FEDERAL COURT OF AUSTRALIA

Tonga v Assistant Minister for Immigration [2026] FCA 574

File number:	NSD 1726 of 2025
Judgment of:	**MARKOVIC J**
Date of judgment:	11 May 2026
Catchwords:	**MIGRATION** – amended application for judicial review of a decision by the Assistant Minister for Immigration made under s 501BA of the *Migration Act 1958* (Cth) – whether the Minister's decision to cancel the applicant's visa was illogical or irrational – whether Minister's reasons were internally inconsistent – whether the Minister engaged in speculative reasoning – application dismissed
Legislation:	*Migration Act 1958* (Cth) s 501(3A)
Cases cited:	*EUD24 v Minister for Immigration and Citizenship* [2025] FCAFC 128; (2025) 311 FCR 155 *Gboujeh v Minister for Immigration and Citizenship* [2012] FCA 288; (2012) 202 FCR 417 *Graham v Minister for Immigration and Border Protection* [2017] HCA 33; (2017) 263 CLR 1 *Maxwell v Minister for Immigration and Border Protection* [2016] FCA 47; (2016) 249 FCR 275 *Minister for Immigration and Citizenship v SZMDS* [2010] HCA 16; (2010) 240 CLR 611
Division:	General Division
Registry:	New South Wales
National Practice Area:	Administrative and Constitutional Law and Human Rights
Number of paragraphs:	34
Date of hearing:	8 April 2026
Counsel for the Applicant:	Dr J Donnelly
Solicitor for the Applicant:	Zarifi Lawyers
Counsel for the Respondent:	Ms K Hooper

Solicitor for the Respondent: Hunt & Hunt

ORDERS

NSD 1726 of 2025

BETWEEN:	**THOMAS MOHELAGI TONGA** Applicant
AND:	**ASSISTANT MINISTER FOR IMMIGRATION** Respondent

ORDER MADE BY:	**MARKOVIC J**
DATE OF ORDER:	**11 MAY 2026**

THE COURT ORDERS THAT:

1. The amended originating application for review of a migration decision filed on 20 November 2025 is dismissed.
2. The applicant is to pay the respondent's costs, as agreed or taxed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

MARKOVIC J:

1 Thomas Mohelagi Tonga, the applicant, is a New Zealand citizen. On 6 August 2019 Mr Tonga was granted a Class TY Subclass 444 Special Category (Temporary) **visa**. On 6 June 2023 a delegate of the **Minister** for Immigration cancelled the visa under s 501(3A) of the ***Migration Act*** *1958* (Cth) (**original decision**). Mr Tonga made an application for revocation of the original decision. However, on 23 December 2024 a delegate of the Minister determined not to revoke that decision.

2 Mr Tonga applied to the Administrative Review **Tribunal** for review of the decision not to revoke the original decision and on 17 March 2025 the Tribunal set aside the delegate's decision and substituted it with a decision to revoke the original decision.

3 On 27 June 2025 the Assistant Minister for Immigration set aside the Tribunal's decision and cancelled Mr Tonga's visa under s 501BA of the Migration Act. Section 501BA of the Migration Act applies if, relevantly, the Tribunal makes a decision under s 501CA to revoke a decision under s 501(3A) of the Migration Act to cancel a visa that has been granted to a person. It empowers the Minister to set aside that decision if the Minister is satisfied that the person does not pass the character test because of, relevantly, the operation of s 501(6)(a), on the basis of subs 501(7)(a), (b) or (c) and the Minister is satisfied that the cancellation is in the national interest. It is not in dispute that for the purposes of the Migration Act, the Assistant Minister for Immigration is "the Minister": see *Maxwell v Minister for Immigration and Border Protection* [2016] FCA 47; (2016) 249 FCR 275 at [19]-[21] (Perry J). In the balance of these reasons I will refer to the Assistant Minister for Immigration as the Minister.

