

FEDERAL COURT OF AUSTRALIA

Ceitinn v Minister for Immigration and Citizenship [2026] FCA 887

File number(s): QUD 384 of 2024

Judgment of: **COLLIER J**

Date of judgment: 10 July 2026

Catchwords: **MIGRATION** – Judicial review of Minister’s decision under s 501BA *Migration Act 1958* (Cth) to set aside a decision of former Administrative Appeals Tribunal and cancel applicant’s visa – where applicant convicted of fraud offences as part of “predatory”, “well-organised” and “very sophisticated” criminal enterprise – where applicant’s visa cancelled by Minister’s delegate under mandatory cancellation provisions – where Minister’s delegate decided not to revoke mandatory cancellation – where Tribunal decided to revoke cancellation – where Minister set aside Tribunal’s decision – whether Minister fundamentally misunderstood nature of power under s 501BA – whether Minister exercised power within reasonable time – whether Minister erred in not seeking information from applicant or Department – whether Minister formed state of satisfaction as to the national interest unreasonably, illogically or irrationally – whether Minister considered all legal consequences of the decision – application dismissed

Legislation: *Migration Act 1958* (Cth) ss 4, (2), 189, 196, 437DC, 501, (3A), (6)(a), 501A(2), 501BA, (1), (2), (3), 501CA(4), 501E, 501F
Migration Amendment (Character and General Visa Cancellation) Act 2014 (Cth)

Cases cited: *Abebe v Commonwealth* [1999] HCA 14; (1999) 197 CLR 510
AQM18 v Minister for Immigration and Border Protection [2019] FCAFC 27; (2019) 268 FCR 424
BMF16 v Minister for Immigration and Border Protection [2016] FCA 1530
Candemir v Minister for Home Affairs [2019] FCAFC 33; (2019) 268 FCR 1
Carrascalao v Minister for Immigration and Border Protection [2017] FCAFC 107; (2017) 252 FCR 352
Ceitinn and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2023] AATA 736

CPCF v Minister for Immigration and Border Protection [2015] HCA 1; (2015) 255 CLR 514

CRRN v Minister for Immigration and Multicultural Affairs [2025] FCA 192

Djokovic v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FCAFC 3; (2022) 289 FCR 21

ENT19 v Minister for Home Affairs [2023] HCA 18; (2023) 278 CLR 75

Ibrahim v Minister for Home Affairs [2019] FCAFC 89; (2019) 270 FCR 12

Ismail v Minister for Immigration, Citizenship and Multicultural Affairs [2024] HCA 2; (2024) 280 CLR 265

KDSP v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2020] FCAFC 108; (2020) 279 FCR 1

Koon Wing Lau v Calwell [1949] HCA 65; (1949) 80 CLR 533

Kruger v The Commonwealth [1997] HCA 27; (1997) 190 CLR 1

Minister for Immigration and Border Protection v Eden [2016] FCAFC 28; (2016) 240 FCR 158

Minister for Immigration and Citizenship v Li [2013] HCA 18; (2013) 249 CLR 332

Minister for Immigration and Citizenship v XMBQ [2026] FCAFC 19; (2026) 315 FCR 207

Minister for Immigration and Ethnic Affairs v Wu Shan Liang [1996] HCA 6; (1996) 185 CLR 259

Minister for Immigration and Multicultural Affairs v Jia Legeng [2001] HCA 17; (2001) 205 CLR 507

Minister for Immigration v George [2004] FCAFC 276; (2004) 139 FCR 127

NABE v Minister for Immigration and Multicultural and Indigenous Affairs [2004] FCAFC 263; (2004) 144 FCR 1

Ozer v Minister for Home Affairs [2019] FCA 104

Plaintiff M174/2016 v Minister for Immigration and Border Protection [2018] HCA 16; (2018) 264 CLR 217

Plaintiff S156/2013 v Minister for Immigration and Border Protection [2014] HCA 22; (2014) 254 CLR 28

Plaintiff S297/2013 v Minister for Immigration and Border Protection [2014] HCA 24; (2014) 255 CLR 179

Selliah v Minister for Immigration & Multicultural Affairs [1999] FCA 615

Taulahi v Minister for Immigration and Border Protection [2016] FCAFC 177; (2016) 246 FCR 146

Vargas v Minister for Home Affairs [2021] FCAFC 162;
(2021) 286 FCR 387
Waterford v Commonwealth [1987] HCA 25; (1987) 163
CLR 54
*XMBQ v Minister for Immigration and Multicultural
Affairs* [2025] FCA 553

Division:	General Division
Registry:	Queensland
National Practice Area:	Administrative and Constitutional Law and Human Rights
Number of paragraphs:	87
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Date of hearing:	11 November 2024
Counsel for the Applicant:	Mr J Donnelly with Dr J Murphy
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Counsel for the Respondent:	Mr P Knowles with Mr J Byrnes
Solicitor for the Respondent:	Sparke Helmore

ORDERS

QUD 384 of 2024

BETWEEN: **STIOFAN CEITINN**
Applicant

AND: **MINISTER FOR IMMIGRATION AND CITIZENSHIP**
Respondent

ORDER MADE BY: **COLLIER J**

DATE OF ORDER: **10 JULY 2026**

THE COURT ORDERS THAT:

1. The name of the respondent be amended to “Minister for Immigration and Citizenship”.
2. The Amended Originating Application for Review of a Migration Decision filed on 4 October 2024 be dismissed.
3. The applicant pay the costs of the respondent, such costs to be taxed if not otherwise agreed.

