

**Applicant:** Shiyong Lin

**Respondent:** Minister for Immigration and Citizenship

**Tribunal Number:** 2025/5199

**Tribunal:** Senior Member A. Nikolic

**Place:** Melbourne

**Date:** 11 May 2026

**Decision:** The reviewable decision is affirmed.

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

Senior Member A. Nikolic

### **Catchwords**

*CITIZENSHIP – application for conferral of Australian citizenship – citizen of China – whether Tribunal satisfied of Applicant’s good character – Australian Citizenship Act 2007 (Cth) – where Applicant entered Australia under a false identity and fraudulent passport – where Applicant did not disclose identity for several years – conviction for conspiracy to import commercial quantity of border-controlled precursor – evidentiary concerns – Tribunal not satisfied Applicant is of good character at time of decision – decision affirmed*

### **Legislation**

*Administrative Review Tribunal Act 2024 (Cth)*

*Australian Citizenship Act 2007 (Cth)*

*Migration Act 1958 (Cth)*

*Nationality Act 1920 (Cth)*

### **Cases**

*BOY19 v Minister for Immigration and Border Protection* (2019) 165 ALD 39

*Briginshaw v Briginshaw* (1938) 60 CLR 336

*DPP v He* [2015] VCC 1473

*Duncan v New South Wales* (2015) 255 CLR 388

*Falzon v Minister for Immigration and Border Protection* (2018) 262 CLR 333

*Grass v Minister for Immigration and Border Protection* (2015) 231 FCR 128

*HZCP v Minister for Immigration and Border Protection* (2019) 273 FCR 121

*Irving v Minister for Immigration, Local Government and Ethnic Affairs* (1996) 68 FCR 422

*Lenahan, Ex parte* (1948) 77 CLR 403

*Lim* (1992) 176 CLR 1

*Minister for Home Affairs v G* (2019) 164 ALD 103

*Minister for Immigration and Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507

*Muller v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCA 924

*Re Drake and Minister for Immigration and Ethnic Affairs (No 2)* (1979) 2 ALD 634

### **Secondary Materials**

Department of Immigration and Border Protection, *Australian Citizenship Policy Statement* (27 November 2020)

Refugee, Citizenship and Multicultural Programs Division, Department of Home Affairs,  
Revised Citizenship Procedural Instructions (26 February 2021); Citizenship Procedural  
Instruction 15 – Assessing Good Character under the Citizenship Act

## Statement of Reasons

### INTRODUCTION

1. The Applicant has asked the Tribunal to review a decision by a delegate of the Respondent to refuse his application for Australian citizenship. This decision was based on the good character requirement at s 21(2)(h) of the *Australian Citizenship Act 2007* (Cth) (**the Act**).
2. The hearing was conducted by video on 24 April 2026. The Applicant was represented by Dr Jason Donnelly of counsel, acting on a direct access basis. The Respondent was represented by Mr Edward Elliot of counsel, instructed by Hunt and Hunt Lawyers.
3. For the following reasons the reviewable decision is affirmed.

### BACKGROUND AND PROCEDURAL HISTORY

4. The Applicant is a 45-year-old citizen of the People's Republic of China (**China**).<sup>1</sup> He first arrived in Australia on 20 March 2006 and concedes he used 'a *fake identity and fraudulently obtained* [Japanese] *passport*' for this purpose.<sup>2</sup>
5. On 14 October 2015, the Applicant was convicted of '*Conspiracy to import a commercial quantity of a border-controlled precursor, pseudoephedrine*'.<sup>3</sup> He was sentenced to seven years' imprisonment, with a non-parole period of four years and six months. His wife, Ms Xiao Yu He, was also imprisoned as a co-conspirator.<sup>4</sup>
6. On 4 October 2024, the Applicant lodged his citizenship application.<sup>5</sup>
7. On 1 May 2025, the Respondent invited the Applicant to comment on matters relevant to assessing his character. He did so on 5 May 2025.<sup>6</sup>

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<sup>1</sup> Exhibit R1, 220.

<sup>2</sup> Ibid 2 [3], 195.

<sup>3</sup> Ibid 149 – 184; *DPP v He* [2015] VCC 1473.

<sup>4</sup> Ibid.

<sup>5</sup> Exhibit R1, 194 – 218.

<sup>6</sup> Ibid 262 – 281.

