

Decision and Reasons for Decision

Administrative
Review Tribunal



Applicant/s: Sila-ki-vai Mafi

Respondent: Minister for Immigration and Citizenship

Tribunal Number: 2026/1304

Tribunal: Deputy President P Britten-Jones

Place: Sydney

Date: 19 June 2026

Decision: The Tribunal sets aside the decision under review and in substitution decides to revoke the cancellation decision dated 3 October 2025.

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

Deputy President P Britten-Jones

Catchwords

MIGRATION – Non-revocation under s 501CA(4) of the Migration Act 1958 (Cth) of the mandatory cancellation of Applicant's Class TY Subclass 444 Special Category (Temporary) Visa – where the Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation – family violence and extensive criminal behaviour – low risk of re-offending – family want the Applicant to return – Applicant has lived the majority of his life in Australia and his family needs him - the decision under review is set aside

Legislation

Migration Act 1958 (Cth)

Cases

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane [2021] HCA 41

Plaintiff M1/2021 v Minister for Home Affairs [2022] HCA 17

SZRTN v Minister for Immigration and Border Protection (2014) 141 ALD 395; [2014] FCA 303

Tanielu v Minister for Immigration and Border Protection (2014) 225 FCR 424

Da Costa Junior v Minister for Immigration and Multicultural Affairs [2025] FCA 1423

Le v Minister for Immigration and Citizenship [2026] FCA 77

Secondary Materials

Direction No. 110 – Migration Act 1958 – Direction under section 499: Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA

Statement of Reasons

1. This is an application for review of a decision to not revoke the mandatory cancellation of the Applicant's Class TY Subclass 444 Special Category (Temporary) visa (**the visa**) under s 501(3A) of the *Migration Act 1958* (Cth).¹

THE DECISION TO CANCEL THE APPLICANT'S VISA

2. On 3 October 2025, the Applicant's visa was mandatorily cancelled (**the cancellation decision**) by a delegate of the Minister under s 501(3A) on character grounds due to his substantial criminal record and because he was serving a sentence of imprisonment of over 12 months.
3. The Applicant sought revocation of the cancellation decision on 7 October 2025 and made representations in support of revocation.
4. On 31 March 2026, a delegate of the Minister decided not to revoke the cancellation decision (**the non-revocation decision**). The Applicant applied to the Tribunal for review of the non-revocation decision on 1 April 2026. The Tribunal heard the matter on 16 and 17 June 2026.

LEGISLATIVE FRAMEWORK

5. Under s 501(3A), the Minister must cancel a visa that has been granted to a person if:
 - (a) the Minister is satisfied that the person does not pass the character test because of the operation of paragraph (6)(a) (substantial criminal record), on the basis of paragraph (7)(a), (b) or (c); and
 - (b) the person is serving a sentence of imprisonment, on a full-time basis in a custodial institution, for an offence against a law of the Commonwealth, a State or a Territory.
6. The character test referred to in s 501(3A) is outlined in s 501(6). Relevantly, s 501(6)(a)

¹ All references to legislation are to the *Migration Act 1958* (Cth) unless otherwise stated.

provides that a person does not pass the character test if the person has a substantial criminal record (as defined by sub-s (7)). For the purposes of s 501(6)(a), and relevant to this matter, a person has a substantial criminal record if the person has been sentenced to a term of imprisonment of 12 months or more.