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

REASONS FOR JUDGMENT

COLLIER J:

1 Before the Court is an Amended Originating Application for Review of a Migration Decision. The applicant seeks to review the decision (**Minister's Discretionary Decision**) of the respondent (**Minister**) made on 11 June 2024 pursuant to s 501BA of the *Migration Act 1958* (Cth) (**Migration Act**). The result of that decision was that a decision of the Administrative Appeals Tribunal (as it then was) (**AAT**) dated 23 March 2023 was set aside, and the applicant's Class BS Subclass 801 Partner visa (**Visa**) was cancelled. Importantly, the AAT decision had *set aside* an earlier decision of the Minister's delegate *not* to *revoke* the mandatory *cancellation* of the applicant's Visa (**Delegate's Decision**). In seeking judicial review of the Minister's decision, the applicant relies on five grounds of review, namely:

1. The Minister erred jurisdictionally by reasoning as if the power in s 501BA(2) was, and was only, a power to cancel a visa.
...
2. The Minister erred jurisdictionally by failing to exercise his power within a reasonable time.
...
3. The Minister erred jurisdictionally by failing to exercise his power to seek information from the Applicant or the Department.
...
4. The Minister erred jurisdictionally by forming his state of satisfaction as to the 'national interest' unreasonably, illogically or irrationally.
...
5. The Minister erred jurisdictionally by failing to consider all of the legal consequences of the decision.
...

(particulars omitted)

2 The applicant seeks the following relief:

1. A writ of certiorari issue quashing the decision of Respondent dated 13 June 2024 to the Applicant's Class BS Subclass 801 – Partner visa.
2. The Applicant be released from immigration detention forthwith.
3. The Respondent pay the Applicant's costs.

3 After this matter was heard, it was determined that delivery of judgment be stayed pending the outcome of the decision of the Full Court in *Minister for Immigration and Citizenship v XMBQ* [2026] FCAFC 19; (2026) 315 FCR 207. There, the Full Court considered an appeal where – as Thawley J explained at [2] – the central question was whether s 501BA(2) of the *Migration Act* conferred a power on the Minister that was silently extinguished if not exercised within a “reasonable time” after the occurrence of the event which enlivened the power. The Full Court determined that the power of the Minister was not extinguished even if not exercised within a “reasonable time”.

4 The outcome of that appeal was plainly relevant to the application presently before me, specifically in respect of ground 2 where Mr Ceitinn claimed that the Minister had erred jurisdictionally by failing to exercise his power within a reasonable time. In light of the Full Court’s decision in *XMBQ* it is clear that ground 2 of the present application is not substantiated. However, the Court notes that the respondent in *XMBQ* has sought special leave to appeal the Full Court’s decision to the High Court. In those circumstances, the parties have requested me to determine whether, as a factual matter, the decision of the Minister in this case was actually made within a “reasonable time”. I shall do so in the course of this judgment.

5 In my view, for the reasons outlined below, the application should be dismissed with costs.

BACKGROUND

6 The applicant is a citizen of the Republic of Ireland, where he was born in 1981. He initially arrived in Australia in November 2003, and has since resided in Australia on, essentially, a permanent basis.

7 In October 2020, the applicant was sentenced to eight years imprisonment (eligible for parole after two years and six months) for two counts of fraud (**Fraud Offences**). Between May 2009 and January 2019, the applicant had also been sentenced for six separate and less serious offences in the Magistrates Court of Queensland. Between February 2008 and June 2018, the applicant had a traffic history including 11 speeding offences, and one offence of driving under the influence of alcohol (where the applicant’s blood alcohol level was over three times the legal limit).

8 On 26 November 2020, the applicant’s Visa was mandatorily cancelled under s 501(3A) of the *Migration Act*, because he did not pass the character test and was serving a full-time custodial sentence for the Fraud Offences (**Mandatory Cancellation**).

- 9 On 18 December 2020, the applicant requested that the Minister revoke the Mandatory Cancellation. On 29 December 2022, the Delegate’s Decision was made, refusing to revoke the Mandatory Cancellation.
- 10 On 23 March 2023, the AAT set aside the Delegate’s Decision and made a decision to revoke the cancellation of the applicant’s Visa in the published decision of *Ceitinn and Minister for Immigration, Citizenship and Multicultural Affairs (Migration)* [2023] AATA 736 (**AAT Decision**). The AAT Decision constituted some 80 pages, and the Minister did not seek review of that decision.
- 11 On 11 June 2024, the Minister made the Minister’s Discretionary Decision by exercising his power under s 501BA of the *Migration Act*, setting aside the AAT Decision and cancelling the Visa. The applicant was notified of the Minister’s Discretionary Decision by letter dated 13 June 2024.
- 12 By his Amended Originating Application for Review of a Migration Decision filed on 4 October 2024, the applicant seeks judicial review of the Minister’s Discretionary Decision.

MINISTER’S DISCRETIONARY DECISION

- 13 The Minister’s Discretionary Decision, together with some 93 paragraphs of reasons for the making of that decision, were given to the applicant on 13 June 2024.
- 14 Relevantly the Minister considered his powers under s 501BA which provides:

501BA Cancellation of visa—setting aside and substitution of non-adverse decision under section 501CA

- (1) This section applies if:

- (a) a delegate of the Minister; or
- (b) the ART;

makes a decision under section 501CA (*the original decision*) to revoke a decision under subsection 501(3A) to cancel a visa that has been granted to a person.