8. On 3 July 2025, a delegate of the Minister refused the citizenship application.<sup>7</sup>
9. On 22 July 2025, the Applicant asked the Tribunal to review the refusal decision.<sup>8</sup>

## **LEGISLATIVE FRAMEWORK**

10. Section 52(1)(b) of the Act is the source of the Tribunal's jurisdiction to review decisions made under s 24.
11. A person can become a citizen by conferral under Subdiv B of Div 2 of the Act. This involves making an application under s 21(1) and satisfying cumulative eligibility criteria at s 21(2). The latter includes being of good character<sup>9</sup> at the time a citizenship decision is made.<sup>10</sup>
12. Section 24(1A) of the Act prohibits the Minister, or their delegated under s 53 of the Act, from approving an application unless satisfied the relevant criteria are met.

## **Authorities and policy**

13. Being of 'good character' has been a requirement for Australian citizenship spanning more than a century.<sup>11</sup> While the Act does not define this term, the Federal Court has interpreted it broadly.<sup>12</sup> Justice O'Bryan has referred to principles commensurate with good character:

*First, it refers to the enduring moral qualities of a person and not to the good standing, fame or repute of that person in the community, although the latter may provide evidence of the former. The expression is not concerned with the physical or intellectual attributes or abilities of a person. Second, the expression does not have a fixed and precise content. Like other broad statutory standards, such as whether an entity is a fit and proper person to hold a statutory licence or whether a decision is in the public interest, the expression imports a discretionary value judgment to be made by reference to undefined factual matters confined only by the subject matter, scope and purpose of the statutory provisions...Third, and as a corollary of the second point, the expression requires a judgment as to whether any proved deficiencies in the moral qualities of a person are sufficient to deny the person citizenship.*<sup>13</sup>

(References removed)

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<sup>7</sup> Ibid 42 – 50.

<sup>8</sup> Ibid 26 – 39.

<sup>9</sup> The Act, ss 21(2)(h), 3(f), 4(f), 6(d), 7(d).

<sup>10</sup> *BOY19 v Minister for Immigration and Border Protection* (2019) 165 ALD 39 [3], (O'Bryan J).

<sup>11</sup> *Nationality Act 1920* (Cth), s 7(1)(b).

<sup>12</sup> *Grass v Minister for Immigration and Border Protection* (2015) 231 FCR 128 [60].

<sup>13</sup> *BOY19 v Minister for Immigration and Border Protection* (2019) 165 ALD 39 [51].

14. It is uncontroversial that the Australian Citizenship Policy Statement and Revised Citizenship Procedural Instructions (**CPI**) (reissued 1 January 2022) constitute government policy intended to guide decision-makers under the Act. The Full Court has held that the discretion to approve or refuse citizenship is unfettered, and '*not inimical to the adoption of executive policy*'.<sup>14</sup> This is not binding on the Tribunal but can be applied unless it is unlawful or '*there are cogent reasons to the contrary*'.<sup>15</sup> Policy should not be used inflexibly and decisions about character ultimately turn on the individual circumstances of each case.

15. Relevant to this application is *Citizenship Procedural Instruction 15 — Assessing Good Character under the Citizenship Act (CPI 15)*. The guidance about good character draws on the Full Court's judgement in *Irving*<sup>16</sup> as follows:

*The phrase 'enduring moral qualities' encompasses the following concepts:*

- *characteristics which have endured over a long period of time;*
- *distinguishing right from wrong; and*
- *behaving in an ethical manner, conforming to the rules and values of Australian society.*

*The good character requirement necessitates consideration of an applicant viewed in a holistic way; that is, all aspects of his/her life may be relevant to consideration of character.*

16. CPI 15 refers to the general proposition that someone of good character would display the following behavioural traits:

- *respect and abide by the law in Australia and other countries;*
- *be honest and financially responsible (for example, pay tax, not be in dishonest receipt of public funds, and pay debts to the Commonwealth);*
- *not practise deception or fraud in dealings with the Australian Government, or other organisations, for example:*
  - *intentionally providing false personal information ... or other material deception during visa and citizenship applications;*
  - *evading immigration control at the border or living unlawfully in the community after their visa ceased, or assisting others to do so, or involvement in people smuggling or trafficking;*

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<sup>14</sup> *Minister for Home Affairs v G* [2019] FCAFC 79; (2019) 164 ALD 103, 120 [64] – [65], [70].

<sup>15</sup> *Re Drake and Minister for Immigration and Ethnic Affairs (No 2)* (1979) 2 ALD 634 at 645.