7. Where a visa has been cancelled as set out above, the Minister has a power under s 501CA(4)(b) to revoke the cancellation decision if satisfied that the visa holder passes the character test, or that there is another reason why the original decision should be revoked:

501CA Cancellation of visa—revocation of decision under subsection 501(3A) (person serving sentence of imprisonment)

- (1) *This section applies if the Minister makes a decision (the original decision) under subsection 501(3A) (person serving sentence of imprisonment) to cancel a visa that has been granted to a person.*
- (2) *For the purposes of this section, relevant information is information (other than non-disclosable information) that the Minister considers:*
- (a) would be the reason, or a part of the reason, for making the original decision; and*
 - (b) is specifically about the person or another person and is not just about a class of persons of which the person or other person is a member.*
- (3) *As soon as practicable after making the original decision, the Minister must:*
- (a) give the person, in the way that the Minister considers appropriate in the circumstances:*
 - (i) a written notice that sets out the original decision; and*
 - (ii) particulars of the relevant information; and*
 - (b) invite the person to make representations to the Minister, within the period and in the manner ascertained in accordance with the regulations, about revocation of the original decision.*
- ...
- (4) *The Minister may revoke the original decision if:*
- (a) the person makes representations in accordance with the invitation; and*
 - (b) the Minister is satisfied:*
 - (i) that the person passes the character test (as defined by section 501); or*
 - (ii) that there is another reason why the original decision should be revoked.*

(Emphasis in original)

8. Where the cancellation decision is not revoked, the right to have that decision reviewed by the Tribunal is enlivened.

ISSUES BEFORE THE TRIBUNAL

9. The Applicant does not pass the character test prescribed under s 501(6)(a) as he has been sentenced to a term of imprisonment of 12 months or more, and therefore has a 'substantial criminal record' as defined under s 501(7). It follows that the Applicant cannot rely on s 501CA(4)(b)(i) to have the mandatory visa cancellation revoked.
10. Section 501CA(4)(b)(ii) requires the Tribunal to examine the factors for and against revoking a mandatory cancellation decision to assess if there is 'another reason' why the cancellation decision should be revoked. This assessment is made by reference to the representations made by the Applicant which I am required to 'read, identify, understand and evaluate'.² As held in *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane* [2021] HCA 41 'deciding whether or not to be satisfied that "another reason" exists might be the product of necessary fact finding, or the product of making predictions about the future, or it might be about assessments or characterisation of an Applicant's past offending'.³

BACKGROUND

11. The Applicant is a 41-year-old citizen of New Zealand of Tongan descent. He came to Australia in 2000 when he was 15 years old. He is the oldest of six children who were brought up in difficult circumstances in south Auckland. At one stage the children were removed from their parents because of issues related to domestic violence and alcohol abuse. The Applicant left school at about the age of 14 or 15 and he commenced drinking soon thereafter. He has an extensive criminal history in Australia from 2005 to 2025. He and his wife are hardworking people and have brought up five children. His family desperately want him to return home because they are struggling without him.

Direction 110

12. The Tribunal is bound by s 499(2A) to comply with any directions made under the Migration Act. In this case, *Direction No. 110 – Migration Act 1958 – Direction under section 499: Visa refusal and cancellation under section 501 and revocation of a*

² *Plaintiff M1/2021 v Minister for Home Affairs* [2022] HCA 17, [24], [36].

³ At [41].

mandatory cancellation of a visa under section 501CA (the Direction) has application.⁴

13. For the purposes of deciding whether to refuse a non-citizen's visa or whether or not to revoke the mandatory cancellation of a non-citizen's visa, paragraph 5.2 of the Direction contains several principles that must inform a decision-maker's application of the Primary and Other Considerations identified in Part 2 where relevant to the decision.
14. The principles that are found in paragraph 5.2 of the Direction are as follows:

(1) Australia has a sovereign right to determine whether non-citizens who are of character concern are allowed to enter and/or remain in Australia. Being able to come to or remain in Australia is a privilege Australia confers on non-citizens in the expectation that they are, and have been, law-abiding, will respect important institutions, such as Australia's law enforcement framework, and will not cause or threaten harm to individuals or the Australian community.

(2) The safety of the Australian Community is the highest priority of the Australian Government.

(3) Non-citizens who engage or have engaged in criminal or other serious conduct should expect to be denied the privilege of coming to, or to forfeit the privilege of staying in, Australia.