Action by Minister—natural justice does not apply

- (2) The Minister may set aside the original decision and cancel a visa that has been granted to the person if:
- (a) the Minister is satisfied that the person does not pass the character test because of the operation of:
 - (i) paragraph 501(6)(a), on the basis of paragraph 501(7)(a), (b) or (c); or

(ii) paragraph 501(6)(e); and

(b) the Minister is satisfied that the cancellation is in the national interest.

(3) The rules of natural justice do not apply to a decision under subsection (2).

Minister's exercise of power

(4) The power under subsection (2) may only be exercised by the Minister personally.

Decision not reviewable by application under Part 5

(5) A decision under subsection (2) is not reviewable by application under Part 5.

Note: For notification of decisions under subsection (2), see section 501G.

15 The Minister then stated, in relation to natural justice:

8. Under s501BA(3) of the Act, the rules of natural justice do not apply to a decision under s501BA(2). While this means that I am not required to apply the rules of natural justice when making a decision under s501BA(2) by giving the affected person an opportunity to be heard before making the decision, I am aware that s501BA(3) does not prohibit me from affording such an opportunity.
9. In this case, I chose to proceed without giving Mr CEITINN an opportunity to be heard before making my decision. I am cognisant that as a consequence, Mr CEITINN has not had the opportunity to advance reasons why an adverse decision should not now be made.
10. I have, however, given consideration to information given by Mr CEITINN in relation to the original request for revocation and the evidence provided to the AAT, as well as the decision record of the AAT in revoking the decision to cancel Mr CEITINN's visa.

16 In relation to the "character test" provided by s 501(6)(a) of the *Migration Act*, the Minister reasoned, relevantly:

12. On 15 October 2020 Mr CEITINN was convicted of *Fraud - dishonestly induces delivery of property value of/over \$30,000* (two counts) in the District Court of Queensland in Brisbane for which he was sentenced to eight years imprisonment **Attachment A**.
13. Accordingly, I am satisfied Mr CEITINN does not pass the character test because of the operation of s501(6)(a), on the basis of s501(7)(c), and so the condition under s501BA(2)(a) of the Act is met.

17 The applicant does not press a ground that the Minister's conclusion on the character test was incorrect. Indeed, the AAT Decision found that the applicant did not pass the character test: AAT Decision at [8].

18 In relation to the national interest, the Minister relevantly outlined his considerations and reasoning process as follows:

16. In *Plaintiff 5156/2013 v Minister for Immigration and Border Protection* [2014] HCA 22 at [40], the High Court said that “What is in the national interest is largely a political question”. To the same effect, a number of Federal Court decisions hold that the question of what is or is not in the national interest is an evaluative one that is entrusted by the legislature to the Minister to determine according to his or her satisfaction (provided that satisfaction is obtained reasonably).
17. I consider that matters of national interest include, amongst other things, the protection of the community and the expectations of the Australian community.

19 The Minister then considered the applicant’s offending prior to the Fraud Offences. After outlining that previous offending, the Minister reasoned:

23. Whilst when viewed individually these offences may appear minor, particularly when regard is had to the sentences imposed for each offence, I am of the view that when viewed together the history demonstrates that Mr CEITINN has a not insignificant history of failing to respect and abide by the laws of Australia.

20 In relation to the Fraud Offences, after having outlined the nature of the Fraud Offences the Minister reasoned relevantly:

32. When regard is had to the circumstances of Mr CEITINN’s fraud offences, the number of Australian citizen victims defrauded, the amount of money defrauded, the amount of money that Mr CEITINN personally derived from the fraud, I find that Mr CEITINN’s fraud offences are very serious.
33. The sentence imposed upon Mr CEITINN for his fraud offending reinforces my view as to the very serious nature of his offending. Sentences involving terms of imprisonment are usually the last resort in the sentencing hierarchy and where a Court has sentenced an offender to a term of custodial imprisonment, this should be viewed as a reflection of the objective seriousness of the offences involved. The fact that Mr CEITINN was sentenced to a term of eight years imprisonment after pleading guilty and with no prior history of fraud demonstrates the seriousness with which the Court viewed his offending. The Queensland Court of Appeal dismissed an appeal against the sentence **Attachment B1**.
34. Mr CEITINN’s offending in Australia has also increased in seriousness culminating in the commission of very serious fraud offending.
35. The cumulative effect of Mr CEITINN’s fraud offending has been truly devastating. The effect was financial loss to some 160 members of the Australian community and, for some, psychological harm which I consider further below.
36. Overall, I find that Mr CEITINN’s criminal offending in Australia is very serious.

21 When considering the risk posed to the Australian community by the applicant’s continued presence in Australia, the Minister stated, relevantly:

37. Having regard to Mr CEITINN's offending history, as outlined above, I consider that any future offending of a similar nature or seriousness would have the potential to cause serious financial, psychological and/or (consequential) physical harm to members of the Australian community.

...

39. The sentencing judge said that the victim impact statements speak of not only the financial loss the victims have sustained which included, for some, the loss of savings and the loss of superannuation, but feelings of worthlessness that they have felt as a consequence of being duped **Attachment B**.

