it is prepared to accept on his sworn evidence that he has one and this also marks him as a Christian.

144. The Tribunal has noted the information included in the material before it, being the DFAT Country Information Report on Iraq.[39] This information is somewhat dated, being current to 16 January 2023. Although Dr Donnelly made reference in his submissions to more recent articles and information put forward, this does not appear to be included in the evidence before the Tribunal. The DFAT Report refers to the substantially reduced population of Christians in Iraq since the 2003 US led military action, following which there were various waves of violence that targeted and displaced Christians, particularly during the reign of Da'esh in 2014-2017. It is reported that consequently large numbers of Christians left Iraq and there are fewer than 300,000 remaining, of which Assyrian Catholics number around 20%. The report assesses that Christians face a moderate risk of societal discrimination and violence in areas where they are a minority, including as targets of violent crime, kidnapping and extortion. Those living in areas where violence continues, or who have been displaced, face a risk of societal violence similar to that faced by other groups living in those areas or situations.[40]

145. Noting that a non-refoulement assessment in this process is not required to be at the same level of detail as would be considered in a protection visa application, and the Tribunal is

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[39] H5, p654, 672 paragraphs 3.41-3.45
[40] Ibid, paragraph 3.45

limited to consider the evidence before it provided by the parties, it accepts that as a member of a religion that has a long history of persecution in Iraq in the recent past, he would be at some risk of harm because of his minority religion and/or vulnerability as a returnee from the west with no family support, even if the harm and risk does not rise to the level of a real chance or real risk or serious or significant harm as required for the purposes of the s36(2) and (2aa) criteria.

146. The Tribunal gives this consideration some weight in favour of revocation of the cancellation.

9.2 Extent of impediments if removed

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

148. The applicant is 31years old. The Tribunal accepts on the evidence before it that he was exposed to, and experienced, significant family violence in his childhood perpetrated by his father. The report of Mr Balfour indicates that his presentation and personal history satisfy the diagnostic criteria for complex Post Traumatic Stress Disorder (PTSD)[41], although in his oral evidence the applicant conceded that he had not read that report and did not have an understanding of what this diagnosis meant. He confirmed he has never sought nor had any treatment for it or any other psychological condition. Mr Balfour also proffered a diagnosis of parentification, which he described as a long-term effect of a type of child abuse where children are compelled to assume adult roles and responsibilities. In respect of each of these conditions the psychologist suggested the applicant would benefit from psychological treatment.

149. Dr Donnelly contends that removal away from his family, combined with his religious minority status in Iraq and absence of support will exacerbate his mental health issues. It was contended that these mental health vulnerabilities bear directly on his capacity to

[41] H3, p139

establish himself, maintain stability and function effectively in a new environment without his Australian supports.

150. In his written and oral evidence the applicant expressed his concerns about being returned to Iraq. He stated that he has not been there since he was three years old and has no immediate or extended family there to his knowledge. He fears deterioration in his mental health and mental wellbeing if separated from his mother and siblings and does not know how he will cope. He fears for his physical safety because of his membership of a Christian religious minority and stated that he does not speak fluent Arabic and will be disadvantaged by that also. He has concerns that his lack of qualifications will make finding employment difficult.

151. The respondent acknowledged the applicant would face hardships on return to Iraq given he has spent the majority of his life in Australia and has minimal connection with that country having left at the age of three years, and his immediate family are all here. It is also acknowledged that he suffers traumas from his childhood as the victim of domestic violence perpetrated by his father. However, it is contended that he is otherwise a healthy young man, educated to year 10 level, physically fit, and has an established employment history as a removalist, indicating he is resourceful and would be capable of forging a reasonable standard of living. In closing submissions, the respondent accepted that there are impediments on removal that would weigh in favour of revocation of the cancellation.

152. Having considered the evidence and submissions of the parties, the Tribunal accepts that the applicant's prolonged absence from Iraq, lack of family or community support, membership of a religious minority and mental health vulnerabilities arising from his experience of childhood domestic violence are all impediments the applicant would face in establishing himself and maintaining basic living standards in Iraq if removed from Australia.

153. The Tribunal considers the extent of impediments if removed are significant in the applicant's case and weigh in favour of revoking the cancellation of the visa.

9.3 Impact on Australian Business interests

154. This consideration requires the Tribunal to consider any impact on Australian business interests if the applicant is not allowed to remain in Australia, noting that an employment

link would generally only be given weight where the decision would significantly compromise the delivery of a major project or delivery of an important service in Australia.

155. The evidence before the Tribunal is that the applicant's own business is no longer in operation. In his oral evidence, corroborated by the evidence of his sister, the business was initially operated by one of his brothers after he was arrested and taken into criminal custody. This brother struggled to manage it. The ASIC Current and Historical Company Extract indicates its status as: 'strike off action in progress.'[42]

156. The respondent contends that this consideration is not relevant in this matter as there is no business interests identified, and the Direction is specific as to when employment links can be given weight. Dr Donnelly, on the other hand submits that recent caselaw provides that *any* impact on a business in Australia can be considered under this factor, citing the judgement in *Luckman v MICMSMA*[43] which helpfully sets out relevant authorities on this point.