<sup>16</sup> *Irving v Minister for Immigration, Local Government and Ethnic Affairs* (1996) 68 FCR 422, 425 (Lee J), 431 (Lee J); Cited with approval in *Minister for Immigration and Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507 (Gleeson CJ and Gummow J).

- knowingly entering into a bogus marriage or pretending to be a de facto partner of another person;
- concealing criminal convictions;
- fraud against the Commonwealth such as tax fraud or Centrelink fraud;
- giving false names and/or addresses to police;

17. CPI 15 refers at paragraph 12.1 to the seriousness of offences that involve importation or supply of illicit drugs. Longer sentences may also carry more weight in the character assessment. Other factors can include if there are victims of the offending, a pattern of criminal behaviour, pre-meditation, associations of concern, or whether the citizenship applicant is a family member of a person who committed an offence. Under the heading 'Weighing information', CPI 15 also sets out how a holistic assessment of a person's character can be made:

*... officers assessing whether an applicant is of good character should as a general proposition:*

- characterise the nature of any offence or behaviour
- is the offence serious or minor?
- did the offence harm other people?
- who were victims?
- is there a pattern of behaviour?
- was it a one off incident?
- were there extenuating circumstances?

*Consider any associations with people or organisations of concern.*

*Consider any mitigating circumstances:*

- length of time since the offence was committed
- age at time of offence
- behaviour since completing prison sentence or obligations to court
- remorse regarding their offending behaviour
- community support (referee reports etc)
- changes in the life of the applicant. For example, relocation away from people who had a negative influence, marriage or de facto relationship, children, treatment for addiction or mental illness.

*The decision-maker must weigh up all relevant factors to decide whether the applicant is of good character. The decision-maker must look holistically at applicant's behaviour over time and reach a conclusion about the person's enduring moral qualities.*

18. Mitigating factors in CPI 15 include the applicant's age when the offence was committed, length of time since the offending and conviction, whether they have accepted responsibility and shown remorse, and any other evidence they are of good character.

## ISSUE TO BE DETERMINED

19. The sole issue for determination is whether the Tribunal is satisfied<sup>17</sup> of the Applicant's good character at the time of its decision.

## EVIDENCE

### Documentary evidence

20. The Tribunal has considered a Statement of Facts, Issues and Contentions (**SFIC**)<sup>18</sup> from each party and the Applicant's reply to the Respondent's SFIC. A Joint Tender Bundle numbering 351 pages was taken into evidence.<sup>19</sup>

### Oral evidence

#### *Applicant's evidence*

21. The Applicant's oral testimony was given under affirmation and assisted by an interpreter in the Chinese (Mandarin) language. He was informed by the Tribunal of his privilege against self-incrimination.
22. The Applicant recalled that a '*friend in China*' procured the fraudulent Japanese passport he used for entry to Australia in 2006. He knew it was unlawful to enter in this way. When asked the name of the person who obtained the passport, the Applicant only stated a first name and claimed he could not recall the full name. When challenged by Mr Elliot, the Applicant responded: '*It's quite a complex issue and happened a long time ago...It was not through a direct friend but through some other people*'. The Applicant stated he did not disclose his true name to authorities until '*a few years*' after arriving in Australia, which was when he lodged a Protection Visa application. This occurred in 2009.<sup>20</sup>

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<sup>17</sup> In *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361, '*satisfaction*' is referred to as an '*actual persuasion of [the] occurrence or existence*' of the matter being considered.

<sup>18</sup> A SFIC is routinely lodged by parties during the pre-hearing phase to identify and narrow issues in dispute and help ensure both sides are aware of each other's case.

<sup>19</sup> Exhibit R1. Pursuant to s 23 of the *Administrative Review Tribunal Act 2024* (Cth).

<sup>20</sup> *Ibid* 116 [11].