40. I also have before me some of the victim impact statements which were tendered at the sentencing proceedings **Attachment J2**. The victim impact statements make for sobering reading and record the profound effect Mr CEITINN's offending had on them. Statements made by some of the victims include:

- *"This eventually led to threats of suicide, three months in a Mental health facility and being on strong medication."*
- *"Since this event, I have lost trust in my own judgement and much of my sense of self-respect and self-worth I feel I have failed my partner and my family and I feel tremendous guilt at having caused a financial loss that has impacted on my family's health and well-being."*
- *"The loss of money has had a detrimental affected on my life. Since the exposure to the fraud and theft of my money, the retirement I had planned for the rest of our lives, has now been placed on hold, forever."*
- *"Apart from the emotional stress this scam has caused me gross embarrassment in front of my family and friends. This incident has not only impacted my life and my wife's, but other family members who see us struggling to enjoy a carefree retirement."*
- *"Just wanted to crawl into a hole and kill myself."*

Since the event

I can't sleep

I have trust issues

I have no friends

I have no job

I have no car

I have no house

I have no money

I have no relationship

I have no life

I have no interests

I have no self worth

I'm a mental basket case''

41. In assessing the likelihood of Mr CEITINN reoffending in the future, I have considered available information as to matters that may have contributed to Mr CEITINN's past conduct, as well as indications of remorse and the extent of Mr CEITINN's rehabilitation.

(a) Factors contributing to past conduct

42. In his evidence to the AAT, Mr CEITINN committed the fraud offences because he was motivated by financial gain Attachment E. He said it was an error in judgment not to conduct further due diligence in relation to the legal implications of the produce Attachment F.

(b) Remorse and rehabilitation

43. I have considered whether Mr CEITINN has demonstrated remorse. Whilst Mr CEITINN has demonstrated remorse more recently, I view this with some circumspection given that in submissions made to the delegate by a solicitor it was suggested that the victims of the offending were not vulnerable due to the principle of buyer-beware and sought to deflect blame for his offending onto the victims themselves. In the AAT, Mr CEITINN suggested that the solicitor was solely responsible for making that submission having not seen the submissions before they were provided (Attachment E) and I reject that argument. I do however acknowledge many of the supportive statements provided by Mr CEITINN refer to his expressions of remorse. The sentencing judge also accepted that Mr CEITINN was remorseful Attachment B. On balance I accept that Mr CEITINN has displayed some remorse.
44. I have minimal independent evidence before me of rehabilitation Mr CEITINN has undertaken. I am aware that Mr CEITINN has undergone counselling with psychologist Ms Taylor however this was in reference to his relationship with his daughter and maintaining that relationship through his incarceration.
45. Mr CEITINN said to the AAT that there are no courses that can be done in jail for people who commit fraud Attachment E. Whilst I am prepared to accept that explanation despite a lack of independent evidence to support it, that does not explain why Mr CEITINN could not engage in rehabilitation or counselling targeted at the factors that led him to offending in the first place (including fraud offending) privately particularly in the time that he was in immigration detention.
46. Whilst I accept that Mr CEITINN has taken some steps at rehabilitation, I am not persuaded that the factors that led Mr CEITINN to commit very serious fraud offences in the first place have been resolved.

22 In concluding his assessment of the risk posed to the Australian community by the applicant, the Minister stated, relevantly:

50. ... Having regard to the available evidence, I consider there to be a low, but not negligible likelihood that Mr CEITINN will reoffend.
51. Mr CEITINN has committed very serious fraud offences. Should he engage in similar conduct again, it would be likely to result in serious financial, psychological and/or physical harm to members of the community. I consider

that this conduct, and the harm that would be caused if it were to be repeated, is so serious that any risk that it could be repeated is unacceptable.

52. Considering the nature and seriousness of Mr CEITINN's conduct, the potential harm to the Australian community should he commit further offences or engage in other serious conduct, and taking into account the likelihood of Mr CEITINN reoffending, I consider that the need to protect the Australian community from criminal or other serious conduct weighs significantly in favour of a finding that it is in the national interest to cancel Mr CEITINN's visa.

23 After outlining the expectations of the Australian community, the Minister concluded:

56. The consideration here is about the expectations of the Australian community as a whole, rather than any expectations that particular members of the community may have. While I accept that certain members of the community may expect that his visa should not be cancelled, I am of the view that the broader Australian community's general expectations about non-citizens apply in this case. I have attributed this consideration significant weight towards a finding that it is in the national interest to cancel Mr CEITINN's visa.

24 After reaching the above conclusion, the Minister considered factors that might support a decision not to cancel the applicant's Visa. In this regard, the Minister reasoned, relevantly:

63. Mr CEITINN submitted that his minor daughter, Keira (DOB: 06/10/2008) would be affected if his visa were cancelled. He stated that the affects could be devastating on Keira and this has been supported by the statements of Ms Katherine Walton (Mr CEITINN's ex-wife) Attachment J6. They detail that Keira has suffered at school after Mr CEITINN was imprisoned and that she would greatly benefit from his support. Keira also provided a statement where she expressed a desire for him to come to her sporting engagements, to help with her studies and for him to generally return to her life Attachment J8.

...

66. I find that it is in the best interest of Keira that I do not cancel Mr CEITINN's visa and have given this significant weight against cancellation ... Considering the interests of all minor children in Australia collectively, I have given this consideration significant weight against cancellation

...

67. I have taken into account the length of time that Mr CEITINN has been ordinarily resident in Australia and whether any of that time spent living in Australia was during his formative years. Mr CEITINN has resided in Australia for 20 years, having arrived as an adult of 21 years. Based on Mr CEITINN's circumstances I find that he has not spent any of his formative years in Australia. I accept that he otherwise has spent a large portion of his life in Australia.

