

FEDERAL COURT OF AUSTRALIA

Pinikera v Minister for Immigration and Multicultural Affairs

[2026] FCA 813

Review of: Decision dated 26 March 2025 by Minister for Immigration and Multicultural Affairs

File number: QUD 250 of 2025

Judgment of: **RANGIAH J**

Date of judgment: 26 June 2026

Catchwords: **MIGRATION** – application for review of decision to cancel applicant’s visa pursuant to s 501(2) of the *Migration Act 1958* (Cth) (the Act) – whether decision illogical or irrational – whether Minister failed to consider legal consequences of s 501E of the Act – whether s 501(2) is subject to an implied temporal limitation – application dismissed

Legislation: *Migration Act 1958* (Cth) ss 116(1)(e), 198(6), 501, 501(2), 501BA and 501E
Migration Regulations 1994 (Cth) cl 5001 of Sch 5

Cases cited: *Archer v Minister for Immigration and Citizenship* [2026] FCAFC 20
Carrascalao v Minister for Immigration and Border Protection (2017) 252 FCR 352
DLJ18 v Minister for Home Affairs (2019) 273 FCR 66
Manebona v Assistant Minister for Citizenship and Multicultural Affairs [2025] FCA 1342
Minister for Immigration and Citizenship v XMBQ [2026] FCAFC 19
Minister for Immigration and Ethnic Affairs v Wu Shan Liang (1996) 185 CLR 259
NBMZ v Minister for Immigration and Border Protection (2014) 220 FCR 1
Rano v Minister for Home Affairs, Minister for Cyber Security [2024] FCA 1003
Taulahi v Minister for Immigration and Border Protection (2016) 246 FCR 146
XMBQ v Minister for Immigration and Multicultural Affairs [2025] FCA 553

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Date of hearing:	4 September 2025 and 17 November 2025
Counsel for the Applicant (4 September 2025):	Dr J Donnelly
Counsel for the Applicant (17 November 2025):	Dr J Donnelly with Mr C Fitzgerald
Solicitor for the Applicant:	Zarifi Lawyers
Counsel for the Respondent:	Mr J Kay Hoyle SC with Ms E Hoiberg
Solicitor for the Respondent:	Minter Ellison Lawyers

ORDERS

QUD 250 of 2025

BETWEEN: **RENAE KAWANA PINIKERA**
Applicant

AND: **MINISTER FOR IMMIGRATION AND MULTICULTURAL**
AFFAIRS
Respondent

ORDER MADE BY: **RANGIAH J**

DATE OF ORDER: **26 JUNE 2026**

THE COURT ORDERS THAT:

1. The proceeding be dismissed.
2. The applicant pay the respondent's costs of the proceeding.

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

REASONS FOR JUDGMENT

RANGIAH J:

- 1 The applicant seeks judicial review of a decision made by the Assistant Minister for Immigration (the **Minister**) on 26 March 2025 to cancel the applicant's visa under s 501(2) of the *Migration Act 1958* (Cth) (the **Act**).
- 2 Section 501(2) provides that the Minister may cancel a person's visa if the Minister reasonably suspects that the person does not pass the character test and the person does not satisfy the Minister that they pass the character test.
- 3 The applicant's grounds of review assert that the Minister fell into error by:
- (1) acting illogically or irrationally by proceeding to consider offences for which no conviction had been recorded, contrary to the Minister's earlier statement that he would not consider such offences;
 - (2) failing to consider the legal consequences of s 501E of the Act; and
 - (3) proceeding on the erroneous view that s 501(2) does not contain a temporal limitation requiring any visa cancellation decision to be made within a reasonable time.
- 4 I will describe the factual background and set out the grounds of review before considering the parties' submissions.

Factual Background

- 5 The applicant is a citizen of New Zealand who arrived in Australia in 1993 at the age of 12 and resided in Australia under a Subclass 444 (Special Category) (Temporary) visa.
- 6 On 27 August 2020, the applicant was sentenced to five years' imprisonment by the Supreme Court of Queensland for an offence of grievous bodily harm.
- 7 On the same day, the applicant's visa was cancelled under s 116(1)(e) of the Act. On 21 December 2020, that decision was set aside by the then Administrative Appeals Tribunal and substituted with a decision not to cancel the visa. The applicant was then released from immigration detention.