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

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

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

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

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

⁴ Direction No. 110 – Migration Act 1958 – Direction under section 499: Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA ('The Direction').

noncitizen does not pose a measurable risk of causing physical harm to the Australian community.

15. Informed by the principles in paragraph 5.2 above, I must take into account the primary and other considerations in the Direction.

16. The primary considerations are:⁵

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

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

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

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

(5) expectations of the Australian community.

17. The other considerations are:⁶

a) legal consequences of the decision;

b) extent of impediments if removed;

c) impact on Australian business interest.

18. The primary consideration of the protection of the Australian community is generally to be given greater weight than other primary considerations.⁷

CONSIDERATION

Protection of the Australian community – 8.1 of Direction 110

19. When considering the protection of the Australian community, I have regard to the principle that the Government is committed to protecting the Australian community from harm as a result of criminal activity. Entering or remaining in Australia is a privilege that Australia confers on non-citizens in the expectation that they are, and have been, law abiding, will respect important institutions, and will not cause or threaten harm to

⁵ The Direction at 8.

⁶ The Direction at 9(1).

⁷ The Direction at 7(2).

individuals or the Australian community.⁸ As required by paragraph 8.1(2) of the Direction, I give consideration below to:

- (a) the nature and seriousness of the non-citizen's conduct to date; and
- (b) the risk to the Australian community, should the non-citizen commit further offences or engage in other serious conduct.

The nature and seriousness of the non-citizen's conduct – 8.1.1 of Direction 110

- 20. When considering the nature and seriousness of the Applicant's conduct, I take into account his criminal activity and other serious conduct. The offending involved traffic offences, assault, stealing, resist or hinder police and domestic violence.
- 21. The Applicant's most recent conviction on 22 August 2025 resulted in a term of imprisonment for 15 months (reduced to 12 months on appeal) for destroy or damage property, stalk/intimidate, common assault and contravene prohibition/restriction in AVO (domestic). This offending took place in a brothel on 6 July 2024 shortly after he had been placed on a community corrections order on 10 April 2024. He assaulted a woman causing her great fear but no physical harm. He also caused property damage. Crimes of a violent nature against women are very serious and the sentencing Magistrate was concerned about community safety and therefore imposed a custodial sentence. The Magistrate said in her sentencing remarks:

Mr Mafi has been in the criminal justice system for a significant period of time. He came into the criminal justice system as an adult in Griffith in 2005 and his criminal history has alcohol-related offences, but more serious assaults as well, occasioning actual bodily harm, there are serious matters that were being committed to trial, and he has served terms of imprisonment for those. At the time of this offending, he was not only on an ICO which is gaol in the community for 12 months and that was imposed upon him on 22 August 2023 for a stalk/intimidate which was a domestic violence offence and was due to conclude on 21 August 2024. This offending took place in July, six weeks short of that intensive corrections order expiring. He was also on a community corrections order for 18 months that was placed on him in April ...

- 22. The community corrections order imposed on 10 April 2024 was for contravening an AVO (domestic). The incident occurred on 2 April 2024. The Applicant had been drinking. He argued with his daughter about a boyfriend and things got out of hand.⁹

⁸ The Direction 8.1(1).

⁹ Applicant statement dated 9 May 2026 at [14].

The police were called and when they arrived the Applicant was handcuffed. He accepts that his behaviour caused his wife and daughter to be fearful. At the time the corrections order was imposed, the Magistrate warned the Applicant that his offending could have implications for his visa status, but he did not heed that warning because he committed the further offences on 6 July 2024. There was evidence of an earlier formal written warning in 2013, but I accept the Applicant's evidence that he did not receive the letter because it was sent to his parents' address and he did not become aware of it. Nevertheless, it is relevant that the Applicant was formally warned by a Magistrate in April 2024 but still went on to offend.