...

73. I have considered the strength, nature and duration of Mr CEITINN's ties to Australia and find that on balance, they weigh strongly against cancellation of the visa in this case.

25 The Minister went on to consider the legal consequences of his decision and reasoned, relevantly:

- 74. Mr CEITINN 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. Further, Mr CEITINN is not covered by a protection finding as defined in s197C of the Act.
- 75. I am aware that under s198 unlawful non-citizens are liable to removal from Australia as soon as reasonably practicable, and in the meantime are liable to detention under s189 provided that removal is practicable in the reasonably foreseeable future, noting also that s197C(1) provides that, for the purposes of s198, it is irrelevant whether Australia has non-refoulement obligations in respect of the unlawful non-citizen.
- 76. However s197C(3) provides that s198 does not require or authorise removal of a person to a country in relation to which a 'protection finding' has been made in the course of considering a protection visa application by the person, except in the circumstances set out in s197C(3)(c).
- 77. A 'protection finding', as defined for the purpose of s197C(3) of the Act, made in the course of considering a protection visa application from a non-citizen, means that Australia will not forcibly return, deport or expel a person to a place where they will be at risk of a specific type of harm. The Act, in particular the concept of 'protection obligations', reflects Australia's interpretation of its non-refoulement obligations and the scope of such obligations that Australia is committed to implementing.
- 78. If relevant circumstances change, a reassessment of a protection finding can be made under s197D. A decision that the person was no longer a person in respect of whom a protection finding would mean that the person no longer engaged Australia's non-refoulement obligations and that s197C(3) no longer operated in respect of the person.

26 The Minister considered that there was only one factor of impediment that weighed against the applicant's removal from Australia. In relation to that factor, the Minister stated:

- 83. I find that Mr CEITINN may experience some practical, financial and emotional hardship if removed to Ireland, because of his period of residence in Australia. As a citizen of Ireland, he would have the same level of government safety net support as is available to other citizens of that country.
- 84. I have accordingly attributed this consideration some weight against the cancellation of Mr CEITINN's visa.

27 In his conclusion, the Minister stated:

- 85. I am satisfied that Mr CEITINN does not pass the character test because of the operation of, in this case, s501(6)(a) with reference to s501(7)(c). Further, I am satisfied that it is in the national interest to cancel Mr CEITINN's visa.
- 86. I have found that the best interests of Mr CEITINN's minor child, as well as the other relevant children in Australia, as a primary consideration, weigh very heavily against cancellation of Mr CEITINN's visa.

87. In addition, I have found that a number of other factors also weigh in favour of a decision to not cancel the visa. These include Mr CEITINN's ties to Australia and impediments if removed to Ireland.
88. I have weighed up the above countervailing factors against the national interest considerations. In doing so, I considered the very serious nature of the crimes Mr CEITINN has committed in Australia.
89. I find that the Australian community could be exposed to significant harm should Mr CEITINN reoffend in a similar fashion. I have found there to be a low but not negligible risk that Mr CEITINN will reoffend. The Australian community should not tolerate any risk of further harm.
90. Noting that Mr CEITINN has lived in Australia for a large portion of his life, I have taken into account that the Australian community may afford a higher level of tolerance of criminal or other serious conduct by Mr CEITINN than it would otherwise. However I am also cognisant that where serious financial and/or psychological harm and/or consequential physical harm could be inflicted on the Australian community, even strong countervailing considerations are generally insufficient to warrant not cancelling the visa.
91. 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 expect non-citizens who have a very serious criminal history involving defrauding 160 Australians of in excess of \$2 million not to continue to hold a visa, especially where the non-citizen continues to pose a measurable risk to the Australian community.
92. I find that the considerations against cancellation are clearly outweighed by the national interest considerations in this case.

APPLICANT'S SUBMISSIONS

28 In relation to ground 1, the applicant submitted, in summary, that:

- The Minister erred jurisdictionally by reasoning as if the power in s 501BA(2) of the *Migration Act* was only a power to cancel a visa. In this regard, the Minister's reasoning was not referable to a proper understanding of the power.
- The power contained in s 501BA of the *Migration Act* was inserted for "exceptional cases": [85] of the Explanatory Memorandum to the *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth).
- The Minister's power under s 501BA of the *Migration Act* includes powers both to set aside decisions of a delegate or the AAT, and to cancel a person's visa. That power is even greater than the Minister's power under s 501 of the Act, and the power of Chapter III Courts, as it does not require the Minister to identify any error before exercising the power.

- In the reasons for the Minister’s Discretionary Decision, the Minister did not treat that decision as one to cancel the Visa **and** to set aside the AAT Decision. The Minister only considered the cancellation. That error was material as it showed a fundamental misunderstanding of the Minister’s power, and a correct understanding could have realistically led to the discretion being exercised differently.