4 Mr Tonga now seeks judicial review of the Minister's decision under s 501BA of the Migration Act. There is no dispute about the Minister's satisfaction that Mr Tonga does not pass the character test because he has a substantial criminal record as defined by s 501(7)(c) of the Migration Act. That is because on 14 November 2022 Mr Tonga was convicted in the District Court of New South Wales of "supply prohibited drug ≥ commercial quantity, cause grievous bodily harm to person with intent and knowingly deal with proceeds of crime" and was sentenced to an aggregate term of three years and seven months imprisonment. Rather, by his amended application Mr Tonga raises one ground of review, namely that the Minister's decision was illogical or irrational. He relies on the following particulars:

a. The Minister's decision is illogical or irrational because his findings on the applicant's insight are internally inconsistent. Having accepted clear evidence of remorse and insight—recorded by the psychologist, stated by the applicant, and expressly acknowledged at [64]—the Minister later treated the applicant as lacking insight at [68]–[69] and again at [81], despite recounting statements that directly show reflection and understanding of the seriousness and causes of the offending. This contradictory reasoning was material because the supposed lack of insight underpinned the Minister's assessment of future risk and the national-interest conclusion under s 501BA. Had the accepted evidence of insight been assessed rationally and consistently, the risk finding and final outcome may have differed.

b. The Minister's reasoning is illogical because, after accepting extensive and detailed rehabilitation evidence—programs completed, expert assessments of good prospects, positive behaviour, and a comprehensive treatment plan likely to reduce risk—he later described this same material as only "limited information" when weighing heavily in favour of cancellation. This contradiction misstates his own findings and was material, as the supposed lack of rehabilitation support was a stated basis for giving "very significant weight" to cancellation. Had the substantial evidence been accurately characterised, the risk assessment and national-interest outcome may have differed.

c. The Minister's reasoning is illogical because he discounted the accepted protective factor of stable family accommodation on the unsupported speculation that the co-offender Samuel "may" also live there. Moving from "unclear" to a mere "possibility" to an increased risk is conjecture, not a rational inference. This error was material because the speculative discounting contributed to the finding of an ongoing likelihood of reoffending and to the national-interest conclusion; absent that speculation, a different risk assessment and outcome may have been open.

5 Before proceeding to consider the ground of review it is convenient to refer briefly to the authorities.

6 In *Minister for Immigration and Citizenship v* ***SZMDS*** [2010] HCA 16; (2010) 240 CLR 611 Crennan and Bell JJ observed at [130] that "'illogicality' or 'irrationality' sufficient to give rise to jurisdictional error must mean the decision to which the Tribunal came … is one at which no rational or logical decision maker could arrive on the same evidence" and that "[n]ot every lapse in logic will give rise to jurisdictional error. A court should be slow, although not unwilling, to interfere in an appropriate case". Their Honours continued at [131]:

> What was involved here was an issue of jurisdictional fact upon which different minds might reach different conclusions. The complaint of illogicality or irrationality was said to lie in the process of reasoning. But, the test for illogicality or irrationality must be to ask whether logical or rational or reasonable minds might adopt different reasoning or might differ in any decision or finding to be made on evidence upon which the decision is based. If probative evidence can give rise to different processes of reasoning and if logical or rational or reasonable minds might differ in respect of the conclusions to be drawn from that evidence, a decision cannot be said by a reviewing

> court to be illogical or irrational or unreasonable, simply because one conclusion has been preferred to another possible conclusion.

7 Jurisdictional error may arise from illogical or irrational findings made on the way to the final conclusion: see *EUD24 v Minister for Immigration and Citizenship* [2025] FCAFC 128; (2025) 311 FCR 155 at [35] (Hill J, Cheeseman and Owens JJ agreeing in part) and the authorities cited therein.

8 For s 501BA of the Migration Act, the Minister's state of satisfaction as to the national interest is a condition precedent to the exercise of the discretionary power to cancel a visa: *Gboujeh v Minister for Immigration and Citizenship* [2012] FCA 288; (2012) 202 FCR 417 at [14] (Bromberg J). That state of satisfaction must be formed reasonably: *Graham v Minister for Immigration and Border Protection* [2017] HCA 33; (2017) 263 CLR 1 at [57] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ).

THE MINISTER'S REASONS

9 In his reasons the Minister first determined that Mr Tonga did not pass the character test. Having done so he turned to consider the national interest. In doing so the Minister considered the following factors: protection of the Australian community (which includes having regard to the seriousness of the Mr Tonga's criminal conduct) and risk to the Australian community. As to the latter the Minister considered factors contributing to past conduct and remorse and rehabilitation; and expectation of the Australian community. Having regard to those factors, at [112] of his reasons the Minister concluded that the use of his discretionary power to cancel Mr Tonga's visa is in the national interest.