8 On 8 October 2021, the applicant was issued with a Notice of Intention to Consider
Cancellation (**NOICC**) under s 501(2) of the Act. Between February and April 2022, the
applicant took the opportunity to provide reasons why his visa should not be cancelled. There
was no further communication from the Minister over the ensuing two-and-a-half years.

9 However, on 13 November 2024, the applicant was issued with another NOICC which was
stated to supersede the previous NOICC. The applicant was told that the information he had
previously provided would be considered and he was invited to provide further information.

10 On 26 March 2025, the Minister made the decision to cancel the applicant’s visa under s 501(2)
of the Act.

11 On 30 April 2025, the applicant lodged for filing an Originating Application commencing the
present judicial review proceedings under s 476A of the Act.

12 A hearing was held on 4 September and 17 November 2025. After the hearing, the parties
provided further written submissions regarding the third ground of review.

13 At the time of the hearing, it was anticipated that the Full Court would hear and determine
appeals in two cases that were likely to affect the applicant’s third ground of review. After
Minister for Immigration and Citizenship v XMBQ [2026] FCAFC 19 (**XMBQ**) and *Archer v*
Minister for Immigration and Citizenship [2026] FCAFC 20 (**Archer**) were decided, the parties
were given an opportunity to provide further written submissions. The applicant declined to
provide any further submissions, but the Minister filed further submissions on 14 May 2026.

Grounds of Review

14 In his Amended Originating Application, the applicant advances the following grounds of
review:

**1. The Minister’s decision is vitiated by jurisdictional error because it is illogical
or irrational.**

- i. At [21]–[23] of the reasons the Minister stated unequivocally that offences
attracting no recorded conviction—and any “underlying findings of guilt”
or associated material—would be given no weight.
- ii. Despite that assurance, the Minister later relied extensively on a drink-
driving incident that did not result in a conviction, treating it as serious
misconduct that endangered public safety: see reasons at [39], [40] and
[54].

- iii. The reasoning is internally inconsistent: conduct expressly disavowed in [21]–[23] became pivotal evidence of ongoing risk. A rational decision-maker could not logically reach that conclusion on the stated premise, so the decision lacks any “foundation for the conclusion reached”.
 - iv. This contradiction satisfies the “very high” threshold for illogicality. The error was material: by giving decisive weight to the un-convicted incident, the Minister distorted the evaluation of risk to the Australian community.
- 2. The Minister’s decision is vitiated by jurisdictional error by failing to have regard to a mandatory consideration.**
- i. A decision-maker must take into account the direct and immediate statutory consequences of the decision being made.
 - ii. One such consequence ... is the automatic bar in s 501E...
 - iii. Although the Minister referred to “legal consequences” at [104] of the reasons... the reasons are silent as to s 501E. The Minister thus failed to give genuine, active and realistic consideration to all material legal consequences of the decision.
 - iv. The error was material. The Minister engaged in a qualitative balancing exercise... Knowledge that cancellation would irrevocably foreclose virtually all future visa pathways could realistically have altered that balance.
- ...
- 3. The Minister’s decision is vitiated by jurisdictional error by acting on a misunderstanding of the law.**
- i. A decision is vitiated by jurisdictional error if the reasons reveal that the decision-maker misunderstood the applicable law.
 - ii. Properly construed, s 501(2) of the *Migration Act 1958* (Cth) carries an implied temporal limitation: once a notice of intention to consider cancellation (**NOICC**) is issued, the Minister must decide whether to cancel the visa within a reasonable time...
 - iii. The Minister cancelled the applicant’s visa on 26 March 2025, more than three years and five months ... after the NOICC was served on 8 October 2021. That delay is patently outside any reasonable period contemplated...
 - iv. ... By treating the power as indefinite, the Minister proceeded on the erroneous view that s 501(2) is atemporal, contrary to the implied limitation described above. That misunderstanding goes to jurisdiction.
- ...

Consideration

Ground 1: Alleged inconsistencies in the reasons amounting to illogicality or irrationality

15 The applicant submits that the Minister’s decision was irrational and illogical because he stated at [13], [21] and [23] of his reasons that he would not take into account offences for which no conviction was recorded, but then, at [39], [40] and [54], proceeded to rely on just such an offence to the detriment of the applicant.