29 In relation to ground 2, the applicant submitted, in summary, that:

- The Minister’s power under s 501BA(2) of the *Migration Act* is subject to an implied limit that it must be exercised within a “reasonable time”: *CPCF v Minister for Immigration and Border Protection* [2015] HCA 1; (2015) 255 CLR 514 at [453], *Koon Wing Lau v Calwell* [1949] HCA 65; (1949) 80 CLR 533, 573, ***Plaintiff S297/2013 v Minister for Immigration and Border Protection*** [2014] HCA 24; (2014) 255 CLR 179 at [37].
- The statutory context supports an implication that the power under s 501BA(2) of the Act was intended to be exercised within a reasonable time: Commonwealth House of Representatives, *Parliamentary Debates*, 24 September 2014, p 10326.
- The omission of a requirement that natural justice be provided under s 501BA(2) is intended to be ameliorated by the fact that the power is to be exercised within a reasonable time, not years later when a person’s evidence and arguments are likely to be different to those put before earlier decision makers.
- In the above respects, the power in s 501BA(2) of the Act is distinguishable from the power in s 501A(2) of the Act, which has been held not to be subject to an implied condition that it be exercised within a reasonable time: ***KDSP v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs*** [2020] FCAFC 108; (2020) 279 FCR 1 at [113]. Further, Bromberg J in *KDSP* indicated that his Honour’s decision may well have been different had the power in s 501A(2) of the Act not been amenable to mandamus. The power under s 501BA(2) of the Act is not amenable to mandamus.
- The Minister’s Discretionary Decision was not exercised within a reasonable time within the definition of reasonable time provided by the High Court in ***Plaintiff S297/2013*** at [37].

- A “reasonable time” included the time it would take for the Minister to make enquiries of the Department or the applicant, to have a brief prepared, and to consider the matter and make a decision.
- Here, no inquiries were made by the Minister, the brief ought not have taken much longer than a day to complete, and the Minister was recorded as having spent 3 hours and 45 minutes considering the material, only a few days after receiving the brief.
- Accordingly, the 14.5 month delay between the AAT Decision and the Minister’s Discretionary Decision has not been justified or satisfactorily explained and is therefore unreasonable.

30 In relation to ground 3, the applicant submitted, in summary, that:

- The Minister erred jurisdictionally in unreasonably failing to exercise his power to seek information from the Department or the applicant.
- The Minister’s incidental power to seek information must be exercised reasonably because:
 - The ordinary rule of statutory construction is that powers conferred on the Executive are subject to a condition that they be exercised reasonably: *Kruger v The Commonwealth* [1997] HCA 27; (1997) 190 CLR 1.
 - Relaxing the requirements of reasonableness in this regard would result in the Minister reaching states of satisfaction as to the national interest that are not fully informed.
 - Given the significance of the consequences of the Minister’s power, in the absence of natural justice, it is to be expected that Parliament intended at least to impose the low guardrail of reasonableness.
 - As the Minister’s power is not reviewable by way of merits review, it must be inferred that Parliament would want the Minister to reasonably inform themselves of the matters relevant to that final exercise of power.
 - The incidental power to seek information is analogous to the non-compellable power in s 473DC of the Act. In relation to s 473DC, the High Court found that failure to exercise the power could “transgress the bounds of reasonableness”: *Plaintiff M174/2016 v Minister for Immigration and Border Protection* [2018] HCA 16; (2018) 264 CLR 217 at [49].

- The Full Court of this Court has found that the Minister’s choice as to whether to afford natural justice is amenable to review for legal unreasonableness: *Vargas v Minister for Home Affairs* [2021] FCAFC 162; (2021) 286 FCR 387 at [35].
- Simply because Parliament did not intend the Minister to be obliged to offer all of the protections of natural justice, it cannot be said that Parliament then intended that the Minister could lawfully exercise the power without reasonably exercising information gathering powers.
- The Minister’s failure to seek information was unreasonable given that 14.5 months had elapsed since the AAT Decision. This is especially so given that the applicant had previously been assessed as at a “low risk” of reoffending and was subject to “strict parole conditions”: Ministers Discretionary Decision [49]-[50]. Logic required that, given the fact of risk posed to the community was central to the Minister’s conclusion on the “national interest”, he ought to have sought an update as to any information that might bear upon the risk the applicant posed.
- To illustrate the unreasonableness of the Minister’s failure to seek information, the applicant filed an affidavit in this Court on 21 October 2024, demonstrating the information that he would have been able to provide to the Minister, if given the opportunity.

31 In relation to ground 4, the applicant submitted, in summary, that:

- The Minister’s conclusion that the cancellation of the applicant’s Visa was in the national interest was a conclusion that must have been reached unreasonably because:
 - The highly consequential nature of the power in s 501BA(2) of the Act (particularly in the absence of natural justice) required the Minister to have particular “care and attention”: *Carrascalao v Minister for Immigration and Border Protection* [2017] FCAFC 107; (2017) 252 FCR 352 at [60].
 - Even if “the risk of harm to the Australian community posed by the continued presence of the visa holder” was not a mandatory relevant consideration, it was central to the Minister’s consideration of the “national interest”. Accordingly, any unreasonableness in the approach to risk would render the state of satisfaction unreasonable.

- In assessing the risk posed by the applicant to the Australian community, the Minister failed to consider:
 - the deterrent effect of the mandatory cancellation of the applicant's Visa and the Delegate's Decision;
 - the deterrent effect of the time the applicant had spent in prison;
 - the deterrent effect of the remainder of the applicant's custodial sentence, which he was serving on parole; and/or
 - the protective effect of the parole conditions.
- The Minister wrongly considered that the applicant had failed to take part in rehabilitation or counselling while in immigration detention in circumstances where the applicant had never been in immigration detention prior to the Minister's Discretionary Decision.
- The above failures, individually or collectively, rendered the Minister's state of satisfaction unreasonable, illogical or irrational.