23. The Applicant referred several times to the salutary experiences of his conviction, imprisonment, and immigration detention. He was released from detention after the previous Administrative Appeals Tribunal set aside the Minister's decision to cancel his visa.<sup>21</sup> The Applicant expressed remorse that largely focussed on adverse family effects following his arrest and imprisonment. This centred on the interests of his three children. The Applicant contextualised his crime as a *'serious mistake when young'* but accepted during cross-examination he was 32 years' old when committing his crime. He has worked predominantly as a *'gyprocker'* since release and claims to have established a business.
24. When asked to explain his crime, the Applicant stated: *'my role was to receive these packages, and the other work was arranged by people in China'*. When asked to elaborate, the Applicant said he brought *'illegal stuff to Australia with some friends...about 11 times'*. He agreed his wife was also involved. When asked who the friends in China were, the Applicant responded it was *'one friend in China'*. When asked by Mr Elliot to name this person, the Applicant claimed to only know their first name. When challenged, the Applicant said he forgot because it was *'quite a long time ago'*. When asked if he transferred this person significant amounts of money in 2012, the Applicant responded: *'that was a long time ago – I don't remember'*. When asked by Mr Elliot about a document stating he transferred \$80,000 to a bank in China on 18 March 2012,<sup>22</sup> the Applicant responded: *'I can't remember - it was a long time ago'*. When put to him this was untruthful, the Applicant insisted he could not recall because of the passage of time.
25. The Applicant agreed he *'avoided answering some questions'* put by authorities after his arrest. He initially responded 'Yes' when asked if he knew his conduct was illegal at the time of his offending. He also responded 'Yes' when asked if he told his parole officer the following on 24 August 2020:

*Offender reported that at the time of offending he was under impression that it was "medicine" and he was not aware that he was breaking the law. He stated that he was offered job of picking up packages from friends that he met while working as Labourer and that he trusted them...<sup>23</sup>*

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<sup>21</sup> Ibid 113 – 148. The Tribunal was then differently constituted by Member Rob Reitano.

<sup>22</sup> Ibid 329.

<sup>23</sup> Ibid 297.

26. It was put to the Applicant that he lied to his parole officer, which he denied. His evidence changed at this point to the effect that he was unaware his conduct was illegal until after being arrested. When challenged that this was inconsistent with his earlier evidence, the Applicant claimed it was *'probably due to...problems expressing [him]self'*. The Applicant was further challenged that someone who believed their conduct was legal would not have organised residential leases in another state to receive packages from China. He responded *inter alia*: *'That was quite a long time ago and I've since realised that I've done something wrong...I can't remember clearly...the residential address is a real address to my memory'*. When asked by Mr Elliot how the *'friend in China'* squared with his current narrative, the Applicant responded: *'It was a long time ago I don't remember'*. When challenged this was implausible, the Applicant stated: *'I've been focussing on my rehabilitation, family and employment. I didn't have much time to think about my involvement'*.
27. When asked if he accepted the Court's finding that he was *'one of the principals and organisers of the conspiracy from the Australian end, and that [he] played an essential and central role in that conspiracy'*,<sup>24</sup> the Applicant responded: *'I think so'*.
28. When asked about pleading not guilty and choosing a jury trial, the Applicant recalled his lawyer telling him this was *'a very serious crime that could result in long imprisonment'*. His children were quite young at the time, so he chose to *'try [his] luck and take a chance'* by letting the jury decide. When challenged about choosing a costly jury trial despite knowing he was guilty of a serious crime, the Applicant responded: *'Yes, I feel very regretful. I made a mistake and sincerely apologise'*.
29. When asked what happened to his three children after he and his wife were imprisoned, the Applicant said the *'Department'*<sup>25</sup> placed them with a foster family in Australia. When asked if the children returned to China, the Applicant responded *'No'* and confirmed this after an adjournment. The Applicant later conceded the children did return to China to live with his wife's parents and attributed the inconsistency in his evidence to *'comprehension'*. Mr Elliot put to the Applicant that the inconsistency instead resulted from his children holding protection visas based on an inability to return to China. The Applicant said they were Australian citizens by this time, and it was safe for them to live with his wife's family in China.

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<sup>24</sup> Ibid 158 [44].

<sup>25</sup> Department of Health and Human Services ('DHHS').

30. The Applicant was questioned about his rehabilitative claims and whether he had seen a doctor for his mental health. He responded: *'That was quite a long time ago – I forget'*. He did recall seeing a general practitioner *'a couple of times'* after release from immigration detention in 2020. When asked about his claimed church attendance, the Applicant said this depends on how busy he is at work and sometimes he just prays at home. When asked which church he attends, the Applicant could not recall. When asked to elaborate on his claims about *'sincere rehabilitation'*,<sup>26</sup> the Applicant said this includes reflecting on what he did, working diligently, *'offering help to people in need'*, taking responsibility for his family, and trying not to make *'further troubles for the government'*.
31. During re-examination, the Applicant denied providing false statements during the hearing, and said any inconsistencies arose because he *'didn't understand very well'*. In terms of the discussion with his parole officer, the Applicant stated: *'Sometimes I didn't fully understand what the interpreter said and at other times I couldn't express myself clearly'*. In terms of his rehabilitative claims after release from immigration detention, the Applicant said he focussed on improving his *'speech, behaviour, comprehension abilities, and being a good and honest person'*.