23. There was an earlier domestic violence incident which occurred on 4 August 2023. The Applicant had been drinking and he got into a fight with his wife when she was driving the car. He punched the rear-view mirror and the dashboard whilst yelling foul abuse at her. He accepted that his wife would have been scared and fearful.
24. The offending for which the Applicant was convicted on 29 April 2016 involved domestic violence against his wife. He was drunk and hit her with an open hand to the nose causing it to bleed. The sentencing Magistrate imposed a sentence of 12 months imprisonment suspended on good behaviour and said:

It is a serious offence of violence taking place in the home of the victim ... It is also serious in that the children were home at the time and were dragged into this offence. ... this is the first time he is before the Court for a domestic violence offence.

25. The offending for which the Applicant was convicted on 14 October 2010 involved an affray and assault officer in execution of duty. A 12-month prison sentence was imposed and it was noted that he already had an antecedent history of violence and a problem with alcohol that needed to be addressed.
26. I conclude as to the nature and seriousness of the Applicant's conduct that it was very serious and mostly alcohol related. The Australian government and community consider much of his offending as being very serious, namely the assault of a police officer in the course of duty, the assault against the women in the brothel and the domestic violence against his wife and daughter (who was a minor at the time). The offending was frequent with a trend of increasing seriousness and a significant cumulative effect. The three custodial sentences reflect the seriousness of the offending. Despite warnings, he continued to reoffend. It is of particular concern that

the Applicant was formally warned on 10 April 2024 but went on and offended on 6 July 2024. The nature and seriousness of the Applicant's offending is a very significant factor in terms of whether I am satisfied that there is 'another reason' to set aside the non-revocation decision.

The risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct – 8.1.2 of Direction 110

27. In considering the need to protect the Australian community from harm, I have regard to the Government's view that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases. Some conduct and the harm that would be caused, if it were repeated, is so serious that any risk that it may be repeated may be unacceptable.¹⁰ As required by paragraph 8.1.2(2) of the Direction, I also have regard to, cumulatively:
- (a) the nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal or other serious conduct; and
 - (b) the likelihood of the non-citizen engaging in further criminal or other serious conduct, taking into account:
 - (i) information and evidence on the risk of the non-citizen re-offending; and
 - (ii) evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since their most recent offence (noting that decisions should not be delayed in order for rehabilitative courses to be undertaken).
28. In terms of measuring the risk to the Australian community, guidance can be found in the decision of Mortimer J (as she then was) in *Tanielu v Minister for Immigration and Border Protection* (2014) 225 FCR 424. Her Honour said that, to determine an unacceptable risk, one has to evaluate what the consequences of reoffending are as well as the likelihood of the person engaging in that conduct in the future.

¹⁰ The Direction at 8.1.2(1).

Nature of harm if further criminal or other serious conduct – 8.1.2(2)(a) of Direction 110

29. If the Applicant were to engage in further similar criminal offending, the nature of the harm would be very serious because it included domestic violence and assault against a police officer.

Likelihood of further criminal or other serious conduct – 8.1.2(2)(b) of Direction 110

30. The Applicant has expressed remorse for his offending and says that he will not re-offend. This may seem unlikely given his long history of offending but the Applicant says it is different this time because he has given up alcohol and because, for the first time, he has engaged with genuine rehabilitative programs. It would appear from the sentencing assessment report dated 20 August 2025 that he had not by that time engaged with any meaningful rehabilitation. However, when he was put into immigration detention later in 2025, the Applicant realized the gravity of the situation and that he may be separated from his family permanently and removed to New Zealand. Thereafter the Applicant engaged with numerous rehabilitative programs dealing with drug and alcohol abuse, anger and stress management, domestic violence and general self-improvement. In both examination in chief and cross examination the Applicant was asked what he had learnt from these courses and I was very impressed with his answers which indicated a genuine insight into the harm his past behaviour caused and the reasons he offended. He was a truthful witness who answered questions directly and made appropriate concessions. He acknowledged and did not seek to downplay his past offending. He said he now had the understanding and courage to reach out to others and seek help when needed. He explained that he had learnt the skills to step away and take a breath if in a situation of conflict. Further, in terms of anger management, he learnt how to recognize early warning signs. He said he no longer had the urge to drink because he understood the consequences. In my view, the Applicant has shown that he has adequately addressed the main factors that led to his past offending, namely alcohol and anger management.
31. It is also encouraging that the Applicant has commenced engagement with SMART Recovery, Odyssey House and SANE Australia. This engagement has helped the Applicant gain insight into his past offending but also has provided the Applicant with a plan for the future and a resource that he can use in the future if in need of support. The