16 The relevant passages of the Minister’s reasons appear under the heading, “Protection of the Australian community”, and are as follows:

[9] In determining whether to cancel Mr PINIKERA’s visa, I have given the highest priority to the safety of the Australian community and the need to protect it. In doing so, I considered the seriousness of Mr PINIKERA’s criminal conduct having regard to the circumstances and nature of the conduct, the likelihood of Mr PINIKERA reoffending, and the risk he would pose to the Australian community if such conduct eventuated.

Nature and seriousness of conduct

...

[13] Mr PINIKERA has a criminal history in Australia dating between 2003 to 2020 Attachment A. In considering Mr PINIKERA’s criminal history, I have not considered his offending where convictions were not recorded.

...

[21] I note between 1999 and 2009 Mr PINIKERA was found guilty of a number of offences without conviction. These offences include *obstruct police officer, behave in a disorderly manner, unauthorised dealing with shop goods, common assault* and two counts of *contravene direction or requirement*. Court results for these offences included fines of varying amounts and an 18 month good behaviour bond. However, as stated above, offences without convictions will not be considered for the purposes of this decision and I have given them no weight Attachment A.

...

[23] For the purpose of my decision, I have disregarded the underlying findings of guilt and penalties imposed where Mr PINIKERA committed offences and a conviction was not recorded. Nor have I had any regard to any other material or arguments on those offences. However, I have taken into account that Mr PINIKERA has been convicted of several offences, including *breach bail undertaking, behave in a disorderly manner and obstruct a police officer*, all of which resulted in convictions Attachment A.

[24] I have taken into account the views of the Australian Government and the Australian community particularly with regards offending involving violence, the judicial observations referred to above, and the sentences imposed. I find that Mr PINIKERA’s criminal conduct is very serious.

Risk to the Australian community

...

[38] Mr PINIKERA submits that he is committed to staying alcohol-free, having realised that he no longer wants to experience the state of intoxication that led to his offending. He reports attending Alcoholics Anonymous meetings while in detention, where he also obtained a sponsor, Mandy, with whom he spoke regularly. These sessions helped him identify the triggers that lead to excessive drinking and have been instrumental in his commitment in change **Attachment G**.

[39] However, I note that just ten days after his release from immigration detention on 21 December 2020, Mr PINIKERA declares that he attended a New Year's Eve party with his family and had consumed alcohol. The following morning, his son who was on a learner's permit drove him home, while he was asleep in the passenger seat. When the police pulled them over they breathalysed Mr PINIKERA and he recorded a low blood alcohol reading, which resulted in a three-month licence suspension and a fine for drink driving **Attachment G**. I find Mr PINIKERA's traffic offence to be of concern, as it highlights that he consumed a considerable amount of alcohol just days after his release from immigration detention, despite claiming to have reformed and understood the importance of sobriety. In addition, he endangered his son's safety, as well as the safety of others on the road, by combining inexperience, impaired judgement, and lack of supervision.

[40] In a personal statement dated 31 March 2022, Mr PINIKERA's son, Kaleil, described how, on New Year's Day at around 7:30am, he found his father asleep in the passenger seat of his mother's car at his grandparents' house. After getting the keys from his mother, who was also asleep, he drove his father home but was pulled over by the police and his father was breathalysed **Attachment R**. I have considered this version of events in my decision making but find that it does detract from the fact that Mr PINIKERA was not sober at the time of this incident and while I accept that Mr PINIKERA's actions did not result in a criminal conviction, as I have already stated his behaviour could have led to a serious incident, potentially causing harm or injury to himself, his son, or others on the road.

...

[54] In a submission dated 24 January 2025, Mr PINIKERA's Migration Agent, Ms Matilda Gee asserts that *'Mr PINIKERA has been assessed on three separate occasions as presenting no risk to the Australian community of reoffending. Mr PINIKERA has been in the Australian community since his release from detention in December 2020, and has presented absolutely no risk to the Australian community within this time'* **Attachment Q**. However, as previously noted Mr PINIKERA was detected by police with a low blood alcohol reading, which led to a three-month licence suspension and a fine for drink driving, just ten days after being released from immigration detention **Attachment G**.

...

Conclusion on risk to community

...