### ***Documentary evidence of lay witnesses***

32. The Tribunal has considered statements from the Applicant's wife and four friends dated between 2024 and February 2026.<sup>27</sup> As discussed during the hearing, these are templated in terms of format, written in English with no reference to an interpreter being used, and include comparable language suggestive of them not being individually authored. The updated February 2026 statements follow by way of example: (Errors in originals)

(a) Statement of Xiao Yu He:

*Updated Statement of Xiayu He*

*I, Xiaoyu He, provide this updated statement in support of my husband, Shiyong Lin, in relation to his application for Australian citizenship.*

*Since my previous statement, our family circumstances remain stable. My husband continues to work full-time in the construction industry and consistently supports our family financially. He remains actively involved in the daily lives of our children and continues to be a responsible husband and father.*

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<sup>26</sup> Ibid 269 [12].

<sup>27</sup> Ibid 12 – 16, 185 – 191, 274 – 281.

*Importantly, he has not committed any further offences and has maintained a stable and law-abiding lifestyle. He continues to meet his personal taxation obligations and remains committed to contributing positively to Australian society.*

*He continues to prioritise our family's wellbeing and the future of our children. Our family unit remains strong and stable. His presence in our household is children's and development.*

*I continue to fully support his application.*

*Signed:*

*Date: 27 February 2026*

(b) Statement of Lin Wei:

*Updated Statement of Lin Wei*

*I, Lin Wei, provide this updated statement in support of Shiyong Lin in relation to his application for Australian citizenship Updated Statement of Lin Wei*

*I have known Mr Lin for many years through our shared Christian faith and longstanding family friendship. Our families continue to maintain regular contact, and we interact both socially and through church-related activities.*

*Since my previous statement, I have continued to observe stability and consistency in his conduct. Through our regular committed to his family, actively participates in a respectful and responsible manner.*

*Importantly, he has not committed any further offences and continues to live in accordance with the law. From my ongoing him to be a steady and reliable member of our community.*

*I continue to support his application.*

*Signed:*

*Name: Lin Wei*

*Phone: [redacted]*

*Email: [redacted]*

*Date: 27 February 2026*

(c) Statement of Guowen Zheng:

*Updated Statement of Guowen Zheng*

*I, Guowen Zheng, provide this updated statement in support of Shiyong Lin in relation to his application for Australian citizenship.*

*I have known Mr Lin for many years as a close family friend, and my wife and I regard him as part of our extended family. Our families continue to see each other regularly, and in recent times our contact has become even more frequent.*

*As someone who has known him over a long period and observed him in a family setting, I have seen consistency in his conduct and attitude. He remains attentive to his responsibilities as a husband and father, and I have personally witnessed his steady and responsible approach to life.*

*He has not committed any further offences and continues to conduct himself in a law-abiding manner. From my long-term perspective, I consider him to be a mature and dependable person who has demonstrated stability over time.*

*I continue to support his application.*

Signed:

Name: Guowen Zheng  
Phone: [redacted]  
Email: [redacted]

Date: 27 February 2026

(d) Statement of Yaotian Cao:

*Updated Statement of Yaotian Cao*

*I, Yaotian Cao, provide this updated statement in support of Shiyong Lin in relation to his application for Australian citizenship.*

*I have known Mr Lin for over fifteen years as a close personal friend and professional associate in the building and construction industry. Over this period, we have worked together on multiple projects and maintained a strong and trusted professional relationship.*

*We continue to work together in the construction industry and meet regularly through professional engagements. Through our ongoing collaboration, I have personally observed that he has remained consistently employed and committed to his trade. Importantly, he has not committed any further offences and continues to conduct himself in a law-abiding and responsible manner.*

*In my professional opinion, Mr Lin is a competent and reliable tradesperson who conducts himself responsibly in both business and personal matters. I continue to trust him and value our professional collaboration.*

*I continue to support his application.*

Signed:

Name: Yaotian Cao  
Phone: [redacted]  
Email: [redacted]

Date: 27 February 2026

(e) Statement of Lin He:

*Updated Statement of Lin He*

*I, Lin He provide this updated statement in support of Shiyong Lin in relation to his application for Australian citizenship*

*I have known Mr Lin for nearly two decades. Although I relocated to Perth more than ten years ago, we have remained in regular contact through phone calls and video communication over the years.*

*Since my previous statement, I have continued to observe stability and consistency in his life. Through our ongoing communication, I am aware that he remains in full-time employment in the construction industry and continues to support his family responsibly.*