Applicant has also been working on a plan with Secure Journeys who have prepared a Detainee Case Plan to develop goals and strategies for the Applicant's re-integration into the community if released. The Plan dated 6 June 2026 states that the Applicant "has appropriate supports in place and has established achievable goals that will enable him to reintegrate into the community successfully."

32. If released from detention, the Applicant will return to his wife and their three children. His wife and daughter gave written and oral evidence that they support him and depend upon him. Despite the incidents of domestic violence in 2016, 2023 and 2024, it would appear on the current evidence from the family that they are a very strong family unit. The Applicant's sister also gave evidence that the Applicant is the oldest of the six siblings living in Australia and that he is the "stronghold in the whole family". His siblings and many nieces and nephews look up to him and rely upon him. The Applicant is ashamed that he has let his family down in the past, but he is determined not to do so in the future. He wants to provide financial and emotional support for his family if he is released. The desire to be with his wife, children and extended family will be a strong motivating factor to avoid alcohol and crime in the future. I accept the Respondent's submission that his family should have been a motivating factor in the past, but the difference this time is the genuine insight gained by the Applicant through his extensive rehabilitation process. The Applicant knows that if he relapses into alcohol abuse or engages in further crime, he will not be given another chance and he will be permanently separated from his family and removed to New Zealand.
33. Another positive factor is that the Applicant has an offer of employment with a removalist company. I have no doubt that the Applicant will take up that offer or otherwise engage in full time work. He has shown himself to be a hard worker in the past. He has never had to rely on unemployment benefits and he provided an impressive list of his employment over the last 25 years in Australia. His employment history and offer of employment are corroborated by letters of support. There are also letters of support from family friends and church colleagues who will be available to support the Applicant if he is released into the community.
34. I have no doubt that the Applicant will reintegrate successfully into the community if he is released. The sentencing assessment report dated 20 August 2025 assesses the Applicant as a low/medium risk of reoffending. In my view, on the current evidence, the Applicant is a very low risk of reoffending because he has achieved an adequate

level of rehabilitation and he has significant support from family, work colleagues, his church, relevant institutions and the broader community.

Conclusion as to protection of the Australian community – 8.1 of Direction 110

35. There is both a backward and forward-looking assessment to be made when considering the protection of the Australian community. It requires a consideration of the Applicant's past conduct and a consideration of the risk of further offending. Further, it is the Government's view expressed in paragraph 8.1.2(1) of the Direction that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases. I believe that this is a case where the Applicant's conduct and the harm that would be caused, if it were to be repeated, is very serious. On the other hand, I consider that there is a very low risk of further offending. Taking both those factors into account, I do not consider that the Applicant poses an unacceptable risk to the Australian community if released. I conclude that the protection of the Australian community is a factor that weighs moderately against revocation of the cancellation decision.

Family Violence – 8.2 of Direction 110

36. The Applicant has engaged in three incidents of domestic violence in 2016, 2023 and 2024 which I have described earlier in these reasons.
37. The Applicant struck his wife causing her nose to bleed in 2016. He was sentenced to 12 months imprisonment suspended upon entry into a bond.
38. On 4 August 2023 the Applicant abused his wife and damaged their vehicle causing his wife to be fearful. An intensive correction order was imposed for a period of 12 months. The Magistrate told him to "cut back on what you drink, you only get into trouble when you're drinking."
39. On 2 April 2024 the Applicant was drinking and got into a serious argument with his daughter about a boyfriend. On 10 April 2024 a community correction order was imposed for 18 months.
40. There is no trend of increasing seriousness but there are repeated incidents which