10 The Minister then turned to consider discretionary factors: best interests of minor children in Australia, Mr Tonga's ties to Australia, legal consequences of the decision and impediments if removed to New Zealand.

11 Drawing each of the factors considered together the Minister concluded that the considerations against cancellation were outweighed by the serious national interest considerations.

12 The particular aspects of the Minister's reasons which Mr Tonga seeks to impugn are set out below in considering each particular of Mr Tonga's ground of review.

CONSIDERATION

13 The first basis on which Mr Tonga contends that the Minister's decision is illogical or irrational is because the Minister's findings about Mr Tonga's insight into the nature of his offending are internally inconsistent and therefore illogical.

14 This particular of alleged illogicality focusses on the following parts of the Minister's reason.

15 First, Mr Tonga draws attention to the following findings under the heading "[r]emorse":

(1) at [61] the Minister refers to the psychological report prepared by Mr Albassit which records that Mr Tonga acknowledged that his behaviour "was reckless, impulsive" and "stupid" and that his actions would "have had significant repercussions on the wider community and upon the victim" of the grievous bodily harm offence;

(2) at [62] the Minister said:

> I note Mr TONGA told the [Tribunal] that while he 'initially lacked insight into the harm caused to the victim of his offending, he has reflected considerably about this and tried to understand things from the victim's perspective'. Mr TONGA further told the [Tribunal] that he would like to apologise to the victim for 'what [he] did' and acknowledges that he does not know whether he will get this chance'. Finally, I note Mr TONGA submits that 'it was also selfishness on my part because we all share the roads and highways and must find a way to use it without fighting over it as if it is our own territory', and that 'he had given consideration to the impact on the victim and the victim's family and the mental pain and physical pain that he had caused the victim and the victim's family' **Attachment L**.

(3) at [63] the Minister noted that he had regard to Mr Tonga's statement in his revocation submissions that "the greatest cost of my mistakes has been the time I've lost with my family, friends, partner, and especially my daughter. Missing two years of her life has been devastating and serves as a constant reminder of why I must change" and the statement Mr Tonga provided to the Tribunal to similar effect. However, the Minister considered that these statements of remorse were primarily focussed on the effect of Mr Tonga's offending on him and his family rather than on the victim; and

(4) at [64] the Minister concluded that overall he accepted that Mr Tonga has demonstrated remorse for, and insight into, the very serious nature of his offending.

16 Secondly, Mr Tonga refers to the Minister's observations under the heading "[r]ehabilitation" at [68]-[69] where the Minister said:

> 68. In a more recent statement made to the [Tribunal], Mr TONGA indicated that he was unable to understand or recognise why he had engaged in the grievous

> bodily harm offence. He was able to acknowledge though that if someone had assaulted one of his family members 'under similar circumstances' he would have been 'appalled'. Also that he would find it 'difficult to understand why they did it and be quite angry'. He further indicated that he has frequently questioned 'why would I assault somebody for a trivial thing that happens on the road so frequently in one's life?' **Attachment L**.
>
> 69. In view of the above, I hold serious concerns that if Mr TONGA is unable to understand or recognise why he has engaged in such behaviour in the past, there is an ongoing risk he may act impulsively again in the future, which increases the likelihood of behaving in a similar way and reoffending again.

17 Mr Tonga submits that the statements at [68] of the Minister's reasons show that he recognised the "triviality of the trigger, the seriousness and unacceptability of the violence" and were an expression of Mr Tonga's "moral disapproval" of his own conduct. Mr Tonga contends that it is logically inconsistent to characterise this as an inability to understand or recognise his behaviour and then to rely on that supposed lack of insight (as the Minister does at [69] of his reasons) as a basis for "serious concerns" about future risk.

18 Thirdly, Mr Tonga refers to [81] of the Minister's reasons where the Minister acknowledges that Mr Tonga has undertaken rehabilitation programs to address anger management and drug use and that he is subject to a treatment plan monitored by Mr Albassit. The Minister accepts that these factors will likely decrease the risk of Mr Tonga reoffending. However, the Minister continues saying "as noted above, [he] remain[s] concerned that if Mr Tonga is unable to recognise why he has engaged in impulsive and violent behaviour in past (sic), and is not rehabilitated to the point that he is able to appropriately deal with inevitable life stressors, there is an ongoing risk he will reoffend in the future".