*Importantly, he has not committed any further offences and has maintained a law-abiding lifestyle for many years. From my long-term perspective I have seen genuine maturity and stability develop over time.*

*Based on my continued relationship with him, I believe he conducts himself as a responsible and reliable member of the community*

*I continue to support his application*

*Signed:*

*Name: Lin He*

*Phone: [redacted]*

*Email: [redacted]*

*Date: 27 February 2026*

### **Oral evidence of Ms Xiao Yu He**

33. Ms He's evidence was given under affirmation with the assistance of an interpreter in the Chinese (Mandarin) language. The Tribunal advised her about her privilege against self-incrimination. Ms He said she met the Applicant in China in around 2004. She first came to Australia in 2005 and he followed in 2006. Ms He said she became an Australian citizen in 2011 and married the Applicant in 2017. They currently live together with their three children in Sydney. Ms He claimed she was unaware the Applicant entered Australia in 2006 on a fraudulent Japanese passport and under a different name until he applied for a protection visa some years later. She claimed never to have asked him about this and is not curious about it. When pressed by Mr Elliot if she found it unusual that he entered Australia using a passport that was not his, Ms He replied: *'I didn't pay much attention to it'*.
34. When asked about her role in the drug conspiracy, Ms He stated: *'Our role was to receive packages for importing commercial quantities of illicit substances'*. She was imprisoned three years and spent two years on parole. When asked whose idea it was to import the drugs into Australia, Ms He replied: *'My husband and his friend or friends...I never met them. From what I was told by my husband all of them were in China'*. When asked by Mr Elliot if the Applicant was good friends with these people in China, Ms He said she does not know and he had told her it was only *'one friend'*. She is unaware of this person's name. When asked if the Applicant ever told her the name, Ms He stated: *'I'm not sure. I forgot. It's quite a while ago. Even if he mentioned the name to me, I couldn't recall'*.
35. When asked why she and her husband were arrested in Melbourne given they were living in Sydney at the time of their offending in 2012, Ms He said *'the criminal conduct was committed in Melbourne'*. She agreed they rented a house in Melbourne to receive the drugs from China. Ms He could not recall why they rented the house and stated: *'All this was*

*arranged by my husband and his friend or friends*'. When challenged by Mr Elliot that this claim is inconsistent with messages she sent to China in March 2012,<sup>28</sup> Ms He responded: *'That was years ago I don't remember the details'*. When asked if she was afraid about being caught by police, Ms He responded: *'We were not aware - we were quite young at the time'*. She nevertheless accepted that both she and the Applicant were aware their conduct was illegal, including by disguising their criminal behaviour and having packages sent to residential properties leased in Melbourne.

36. Ms He said that after she and the Applicant were imprisoned, their children were supervised by DHHS. As Australian citizens, DHHS approval was required for them to leave Australia. Once obtained, the children lived in China with her parents for about a year.
37. In terms of the Applicant's church attendance, Ms He said he attends *'less frequently'* because of his work commitments. She cannot recall the church he attends.
38. Ms He claims to have observed positive *'changes'* in the Applicant and considers him *'a responsible husband and father'*. She hopes he can become an Australian citizen because she and their children already have citizenship.

#### ***Oral evidence of other lay witnesses***

39. The oral evidence of the Applicant's four friends was given under affirmation and assisted by an interpreter in the Chinese (Mandarin) language. Their oral testimony disclosed general knowledge about the Applicant's crime, to the effect that he engaged in some sort of drug-related offending leading to imprisonment. None were aware he was found by the Court to be a principal and organiser of the conspiracy. Some witnesses contextualised the Applicant's crime as making a *'mistake once'* by *'sending medication'*, being *'forced to do smuggling'*, being *'manipulated'* by others, or motivated by wanting a *'better life for his family'*. None of the witnesses were aware he arrived in Australia under a false identity using a fraudulent Japanese passport.
40. Mr Guowen Zheng disclosed during cross-examination that his daughter wrote his statement. Ms Lin He initially claimed she personally wrote her three statements in English.

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<sup>28</sup> Ibid 328.

When asked about the comparable nature of aspects of her statement with others, her responses did not assist the Tribunal. When asked to spell the word '*stability*' in English, which appears twice in her statement, she was unable to do so or to make a coherent response in English. When put directly that her claim about authoring the three statements in English was erroneous. Ms Lin He's evidence changed to the effect that she '*wrote it in Chinese*', then asked her daughter to translate it into English, following which she '*copied what was already written*'. The Tribunal notes none of the statements, which are in common format, make any reference to translation or other assistance obtained in their production.