32 In relation to ground 5, the applicant submitted, in summary, that:

- The Minister was required to take into account the legal consequences of the Minister's Discretionary Decision. The Minister failed to take such consequences into account.
- The Minister failed to consider that the applicant would be taken into custody as a result of the Minister's Discretionary Decision (**detention consequence**) and the reasons for that decision showed an erroneous understanding of when and how the applicant was detained in immigration detention. It should be inferred that the Minister did not consider the detention consequence.
- The Minister failed to consider that the applicant would be precluded from applying for another visa as a result of the Minister's Discretionary Decision (**preclusion consequence**). Because the submission to the Minister, and the Minister's reasons, did not refer to the preclusion consequence, it should be inferred that the Minister did not consider the preclusion consequence.
- The Minister's failure to have regard for the above consequences was a manifestation of the risks of the Minister making decisions in the absence of procedural fairness: *Taulahi v Minister for Immigration and Border Protection* [2016] FCAFC 177; (2016) 246 FCR 146 at [84].

RESPONDENT'S SUBMISSIONS

33 In relation to ground 1, the Minister submitted, in summary, that:

- The Minister did not misunderstand the power contained in s 501BA(2) of the *Migration Act* and was mindful that the power involved setting aside the AAT Decision.
- It should not be assumed that the Minister misunderstood the law unless that appeared clearly from the Minister's Discretionary Decision: see, eg, *Selliah v Minister for Immigration & Multicultural Affairs* [1999] FCA 615, [39], by reference to *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* [1996] HCA 6; (1996) 185 CLR 259, 271.
- The Minister's Discretionary Decision made clear that the AAT Decision was to be set aside. The Minister referred to that fact, as well as the reasoning of the AAT Decision, throughout his reasons: Minister's Discretionary Decision at [1], [6], [7], [10], [42], [43], [45], [49], [50], [80] and [93].
- Under the heading "Discretion", the Minister's Discretionary Decision referred to the power to "cancel", rather than to "set aside and cancel". However, the Minister's sequential structuring of reasons is not generally sufficient to infer that, in dealing with one matter, the Minister forgot other parts or had quarantined his assessment: *Ismail v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 2; (2024) 280 CLR 265 at [50].
- The issue of setting aside and cancelling were intertwined as, to enliven the Minister's power under s 501BA(2) of the Act, there must have been an "original decision" of the AAT or a delegate. In this regard, the applicant's complaint is artificial.

34 In relation to ground 2, the Minister submitted, in summary, that:

- There is no authority for the implied timeframe that the applicant seeks to impose on s 501BA of the *Migration Act*. Nothing in the context of that section permits the Court to infer a legislative intention for there to be an implied timeframe.
- The decision of the Full Court in *XMBQ* determined this issue.
- In any event, if a time limit were implied, such a limit was not breached by the Minister.
- The onus rests on the applicant to establish that there was an unreasonable delay: *AQM18 v Minister for Immigration and Border Protection* [2019] FCAFC 27; (2019) 268 FCR 424 at [58]-[59].

- The authorities support a conclusion that there was no unreasonable delay in this case: *AQMI8* at [37]-[54]; *KDSP* at [69] and [73]-[87].

35 In relation to ground 3, the Minister submitted, in summary, that:

- The threshold for a finding of legal unreasonableness is a high one that must be made with regard to the terms, scope and policy of the statutory source of power: see, eg, *Minister for Immigration and Border Protection v Eden* [2016] FCAFC 28; (2016) 240 FCR 158 at [58]-[65].
- The Minister was aware of his power to seek further information, and of the time between the AAT Decision and the Minister’s Discretionary Decision. His choice to not seek further information did not amount to unreasonableness, particularly where administrative decision makers do not generally have an obligation to make enquiries: *Ozer v Minister for Home Affairs* [2019] FCA 104 at [43]-[45].
- Alternatively, an extreme delay to seek an update of evidence would have been required given the decisional freedom under s 501BA: *Ozer* at [45].
- *Vargas* does not support the applicant’s case as the Court there merely held that the Minister’s choice as to whether to afford procedural fairness “might” be reviewable for legality: *Vargas* at [41]. The choice not to do so in *Vargas* was not unreasonable because the Minister had stated an intelligible justification for the choice and it was inferred that the Minister considered that zhe had sufficient probative material to support the findings: *Vargas* at [36]-[42].
- To the extent it is found that legal reasonableness applied to the Minister’s choice not to seek further information, the Minister provided an intelligible justification for this choice at [8]-[10] of the Minister’s Discretionary Decision.

36 In relation to ground 4, the Minister submitted, in summary, that:

- It may be accepted that the Minister’s state of satisfaction must have been formed reasonably; however, the nature of the power must be kept in mind. The determination of the “national interest” by the Minister is a “matter of political responsibility”: *Minister for Immigration and Multicultural Affairs v Jia Legeng* [2001] HCA 17; (2001) 205 CLR 507 at [102].
- It should not be inferred that the Minister overlooked the deterrent issue as the Minister was mindful of the Mandatory Cancellation (Minister’s Discretion Decision at [3]-[4]),

the applicant's time in prison (Minister's Discretion Decision at [12], [24], [33] and [49]) and the strict parole conditions on the applicant (Minister's Discretion Decision at [49]).