19 Mr Tonga submits that in circumstances where the Minister had already accepted that he has insight into the serious nature of his offending (at [64] of his reasons) and recorded multiple statements on the causes and consequences of the offence (at [61]-[62] of his reasons), treating Mr Tonga as unable to recognise his behaviour and using that as a decisive risk factor (at [69] and [81] of his reasons) is "logically self-contradictory" and not supported by the evidence to which the Minister refers in his reasons.

20 I do not accept that there is any inconsistency or contradiction as alleged by Mr Tonga in these parts of the Minister's reasons. In each part of the Minister's reasons set out above, the Minister addresses distinct aspects of Mr Tonga's "insight" into his conduct. At [63]-[64] the Minister considered Mr Tonga's insight into the seriousness of his offending. The Minister accepted that Mr Tonga had shown remorse for the serious nature of his offending and that he understood

that his offending was serious. Commencing at [65] the Minister turned to a different topic, rehabilitation. In particular at [68]-[69] of his reasons the Minister addressed Mr Tonga's lack of understanding or insight into *why* he engaged in the conduct which constituted the offence of grievous bodily harm. It was the lack of understanding by Mr Tonga of the cause for his conduct that led the Minister to make the finding at [69] and ultimately his conclusion on the question of rehabilitation.

21 Given the different aspects of Mr Tonga's understanding or insight into his conduct addressed by the Minister in these parts of his reasons I can see no basis to conclude that there was any inconsistency in the Minister's findings.

22 The second basis on which Mr Tonga alleges that the Minister's decision was illogical or irrational is because of the Minister's assessment of the evidence in relation to rehabilitation. As Mr Tonga submits, at [81] of his reasons the Minister accepts that Mr Tonga has engaged in rehabilitation programs to address his anger management and drug use and that Mr Tonga is subject to a treatment plan monitored by Mr Albassit, and that "these factors will likely decrease the risk of Mr Tonga reoffending". The Minister sets out a summary of the programs earlier in his reasons (at [66]-[67] and [70]-[73]).

23 Mr Tonga submits that on the Minister's own account there is a large volume of structured, professional and behavioural evidence pointing towards rehabilitation and he accepts that it will likely lower risk. Mr Tonga contends that, despite that, when explaining why he gave very significant weight to matters weighing in favour of cancellation the Minister states (at [177] of his reasons) that a relevant factor in favour of cancellation is the limited information demonstrating that Mr Tonga had addressed and/or overcome some of his rehabilitation needs. Mr Tonga submits that it is logically difficult to reconcile an earlier acceptance of substantial, specific rehabilitation evidence with a later characterisation that there is only "limited information" and that the conclusion misdescribes the Minister's own findings.

24 The two paragraphs of the Minister's reasons put in issue by Mr Tonga are [81] and [177] where the Minister relevantly said:

> 81. I acknowledge that Mr TONGA has engaged in rehabilitative programs to address his anger management and drug use. I further acknowledge that Mr TONGA is subject to a treatment plan, which is monitored by Mr Albassit. I accept these factors will likely decrease the risk of Mr TONGA reoffending. However, as noted above, I remain concerned that if Mr TONGA is unable to recognise why he has engaged in impulsive and violent behaviour in past, and is not rehabilitated to the point that he is able to appropriately deal with

inevitable life stressors, there is an ongoing risk he will reoffend in the future.

…

177. I have given very significant weight to matters weighing in favour of cancellation. In doing so, I considered the very serious nature of the violent crimes committed by Mr TONGA; the considerable impact on the community of Mr TONGA's offending and the impact if Mr TONGA reoffends in a similar way; the limited information me before demonstrating that Mr TONGA has addressed and/or overcome some of his rehabilitation needs; and the risk of Mr TONGA reoffending.

25 The Minister's finding at [81] of his reasons goes no higher than an acceptance on the part of the Minister that Mr Tonga has engaged in rehabilitation programs which will "likely decrease" his risk of reoffending. The Minister was also concerned with the fact that if Mr Tonga was unable to recognise why he had engaged in the past violent behaviour and not rehabilitated in a way that enabled him to manage life stressors there remained an ongoing risk that he would reoffend.