## CONSIDERATION

41. Even if a person has committed crimes or other misconduct, this is not determinative of whether they are currently of good character. As the High Court has noted:

*...the false steps of youth and early manhood are not always final proof of defective character and unfitness. The presumption which, according to circumstances, they may appear to raise may surely be overcome by a subsequent blameless career.*

...

*In short this appears to be a case in which this Court ought to give effect to the view that the adverse conclusions that might otherwise be drawn from an unsatisfactory beginning may be displaced by a completely satisfactory subsequent career sustained over a lengthy period of time.*<sup>29</sup>

(Emphasis added.)

42. To the extent the Applicant's submissions suggest denial of citizenship may constitute '*re-sentencing*' him or imposing '*further punitive consequences*',<sup>30</sup> this is rejected. Criminal history is relevant to determining character for the purpose of citizenship. Moreover, '*[l]egislative detriment cannot be equated with legislative punishment*'.<sup>31</sup> The Court has elaborated on this dichotomy as follows, albeit in the context of the *Migration Act 1958* (Cth):

*What s 501(3A) does is to require the cancellation of a visa in certain circumstances...That power is administrative in character. It forms no part of the judicial power of the Commonwealth. In particular, the exercise of that power does not trespass on the exclusively judicial function of determining or punishing criminal guilt.*<sup>32</sup>

(Footnotes omitted)

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<sup>29</sup> *Lenahan, Ex parte* (1948) 77 CLR 403 (Latham CJ, Rich, Starke, Dixon and Williams JJ).

<sup>30</sup> Exhibit R1, 3 [9], 7 [33], 17 [2].

<sup>31</sup> *Duncan v New South Wales* (2015) 255 CLR 388, [46].

<sup>32</sup> *Falzon v Minister for Immigration and Border Protection* (2018) 262 CLR 333 at [88] (per Gageler and Gordon JJ) ("*Falzon*"), citing *Lim* (1992) 176 CLR 1 at 27. See also Nettle J in *Falzon* at [92]-[94].

43. The evidence refers to the Applicant being arrested while living in China.<sup>33</sup> The source documents are not before the Tribunal, however, and no weight is placed on this.
44. There is no evidence the Applicant was other than compliant in custodial settings before release from immigration detention in 2020. It is similarly uncontroversial he has been law-abiding since completing parole in 2022. The Applicant has worked, completed some vocational courses, attended to family needs, and engaged in prosocial activities. These are positive contributions.
45. The Applicant expressed remorse during the hearing, but this was primarily directed to the adverse consequences he and his family have experienced, rather than the significant community damage that could have resulted from his crime.<sup>34</sup> There is scant corroboration for his claims about '*sincere rehabilitation*',<sup>35</sup> which seem largely founded on self-reflection. The few supportive statements are from his wife, who is a co-offender, and a small number of close friends. Except for the Applicant's wife, none of the witnesses are aware in other than a general sense about the totality of the Applicant's conduct since 2006. This detracts from the weight of their statements, which are somewhat templated in terms of format and language. Greater weight is placed on oral evidence, which is collectively to the effect that the Applicant is a hard worker, remorseful for past conduct, and attentive to family responsibilities. In considering references from family and friends, the Tribunal is mindful they can accentuate positive aspects over conduct that is suggestive of character concerns. The Tribunal rejects the claim of some witnesses, for example, that the Applicant was '*forced*' or '*manipulated*' to engage in the drug conspiracy.
46. A prominent feature of the Applicant's residence in Australia is dishonest behaviour in conflict with Australian laws and values. A person of good character would not have procured a fraudulent Japanese passport in a false name or used this to obtain an Australian visa and deceive border authorities. They would not have continued living here under a false identity for several years. It is noteworthy the Applicant's 2009 protection claims were rejected. The Refugee Review Tribunal expressed '*serious doubts*' about his credibility and

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<sup>33</sup> Exhibit R1, 175 [[131] – [132].

<sup>34</sup> Exhibit R1, 164 [78].