[59] On balance, I consider there to be a low, but not negligible likelihood that Mr PINIKERA will reoffend and note that should he engage in similar conduct again, it would be likely to result in serious psychological and physical harm to members of the community. Accordingly, I have attributed this consideration significant weight in favour of a decision to cancel Mr PINIKERA's visa.

(Emphasis added.)

17 The applicant submits that the Minister treated the drink driving offence of 31 December 2020 referred to at [39], [40] and [54] (the **drink driving offence**) as significant misconduct endangering public safety despite no conviction having been recorded. The irrationality and illogicality is said to arise by the Minister, on one hand, disavowing any reliance on offences for which no conviction was recorded but, on the other hand, ascribing significant weight to such an offence to draw an adverse conclusion about the applicant's risk to the community.

18 The Minister contends that the applicant's submission involves a misunderstanding and mischaracterisation of the reasons. The Minister submits that the references to "Attachment A" at [13], [21] and [23] indicate that his statements in those paragraphs were limited to how he proposed to treat the criminal offences listed in that Attachment. The Minister submits that his comments that he would not consider offences for which no conviction had been recorded did not extend to the applicant's driving offences.

19 In considering whether the Minister's stated intention was inconsistent with his subsequent approach and whether any such inconsistency was illogical or irrational, it is necessary to pay attention to the context in which the relevant passages were found. It is axiomatic that reasons must be read as a whole rather than merely plucking sentences, or parts of sentences, and considering them in isolation. Further, the Minister's reasons should not be scrutinised, "minutely and finely with an eye keenly attuned to the perception of error": *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 272; *Carrascalao v Minister for Immigration and Border Protection* (2017) 252 FCR 352 at [45].

20 The Minister's consideration of the exercise of his discretion under s 501(2) of the Act began with the nature and seriousness of conduct of the applicant's criminal offending in the context of assessing the need for the protection of the Australian community. The Minister stated at [13] that, "[the applicant] has a criminal history in Australia dating between 2003 to 2020 **Attachment A**." The Minister continued, "[i]n considering [the applicant's] criminal history, I have not considered his offending where convictions were not recorded". Attachment A was a "nationally coordinated criminal history check" which set out the applicant's criminal history.

The Minister must be understood to have indicated that he had not considered the applicant's criminal offences *listed in* Attachment A for which no conviction had been recorded.

21 The Minister stated at [21] that, “[h]owever, as stated above, offences without convictions will not be considered for the purposes of this decision... **Attachment A**”. The Minister evidently intended to reinforce that which he had said at [13]. The reference to Attachment A again emphasises that his statement was only applicable to offences listed in Attachment A.

22 The Minister then stated at [23] that, “[f]or the purposes of my decision, I have disregarded the underlying findings of guilt and penalties imposed where [the applicant] committed offences and a conviction was not recorded”. The Minister continued, “[h]owever, I have taken into account that [the applicant] has been convicted of several offences, including *breach bail undertaking, behave in a disorderly manner and obstruct a police officer*, all of which resulted in convictions **Attachment A**.” Again, the reference to Attachment A indicates that the Minister's self-imposed limitation was only concerned with the offences listed in Attachment A.

23 It is important to observe that Attachment A did not contain the applicant's history of driving offences. Accordingly, the Minister's statements to the effect that he had not considered or had disregarded the applicant's offending listed in Attachment A where convictions were not recorded were not intended to encompass any driving offences.

24 The Minister proceeded to take into account the drink driving offence in the course of considering the extent of the applicant's remorse and rehabilitation. The applicant had acknowledged the impact of excessive drinking on his offending and submitted that he was committed to staying alcohol-free, his commitment being demonstrated by his attendance at Alcoholics Anonymous meetings while in immigration detention.

25 It was in the context of assessing the applicant's stated intention to remain alcohol-free that the Minister noted at [39] that only ten days after the applicant's release from immigration detention, he had, “consumed a considerable amount of alcohol”, and the next morning, “recorded a low blood alcohol reading, which resulted in a three-month licence suspension and a fine for drink driving **Attachment G**”. Similarly, the Minister stated at [54] that the applicant had been, “detected by police with a low blood alcohol reading, which led to a three-month licence suspension and a fine for drink driving... **Attachment G**”. The Minister also found at

[39] and [40] that the applicant's conduct had endangered the safety of his son and others on the road.

26 Attachment G was a personal statement made by the applicant dated 11 April 2022. It is clear that the drink driving offence was revealed by Attachment G, not Attachment A.