157. The applicant's evidence, supported by the witness, his brother, is that his intention if released is to work as an employee for his brother. He told the Tribunal that he has no intention of seeking to run his previous business or any business as he identifies the problems and financial pressures he faced in that context was the underlying reason for his offending and by not putting himself in that position again he is confident he will not fall under that pressure again.

158. The witness, his brother gave evidence that he owns and operates an electrical business installing solar panels. He stated that his business is doing well and there is plenty of work and he is able to offer the applicant employment. No supporting evidence regarding his business and its status or circumstances is before the Tribunal. There is no evidence that employment of the applicant, who does not appear to have any relevant qualifications for such a business, is critical for the business in any way such that his employment would warrant being given any weight in this assessment.

159. Therefore, the Tribunal gives this consideration neutral weight in his consideration.

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[42] H4, p 559
[43] (2024)FCA 851 at [28]-[36]

Findings on Considerations

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

- The nature and seriousness of the applicant's conduct weighs significantly against revocation of the cancellation of the visa. While protection of the Australian community against serious criminal conduct of the kind committed by the applicant weighs against revoking the cancellation of the visa, the Tribunal found that the risk to the Australian community of the applicant reoffending is low.
- There was no evidence of family violence in this case and this consideration is not relevant to the Tribunal's decision.
- The strength, nature and duration of ties to Australia weighs strongly in favour of revocation of the cancellation of the visa;
- The best interests of relevant children weighs in favour of revocation of the cancellation, only moderately in so far as the 17 year old.
- The expectations of the Australian community weighs moderately against revocation of the cancellation of the visa.

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

- The legal consequences of the decision weigh in favour of revocation of the cancellation of the visa;
- The extent of impediments if the applicant is removed weighs substantially in favour of revocation of the cancellation; and
- Australian business interests is neutral in this assessment.

CONCLUSION

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

163. Paragraph 7 of the Direction gives guidance on how the relevant considerations should be weighed and applied. Judicial authorities have considered the exercise of balancing and weighing considerations in the relevant Ministerial Directions. In *Suleiman v MIBP* the Court referred to the appropriate weight to be given to primary and other considerations, stating that what is required is,

> *an inquiry as to whether one or more considerations should be treated as being a primary consideration, or the consideration to be afforded greatest weight in the particular circumstances of the case because it is outside the circumstances that generally apply*.[44]

In *FHHM v MICMSMA* the Ful Court endorsed the approach in *Sulieman*, framing the question as,

> *whether there was some reason why the general circumstance where the primary considerations should be given greater weight than the other considerations should not apply when it came to weighing the various considerations that were relevant to the particular case*.[45]

164. In *CRNL v Minister for Immigration, Citizenship and Multicultural Affairs*[46] the Full Court stated that compliance with the Direction is not achieved by focussing upon individual considerations attributing some form of weight to that consideration in isolation. The task of the Tribunal is to *bring together the considerations as part of a single evaluation of their relative significance thereby weighing them all together*.[47] The Court went on to state:

> *The balancing process is directed to determining whether there is "another reason" why the visa cancellation should be revoked. It requires an identification of the matters that may constitute "another reason" and bringing to bear the considerations that the Direction requires the Tribunal to take into account where relevant in determining whether or not the Tribunal is satisfied that there is another reason (or*

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

reasons) to revoke the visa cancellation. Some of the considerations set out in the Direction, where relevant, may weigh in favour of revocation, and so may constitute "another reason" capable of supporting the state of satisfaction required in order for revocation under s 501CA(4)(b)(ii) to occur. But whether they do qualify as a reason of that kind will need to be assessed in the context of different considerations set out in the Direction which may weigh against revocation, where relevant. That is why it is appropriate to describe it as a process of weighing and balancing.

165. In bringing together the considerations as part of a single evaluation as required in *CRNL* the Tribunal finds the nature and seriousness of the applicant's conduct weighs against revocation of the cancellation of the visa but in this case it is tempered by the finding that the risk to the Australian community of the applicant reoffending or committing other serious conduct is low. Without minimising the significance and seriousness of the index offending of money laundering which has broad social and economic consequences across the community, the Tribunal takes into account the absence of any evidence to link the applicant to any larger organised criminal enterprise and there is no evidence of any offending involving violence or sexual crime. Therefore while the Tribunal weighs the primary considerations of protection of the Australian community against criminal and other serious conduct and expectations of the Australian community, against revocation in this matter, these considerations in this case are *not* outweighed by the primary considerations of the applicant's strength, nature and duration of ties to Australia, and best interests of relevant minor children, that weigh in favour of revocation of the cancellation primarily because of the duration of residence and significant impact on the applicant's Australian citizen mother and younger siblings who would be adversely affected by the decision. The primary consideration relating to family violence does not arise. The other considerations, of legal consequences of the decision and extent of impediments all also fall on the side of the scale in favour of revocation, and impact on business interests is neutral.

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

DECISION

167. The Tribunal sets aside the decision not to revoke the cancellation of the applicant's Global Special Humanitarian Class BA Subclass 202 visa under s501CA (4) and in substitution decides that the cancellation of the Global Special Humanitarian Class BA Subclass 202 visa is revoked under s501CA (4).

Date of hearing:	15 and 16 January 2026
Date final submissions received:	12 January 2026
Counsel for the Applicant:	Dr J Donnelly instructed by Ms O Branson, Hanna Legal
Solicitors for the Respondent:	Ms C Cloudsdale, Mills Oakley