<sup>35</sup> Ibid 269 [12] – [14].

variously described his evidence as '*vague, evasive, inconsistent, and generally unsatisfactory, implausible, untrue and untruthful*'.<sup>36</sup>

47. After having his visa status regularised in 2010, the Applicant conspired with his wife and others in 2012 to commit an extremely serious drug offence.<sup>37</sup> He conceded in oral evidence that despite knowing he was guilty he nevertheless decided to '*try his luck*' on a jury trial. This was of course his right, but the decision does not reflect well on his character in a citizenship context. After a jury trial in 2015, the Applicant was found to have '*comprehensively lied*' during police interview and displayed '*an absence of cooperation and remorse*'.<sup>38</sup> Contrary to the Applicant's claim that his offending was contextualised by young age, he was 32 when committing this premeditated crime as a principal organiser of a conspiracy that could have resulted in significant community harm.<sup>39</sup> His role was central, motivated by enrichment, and involved significant overseas financial transfers.<sup>40</sup> There is no evidence the conspiracy would have ended if authorities did not intervene.<sup>41</sup> The Applicant served four-and-a-half years of his seven-year prison sentence, had his visa mandatorily cancelled, and then spent about a year in immigration detention.
48. The time the Applicant has spent in the community under his real name and at complete liberty is limited by his past conduct. Given his background of dishonesty, the Tribunal is unwilling to uncritically accept his assertions about rehabilitation and positive community involvement. There is no onus on the Applicant to corroborate these claims, but independent evidence from employers, or an expert who could reflect on his claimed rehabilitation, or the church he claims to attend, may have enhanced their persuasiveness.
49. The Tribunal found aspects of the Applicant's evidence during the hearing to be variously evasive, revisionist, self-serving, or implausible. This undermines his claims about remorse, developed insight, and acceptance of responsibility. Examples include:

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<sup>36</sup> Ibid 116 - 117 [12] - [13]

<sup>37</sup> Ibid 164 [78].

<sup>38</sup> Ibid 168 [96] – [97]; 178 [144].

<sup>39</sup> Ibid 164 [78]. See also: *Muller v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCA 924, [34]-[35] (Rofe J).

<sup>40</sup> Exhibit R1, 167 [90]

<sup>41</sup> Ibid 166 [86]

- (a) The Tribunal does not accept the Applicant was unaware his conduct was illegal until being arrested. This is contradicted by Ms He's evidence and the sentencing remarks. The latter refers to a '*relatively sophisticated enterprise*' encompassing careful monitoring of packages from China, renting houses interstate at which deliveries were made, and '*precise symmetry*' between his and Ms He's movements when packages arrived. Someone who genuinely believes their conduct was legal would not have acted in this way. Aspects of the Applicant's current evidence impermissibly impugn essential facts underlying his conviction<sup>42</sup> or enliven concerns pursuant to s 118 of the ART Act.
- (b) The Applicant's evidence about not being able to recall the names of friends in China who procured a false Japanese passport for him, or who he conspired with to import illicit drugs, did not ring true. It is implausible he could not recall key details about such significant events. His non-cooperation with authorities about the Chinese end of the conspiracy hampered their ability to determine its scale.
- (c) The Tribunal does not accept the Applicant's speculative assertion that his parole officer erroneously recorded revisionist claims about his offending<sup>43</sup> because of the Applicant's difficulties in expressing himself. The specificity of claims attributed to him in this contemporaneous record, made with the assistance of an interpreter and by a parole officer with experience of the Applicant's case and any expressive difficulties, is preferred to the Applicant's current claims.
50. The Applicant was released from immigration detention in 2020 and his parole obligation ended in 2022. A period of law-abiding and prosocial behaviour has followed, but this must be considered with regard for the totality of his conduct since arrival in Australia. His revisionist and unpersuasive claims in the current proceeding cast doubt on the extent of his remorse and acceptance of responsibility. The Tribunal is not satisfied he is currently of good character within the meaning of s 21(2)(h) of the Act.

## DECISION

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<sup>42</sup> See, for example, the Court's discussion in *HZCP v Minister for Immigration and Border Protection* (2019) 273 FCR 121 at 135–139 [63] - [77] (McKerracher J) and 163–165 [179] - [189] (Colvin J).

<sup>43</sup> Exhibit R1, 297.

51. The reviewable decision is affirmed.

*I certify that the preceding fifty-one (51) paragraphs are a true copy of the written reasons for the decision herein of Senior Member A. Nikolic AM CSC*

.....[sgd].....

Associate

Dated: 11 May 2026

Date of hearing:	<b>24 April 2026</b>
Counsel for the Applicant:	<b>Dr Jason Donnelly (direct access)</b>
Advocate for the Respondent:	<b>Mr Edward Elliot</b>
Solicitors for the Respondent:	<b>Hunt and Hunt Lawyers</b>