27 Consistently with the approach the Minister had foreshadowed at [13] and [21]-[23], the Minister did not take into account any of the applicant's criminal offences set out in Attachment A for which no conviction had been recorded.

28 The applicant's argument is that to say one thing and then do the opposite is irrational or illogical. There is no doubt that conduct of that kind may be irrational or illogical in some circumstances, but the initial question is whether there was any relevant inconsistency between what the Minister said he would do and what the Minister did.

29 The only potential "inconsistency" was that the Minister decided to take into account the drink driving offence for which no conviction was recorded, whereas he decided not to take into account the criminal offences for which no conviction was recorded. However, the context in which the Minister considered the drink driving offence was quite different. There was nothing irrational or illogical in the Minister's treatment of different offences in a different way for different purposes.

30 The applicant's first ground of review must be rejected.

Ground 2: Alleged failure to consider legal consequences of s 501E

31 It is common ground that the Minister was required to take into account the direct and immediate statutorily prescribed consequences of his decision: *NBMZ v Minister for Immigration and Border Protection* (2014) 220 FCR 1 at [8]-[9]; *Taulahi v Minister for Immigration and Border Protection* (2016) 246 FCR 146 at [84].

32 The Minister's reasons stated at [104], under the heading, "Legal consequences of the decision":

Mr PINIKERA has not made any claims which require assessment in relation to Australia's international non-refoulement obligations, nor does the other available evidence indicate that such an assessment is necessary in this case. Furthermore, Mr PINIKERA is not covered by a protection finding as defined in s 197C of the Act.

33 There is no express reference in the Minister's reasons to s 501E of the Act. A consequence of s 501E is that a person whose visa is cancelled under s 501 is prohibited from applying for any visa while in the migration zone except a protection visa or another prescribed visa. The applicant submits that the inference to be drawn from the failure to refer to s 501E is that the Minister overlooked the provision and this consequence. The applicant submits that the Minister's failure to consider a consequence of s 501E was a failure to consider a mandatory consideration and a jurisdictional error.

34 Section 501E provides, relevantly:

501E Refusal or cancellation of visa—prohibition on applying for other visas

- (1) A person is not allowed to make an application for a visa, or have an application for a visa made on the person's behalf, at a particular time (the *application time*) that occurs during a period throughout which the person is in the migration zone if:
 - (a) at an earlier time during that period, the Minister made a decision under section 501, 501A, 501B or 501BA to refuse to grant a visa to the person or to cancel a visa that has been granted to the person; and
 - (b) the decision was neither set aside nor revoked before the application time....
- (2) Subsection (1) does not prevent a person, at the application time, from making an application for:
 - (a) a protection visa; or
 - (b) a visa specified in the regulations for the purposes of this subsection.

35 A consequence of cancellation of the applicant's visa under s 501(2) of the Act is that he will be permanently excluded from Australia. That flows from his inability to obtain another visa. Under s 501E, he cannot apply for any visa while he is in the migration zone other than a protection visa or other specified visa. There is no suggestion that the applicant is eligible for any such visa. Section 198(6) requires that he be removed from Australia as soon as reasonably practicable. By the operation of cl 5001 of Sch 5 of the *Migration Regulations 1994* (Cth), the applicant cannot be granted another visa after he leaves Australia.

36 The Minister submits that his reasons demonstrate he was aware that the practical consequence of his decision was permanent exclusion from Australia. The Minister submits it is implicit in that consequence that he considered that the applicant could not apply for a visa either while he was in Australia or after he returned to New Zealand.