have a very significant cumulative effect. The Applicant has engaged in a targeted rehabilitative program. He received a certificate for domestic violence awareness on 3 January 2026. He has also engaged in related programs such as anger management, understanding drug and alcohol abuse, personality development, decision making skills, positive parenting techniques, basic parenting skills, how to live with a teenager, conflict resolution and stress management. In my view, he has adequately addressed the factors that contributed to his conduct. In particular, he has given up alcohol which was a major contributing factor to the domestic violence.

41. The Applicant expressed genuine remorse to the Tribunal and is clearly ashamed of his behaviour. He accepts responsibility fully and understands how his behaviour impacted his wife and daughter and he has apologized repeatedly to them. His wife and daughter confirmed his evidence and said that they had forgiven him. Indeed, they spoke very highly of him and want him to return to the family home.
42. The Applicant's engagement with SMART Recovery, Odyssey House and SANE Australia are also positive factors in terms of the risk of further family violence. I consider that risk to be very low because of his rehabilitation and genuine remorse and insight in relation to his family violence behaviour. Nevertheless, this is a factor that weighs significantly against revocation.

Strength, Nature and Duration of Ties to Australia – 8.3 of Direction 110

43. This primary consideration provides at paragraph 8.3 of Direction 110:
 - (1) *Decision-makers must consider any impact of the decision on the non-citizen's immediate family members in Australia, where those family members are Australian citizens, Australian permanent residents, or people who have a right to remain in Australia indefinitely.*
 - (2) *Where consideration is being given to whether to cancel a non-citizen's visa or whether to revoke the mandatory cancellation of their visa, the decision-maker must also consider the strength, nature and duration of any other ties that the non-citizen has to the Australian community. In doing so, decision-makers must have regard to:*
 - a) *how long the non-citizen has resided in Australia, including whether the non-citizen arrived as a young child, noting that:*
 - i. *less weight should be given where the non-citizen began offending soon after arriving in Australia; and*
 - ii. *more weight should be given to time the non-citizen has*

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

44. The Tribunal heard oral evidence from “immediate family members”, namely the wife, daughter and sister of the Applicant. If the Applicant were removed to New Zealand, it would have a devastating impact on them.
45. In the absence of her husband, the wife is struggling financially and emotionally and is having real difficulties with her teenage boys. She works full time but has fallen behind on the rent. She desperately wants her husband to return to provide financial support and support to her and her children. She said that her husband holds the family together. She described how he took the children to sport and helped them with their homework and more generally around the house by cooking and other chores. The children have become disengaged from their sport and their schooling and more generally since the Applicant was imprisoned in June 2025. They have become disrespectful towards her. They respect their father and the family needs him to return.
46. The Applicant’s daughter has just turned 18 and is in year 12. She is hurting emotionally and mentally and struggling to cope without her father. His absence has impacted her wellbeing and motivation. She described the loving care and support that he provides for her. His presence is especially important because it is her final year of school and she needs his help to deal with stress and to get through this challenging period. If the Applicant was returned to New Zealand it would have a devastating impact on her.
47. The Applicant’s sister described him as the stronghold and backbone of the family who has provided strength and leadership to the entire family unit. He is the oldest of her five brothers and the siblings and their children all look up to him. The Applicant used to help her with her children who are now aged 19, 18 and 6 by taking them to sport. She said his absence would destabilise the family’s support network and would cause severe emotional distress and long-term mental health impacts on each of his siblings who look up to him as a mentor. It is apparent that she and her children together with the other siblings and their children would be negatively impacted if he were removed to New Zealand.
48. The Applicant’s most significant ties to Australia are through his family. He and his wife

brought up five children, the first two of which were from his wife's previous relationship. Those two older boys never knew their biological father and have always considered the Applicant as their father. They both wrote very positive letters of support describing how he raised them with love, care and fairness and how his absence negatively impacts them.