26 At [177] of his reasons, in drawing together factors weighing in favour of cancellation, the Minister said that there was "limited information" before him which demonstrated that Mr Tonga had "addressed and/or overcome some of his rehabilitation needs". That is, the Minister characterised the totality of the evidence of the rehabilitation courses undertaken by Mr Tonga as limited. There is no basis on which it could be said that the Minister's characterisation of the evidence as "limited" was illogical or not rationally open to him. No error as alleged has been demonstrated.

27 The third and final basis on which Mr Tonga alleges that the Minister's decision was illogical or irrational concerns the Minister's findings about the possibility that Mr Tonga might return to live with his brother, Samuel Tonga. Relevantly under the heading "protective factors" at [85]-[86] of his reasons the Minister said:

85. I have considered Mr TONGA's submission with regard to his future life. He states he has a short term goal of commencing study at TAFE to become a carpenter, and a longer term goal of obtaining a builder's licence. Additionally Mr TONGA advises he plans to obtain qualifications to become a personal trainer **Attachments H, I and L**. Mr TONGA has held employment in the past. I note that Mr TONGA has stated that financial difficulties after the loss of his employment were a contributing factor to his offending. **Attachment B**. I find that if Mr TONGA were able to secure employment, this may reduce the likelihood of reoffending.

86. I note that Mr TONGA expressed an intention to live with his mother and brothers upon his release from prison **Attachments L and E**. Based on the information before me, it is unclear whether his brother and co-offender, Mr

> Samuel Tonga, will also reside at the same address. On balance, while I find that having reliable accommodation will assist Mr TONGA in refraining from reoffending, this is tempered by the possibility Mr Samuel Tonga may also live at the same residence, which I find may increase the likelihood of Mr TONGA falling back into past patterns of behaviour and further offending.

28 At [93] of his reasons the Minister concludes in relation to protective factors as follows:

> Overall, I am unable to reach the same conclusion as the [Tribunal] in respect of the value of the available protective factors as deterrents to reoffending. I find that secure accommodation will likely deter Mr TONGA from re-offending, however, note it is unclear whether Samuel Tonga will also reside at the same location. I note that Mr TONGA submits he has been with his current partner for 'about three to four years' and that they were 'seeing' each other prior to his index offending. I also remain concerned that Mr TONGA's relationship with his daughter was strong prior to his offending yet this also did not deter him from re-offending.

29 Mr Tonga submits that at [86] of his reasons the Minister discounts a concrete, accepted protective factor, namely stable accommodation with family support, because of a mere possibility, unsupported by evidence, that Samuel might live there in future. He contends that the chain of reasoning is "unclear → possibility" that Samuel might live there leading to the possibility (i.e. "may increase") of a likelihood of reoffending. Mr Tonga submits that the Minister engaged in double speculation built on an evidentiary gap, rather than a rational inference from proven facts. He says that a critical part of the Minister's reasoning rests on conjecture rather than evidence, which is irrational.

30 There was evidence before the Minister that Mr Tonga intended to live with his mother and "brothers" upon his release from prison. For example, in Attachment E to the reasons being a personal circumstances form received on 5 July 2023, Mr Tonga responded to the question "[w]hat address do you intend to live at upon return to the community" as follows:

> With my mother and brothers at [address].

31 The Minister noted that it was unclear whether Mr Tonga's brother, Samuel, would reside with him. The Minister made no finding one way or the other about that matter but was identifying a potential risk factor, namely that Samuel may reside at the same address as Mr Tonga which undermined the protective factor of stable accommodation. The Minister weighed up the competing factors in the face of the lack of clarity on this point.

32 The Minister was entitled to proceed as he did. It could not be said that his reasoning led to a conclusion at which no rational or logical decision maker could arrive based on the same material: see *SZMDS* at [130]-[131].

CONCLUSION

33 Mr Tonga has failed to make out any of the bases upon which he contends that the Minister's decision was illogical or irrational.

34 It follows that Mr Tonga's amended application should be dismissed with costs. I will make orders accordingly.

I certify that the preceding thirty-four (34) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Markovic.

Associate: 

Dated: 11 May 2026