- 37 In *Manebona v Assistant Minister for Citizenship and Multicultural Affairs* [2025] FCA 1342 (*Manebona*), Wheatley J at [88] expressed doubt about whether the legal consequences arising under s 501E are required to be taken into account by the Minister. Since that issue was not argued in this case, I will proceed on the basis that the Minister was required to take those consequences into account.
- 38 It can be accepted that the Minister did not expressly refer to the legal consequence arising under s 501E that the applicant could not apply for any visa other than a protection visa or specified visa while in the migration zone. The absence of any express reference does not preclude a conclusion that the Minister took that consequence into account: see, for example, *Rano v Minister for Home Affairs, Minister for Cyber Security* [2024] FCA 1003 at [17]-[18]; *Manebona* at [89]; *DLJ18 v Minister for Home Affairs* (2019) 273 FCR 66 at [77].
- 39 The Minister's reasons demonstrate that he took into account that a fundamental consequence of cancellation of the applicant's visa under s 501(2) of the Act would be his permanent exclusion from Australia. The relevant passages include the following:
- [3] Mr PINIKERA does not hold, and has no outstanding application for, a protection visa or any other visa prescribed by the *Migration Regulations 1994* (Cth). As a result of my decision, Mr PINIKERA therefore no longer holds any visa, and all applications for any other visa have been finalised.
- ...
- [90] Ms Gee submits that if Mr PINIKERA were to be removed from Australia, Tarquin and Mia would likely face emotional distress, disruption to their education, loss of stability, financial strain, and challenges in maintaining established networks and opportunities. This would be particularly impactful given that Tarquin and Mia are at formative stages in their development and are heavily reliant on their father to meet their needs...
- ...
- [98] While I accept that the bond between Mr PINIKERA and his nieces and nephews is strong, I also consider that, if returned to New Zealand, Mr PINIKERA would still be able to maintain contact via phone or video calls...
- ...
- [103] I consider that the expectations of the Australian community, which include an expectation that non-citizens who commit serious breaches of Australian law should not be allowed to enter or remain in Australia, weigh somewhat in favour of visa cancellation.
- ...

[112] I find that Mr PINIKERA will experience practical and emotional hardship if removed to New Zealand, especially if his immediate family does not return with him...

...

[123] In addition to the need to protect the Australian community from risks of harm, I have also considered what the community would expect in relation to non-citizens. I am of the view that the Australian community generally would not expect non-citizens who have a criminal history involving violence to continue to hold a visa, especially where the non-citizen continues to pose a significant risk to the Australian community.

[124] In this case, I consider that the seriousness of Mr PINIKERA's offending and the risk that he could further offend if allowed to remain in Australia outweigh the above matters against cancellation and concluded that Mr PINIKERA represents a risk of harm to the Australian community which is unacceptable.

40 The applicant's argument is not that the Minister failed to take into account that the applicant would be permanently excluded but that the applicant would be prevented from making any further visa application other than a protection visa or specified visa while in the migration zone. However, once it is accepted that the Minister took into account that the applicant would be permanently excluded from Australia, a necessary inference is that the Minister considered that there was no legal pathway for the applicant to obtain another visa while he was inside or outside the migration zone. Accordingly, it cannot be concluded that the Minister failed to take into account the legal consequence contended for by the applicant.

41 The applicant's second ground of review must be rejected.

Ground 3: Whether s 501(2) has an implied temporal limitation

42 The applicant's third ground asserts that the Minister's decision is vitiated by jurisdictional error by acting on a misunderstanding of the law. The applicant submits that, properly construed, s 501(2) of the Act carries an implied temporal limitation, namely that once a NOICC is issued, the Minister must decide whether to cancel the visa within a reasonable time. He submits that the Minister proceeded on the erroneous view that s 501(2) does not have that temporal limitation.

43 The applicant relied on the reasoning in *XMBQ v Minister for Immigration and Multicultural Affairs* [2025] FCA 553, where it was held that s 501BA of the Act was subject to an implied limitation requiring the exercise of the power within a reasonable period. However, that judgment was subsequently overturned by the Full Court.

44 In supplementary written submissions, the Minister contends that in light of the judgments of the Full Court in *XMBQ* and *Archer*, the applicant's third ground cannot succeed. As the Minister submits, in *XMBQ*, the members of the Full Court held:

- (a) There is a distinction between jurisdiction, being a condition that affects the *existence* of the power such that it no longer exists, and legality, being a condition that operates as a constraint on the *exercise* of the power, but does not affect its existence: [3] (Thawley J). A particular statute may, properly construed, contain an implied temporal condition or limitation. This typically occurs where the statute specifies that something must occur “on”, “upon”, or “after” an event, without specifying a time for exercise of the power. Where it exists, a temporal condition of this kind generally operates as a condition on lawful exercise, not on the existence of the power itself: [6] (Thawley J). Treating unreasonable delay as extinguishing jurisdiction erroneously collapses the distinction between jurisdiction and legality: [11] (Thawley J).
- (b) There is no “general rule of construction” that a statutory power which is triggered by the happening of an event must be exercised within a “reasonable time” after the event: [78]-[90] (Kennett J); see also [13] (Thawley J). Neither *Koon Wing Lau v Calwell* (1949) 80 CLR 533 nor *CPCF v Minister for Immigration and Border Protection* (2015) 255 CLR 514 are authority for such a general principle of construction: [16] and [23] (Thawley J); [78] and [84] (Kennett J). The “ordinary rule” referred to by Dixon J in *Koon Wing Lau* must be a reference to the meaning of the temporal word “upon”: [17] (Thawley J); [82] (Kennett J).
- (c) Section 501BA of the Act is, in its terms, open-ended as to the timing of the exercise of the power, other than that the decision must necessarily come after the “original decision”: [72] (Kennett J). The role of the “original decision” is to identify the class of case to which the Minister's override power applies: [26] (Thawley J). Section 501BA(1) sets out the precondition for the exercise of the power in a neutral way. The decision authorised to be made is not linked to the original decision by words that suggest temporal proximity: [91] (Kennett J); see also [26] (Thawley J).
- (d) Section 501BA does not contain textual indications that Parliament intended decisions to be made within any particular timeframe: [95] (Kennett J); see also [26] (Thawley J).
- (e) The statutory context does not support the implication of a time limit into s 501BA: [110] (Kennett J). Section 501A(2) deals with both decisions not to refuse and decisions not to cancel a visa. Both Thawley and Kennett JJ adopted the view expressed by Bromberg J in *KDSP v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2020) 279 FCR 1; [2020] FCAFC 108 that the exercise of the power to refuse a visa under s 501A(2)(a) did not lapse by reason of the effluxion of time because it was part of the regime for performance of the duty to make a decision under s 65 of the Migration Act, which did not lapse: [33] (Thawley J); [103] (Kennett J). It is impossible to accept that the Parliament intended the power conferred by s 501A(2) to lapse as a result of the effluxion of time in one kind of case but not in the other. Once it is accepted that the power not to cancel a visa in s 501A(2) is not subject to an implied time limit, this makes it much less likely that the Parliament intended a time limit to apply to s 501BA(2) but did not expressly say so: [103] (Kennett J); see also [33] (Thawley J).

- (f) The limit on what is a “reasonable time” cannot be known at the point when the power comes to be exercised, as it depends on all the circumstances of the particular case: [69] (Kennett J); see also [32] (Thawley J). The indeterminacy of the implication, particularly in an area of relatively high-volume decision-making, weighs against its making: [96] (Kennett J).
- (g) Delay in considering the exercise of the power may be relevant to questions of legal unreasonableness, but that is a different argument from the one put to and accepted by the primary judge in *XMBQ*: [75] (Kennett J); see also [7] and [34] (Thawley J).

45 In *XMBQ*, the Full Court held that s 501BA of the Act does not contain any implied temporal limitation, having regard to the text and context of that provision. It is necessary to examine whether the Full Court’s reasoning also applies to s 501(2).

46 The Full Court reasoned that no temporal limitation is implied in s 501BA because of the absence of any textual indications to support such an implication; the surrounding context, including s 501A; and the indeterminacy of the implication of a “reasonable time”. In my opinion, s 501(2) is attended with the same characteristics. The requirement to provide natural justice in exercising the power under s 501(2) does not appear to import any requirement to make the decision within a reasonable time. The applicant has not taken up the opportunity to respond to the Minister’s submissions on this issue and has not suggested a conclusion different from that reached in *XMBQ* is available.

47 The applicant’s argument is grounded in the proposition that the Minister’s power under s 501(2) of the Act is subject to a temporal limitation and he has not advanced any independent argument that the Minister’s decision was legally unreasonable through unreasonable delay in making the cancellation decision.

48 The applicant’s third ground of review must be rejected.

Conclusion

49 It can be accepted that to cancel the applicant’s visa more than five years after the initial cancellation decision was overturned by the Administrative Appeals Tribunal in circumstances where there was no further criminal offending was cruel. Nevertheless, the Minister’s decision did not involve any of the jurisdictional errors alleged and there is, accordingly, no basis for the decision to be quashed.

50 The application must be dismissed with costs.

I certify that the preceding fifty (50) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Rangiah.

Associate:



Dated: 26 June 2026