49. In addition to his family, the Applicant has other ties to the Australian community. The most significant of these is through his history of employment since coming to Australia as a 15-year-old. He started work on a farm, then factory work. Thereafter he worked in construction, warehousing, scaffolding and as a forklift driver. He obtained numerous work-related licences. He was recently employed as Floor Supervisor for three years at Intercentral Logistics who provided an extremely positive written reference. He has never received unemployment benefits and has paid tax all his life. There are other positive letters of support from members of his church, long-standing friends and work colleagues with whom he has strong social links. He has also been a volunteer and spoke fondly of his time helping a charity fun run.
50. The Applicant has made a long and outstanding contribution to the Australian community through his commitment to work, family and community for the last 25 years since arriving as a teenager. This represents all his adult life and more than half of his whole life. He worked hard so as to support his family which he wants to continue to do. Significant weight should be given to the positive contribution he has made to the Australian community.
51. In conclusion with respect to strength, nature and duration of ties to Australia, I give very significant weight to the fact that the Applicant has lived in Australia since he was a child and for the majority of his life during which time, for the most part, he has positively contributed to the Australian community through his work and his family.
52. I consider that this factor weighs very significantly in favour of revocation of the cancellation decision.

Best interests of minor children – 8.4 of Direction 110

53. The Applicant has two minor children aged 16 and 13 both of whom wrote very positive letters of support. His daughter has just turned 18. I will not provide all the details but there is overwhelming evidence that he has been and is a loving and devoted father and that his

children love him very much. There is also much evidence that the boys are struggling without their father. Permanent separation would have a very significant negative impact. It is relevant that the Applicant exposed his children to family violence but in my view that is unlikely to happen again and there is no doubt that the boys would benefit hugely if their father can resume his parental role during the critical teenage years. The Applicant's wife gave emotional evidence about how the children miss their father and how his presence will benefit them. It is in the best interests of these two boys for the cancellation decision to be revoked so he can return home.

54. The Applicant's sister has two minor children who have a strong relationship with their uncle. The sister gave oral and written evidence about the positive role the Applicant has played in their lives. They miss him and would benefit from his return. It is in their best interests for the cancellation decision to be revoked but I give less weight to them because the relationship is non-parental; although still significant and important for these children.
55. There are other minor aged nieces and nephews who the sister listed in her statement. I do not take them into account because of the limited evidence about them.
56. The best interests of minor children is a very significant factor which weighs most heavily in favour of revocation of the cancellation decision.

Expectations of the Australian community – 8.5 of Direction 110

57. The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has engaged in serious conduct in breach of this expectation, or where there is an unacceptable risk that they may do so, the Australian community, as a norm, expects the Government to not allow such a non-citizen to remain in Australia.¹¹ The Applicant has failed to obey the laws of Australia and has engaged in serious criminal activity including family and other acts of violence towards women and a police officer performing duties. He would therefore be expected to be removed from the community.
58. I conclude that the Australian community expects that the Australian government should cancel the Applicant's visa. The Applicant has engaged in conduct that raises serious character concerns. This expectation of the Australian community applies regardless of whether the Applicant poses a measurable risk of causing physical harm

to the Australian community.¹¹ However, I have found that there is a very low risk of further offending which I do not consider is unacceptable. Nevertheless, this is a factor that weighs heavily against revoking the cancellation decision.

Other Considerations

59. In deciding whether there is ‘another reason’ to revoke the cancellation of the Applicant’s visa, I must also take into account the ‘other considerations’ listed in the Direction, where relevant, but these are not exhaustive.¹²

Legal Consequences of Decision – 9.1 of Direction 110

60. As a consequence of affirming the decision under review, the Applicant would remain in detention and be liable to be removed from Australia as soon as reasonably practicable. There is no suggestion of a protection finding or any other matter that would delay removal and therefore any further period of detention would not be significant. He would not be able to apply for another visa (except for a protection visa) and his exclusion from Australia would be permanent. These are the “direct and immediate statutorily prescribed consequences”¹³ that I take into account. The Applicant has raised no claim of non-refoulement obligations, but he says that the application of a permanent bar on him from returning to Australia is too harsh in all circumstances. I explained earlier in these reasons how permanent removal to New Zealand would have devastating consequences for the Applicant and his family. In my view, the legal consequences in paragraph 9.1 of the Direction have no independent appreciable weight beyond the weight I have previously given.¹⁴ Therefore I give no weight to this factor.

Extent of impediments if removed – 9.2 of Direction 110

61. The Direction requires that I consider the extent of any impediments that the Applicant may face if removed from Australia to his home country in establishing himself and maintaining basic living standards (in the context of what is generally available to other citizens of that country), taking into account:¹⁵

¹¹ Ibid 5.2(4).

¹² *SZRTN v Minister for Immigration and Border Protection* (2014) 141 ALD 395, 409 at [86]; [2014] FCA 303.

¹³ *Taulahi v Minister for Immigration and Border Protection* (2016) 246 FCR 146; [2016] FCAFC 177 at [84].

¹⁴ See *Da Costa Junior v Minister for Immigration and Multicultural Affairs* [2025] FCA 1423 at [32]; and *Le v Minister for Immigration and Citizenship* [2026] FCA 774 at [50].

¹⁵ *The Direction* (n 9) at 9.2(1).

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

62. The Applicant is a relatively young and healthy man and he will not face any significant cultural or linguistic barriers in returning to New Zealand. He suffers from migraines and gout and his mental health may deteriorate but he will be able to access medical services in New Zealand. There would be a difficult period of adjustment made worse because of a lack of family or social network in New Zealand. Nevertheless, in terms of establishing himself and maintaining basic living standards (in the context of what is generally available to other citizens of New Zealand), I consider the extent of impediments to be insignificant and therefore I give very little weight in the Applicant's favour to this consideration.

Impact on Australian business interests – 9.3 of Direction 110

63. There was no evidence of impact on Australian business interests within the meaning of the Direction. This factor is neutral.

CONCLUSION

64. I have considered the specific circumstances relating to the Applicant as part of my consideration. I am now required to carry out the evaluative exercise of weighing up the factors to determine whether I am satisfied that there is 'another reason' to revoke the cancellation decision.

65. The primary considerations of the protection and expectations of the Australian community and family violence weigh heavily against the Applicant because of the seriousness of the offending and the serious harm that would occur if it were repeated albeit noting that I consider the risk of further offending to be very low. The most significant countervailing factors are the primary considerations of the Applicant's ties to Australia and the best interests of his two sons. In particular, I give significant weight to the desperate pleas from his wife and children for him to return. It is no exaggeration on the evidence before the Tribunal to say that his absence is having a disastrous impact on his wife and children. The wife is not coping and she needs the support of

her husband. The protection of the Australian community is generally to be given greater weight but in this case it is not determinative because of the Applicant's rehabilitation and because of the more significant weight that I give to the Applicant's ties to Australia and the best interests of his minor children. The Applicant has given up alcohol and has shown himself ready to return to the family and the wider community. The risk of harm to them is very low and is significantly outweighed by the harm the family will suffer if he is not released.

66. In my view, the primary considerations of the protection and expectations of the Australian community and family violence are outweighed by the countervailing considerations.
67. I am satisfied that there is another reason for revoking the cancellation decision. The decision under review is set aside and substituted by a decision to revoke the cancellation decision.

I certify that the preceding 67 (sixty-seven) paragraphs are a true copy of the reasons for the decision herein of Deputy President P Britten-Jones.

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

Associate

Dated: 19 June 2026

Date of hearing:	16 and 17 June 2026
Applicants' Representative	Dr Jason Donnelly
Respondent's Representative:	Ms Mary Trimboli