- The applicant's contention is essentially that the Minister did not view the matters in a favourable light that the applicant would have desired, or did not give sufficient weight to them. That contention seeks to impermissibly stray into the merit of the Minister's Discretionary Decision.
- In any event, such a matter would lack materiality given the Minister decided, consistently with the independent assessments of the applicant, that the applicant had a low, but not negligible, risk of reoffending.
- In relation to the alleged error of the Minister in stating that the applicant had been in immigration detention, there was material before the Minister that suggested the applicant would have spent time in immigration detention: AAT Decision at [122]; applicant's submissions to the Department dated 9 June 2021.
- A "no evidence" ground must fall away if there is a skerrick of evidence supporting the Minister's finding: *Djokovic v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 3; (2022) 289 FCR 21 at [28].
- In any event, errors of fact are generally errors within jurisdiction, and fresh evidence cannot be adduced merely to demonstrate an error of fact: *Waterford v Commonwealth* [1987] HCA 25; (1987) 163 CLR 54,77-78; *Abebe v Commonwealth* [1999] HCA 14; (1999) 197 CLR 510 at [137]; *Minister for Immigration v George* [2004] FCAFC 276; (2004) 139 FCR 127 at [52]; *NABE v Minister for Immigration and Multicultural and Indigenous Affairs* [2004] FCAFC 263; (2004) 144 FCR 1 at [53].
- Further and in any event, any such error lacked materiality as the critical part of the Minister's reasons in this respect related to the applicant not engaging in rehabilitation or counselling. That criticism stands, whether or not the applicant was in immigration detention.

37 In relation to ground 5, the Minister submitted, in summary, that:

- It should be inferred that the Minister considered the detention consequence as the Minister had expressly referred to the applicant's liability to detention pending removal from Australia: Minister's Discretionary Decision at [75]. Further, in circumstances

where the applicant had not made a protection claim, nor were there any other reasons precluding removal, it should be inferred that the prospect of detention was not material.

- It should not be inferred that the Minister did not consider the preclusion consequence as the Minister was mindful of the consequences of s 501F of the Act (Minister's Discretionary Decision at [2]-[3]), and the reasons were predicated on the outcome that the applicant would be removed to Ireland and separated from his family (Minister's Discretionary Decision at [70] and [79]).
- In any event, a failure to consider the preclusion consequence was immaterial.

CONSIDERATION

38 The Full Court in *XMBQ* set out in detail principles referable to operation of s 501BA of the *Migration Act*. In particular Thawley J observed:

Section 501BA(2)

25. There are three express preconditions for the exercise of power in s 501BA(2):
 - (a) First, a delegate or the Tribunal must decide under s 501CA (the "original decision") to revoke a mandatory visa cancellation decision made under s 501(3A): s 501BA(1).
 - (b) Second, the Minister must be satisfied that the person does not pass the character test because of the operation of s 501(6)(a) (on the basis of s 501(7)(a), (b) or (c)), or s 501(6)(e): s 501BA(2)(a).
 - (c) Third, the Minister must be satisfied that the cancellation is in the national interest: s 501BA(2)(b).
26. The role of the "original decision" in s 501BA(1) is to identify the class of case to which the Minister's override power applies. The "original decision" is not a temporal trigger. It is merely a condition which must exist before the power can be exercised. Section 501BA contains no temporal language. The section "applies" if a revocation decision is made. Once that condition is satisfied, the section continues to apply, albeit two other conditions must exist for its exercise.
27. The power in s 501BA is subject to the implied condition of reasonableness. Specifically, the Minister's state of satisfaction, that the cancellation is in the national interest, must be attained reasonably: *Graham v Minister for Immigration and Border Protection* [2017] HCA 33; 263 CLR 1 at [57]; *Carrascalao v Minister for Immigration and Border Protection* [2017] FCAFC 107; 252 FCR 352 at [156] and [157]; *Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v CWY20* [2021] FCAFC 195; 288 FCR 565 at [140]; *Luong v Minister for Immigration, Citizenship and Multicultural Affairs* [2026] FCAFC 6 at [31] and [37].
28. Section 501BA(2) confers a personal, non-compellable power on the Minister to override a decision revoking a mandatory cancellation under s 501(3A). Its principal features include: personal exercise by the Minister; exclusion of

natural justice; absence of merits review; satisfaction of a national interest criterion; and operation as an executive override of an outcome produced by an administrative decision of a delegate or the Tribunal.

29. Section 501BA operates on the result created by the revocation of the cancellation: a non-citizen holding a visa. It is the outcome, not the reasoning which led to the revocation decision, that s 501BA addresses: *CRRN v Minister for Immigration and Multicultural Affairs* [2025] FCA 192 at [34]; *GFE24 v Minister for Immigration and Citizenship* [2025] FCAFC 165 at [9] to [13].
30. Through the third condition, s 501BA only authorises executive intervention when the Minister is satisfied it is in the national interest. This concept is broad and evaluative. What is in the national interest is “largely a political question”: *Plaintiff S156/2013 v Minister for Immigration and Border Protection* [2014] HCA 22; 254 CLR 28 at [40]; *Graham* at [57]; *ENT19 v Minister for Home Affairs* [2023] HCA 18; 278 CLR 75 at [11] and [92].

39 Taking into account this summary of principles it is appropriate to turn to the grounds raised in the present application.

Ground 1

40 In respect of ground 1 the applicant pleaded the following ground and particulars:

- (1) The Minister erred jurisdictionally by reasoning as if the power in s 501BA(2) was, and was only, a power to cancel a visa.

Particulars

- (i) Once the Minister is satisfied of the matters in s 501BA(2)(a) and (b), s 501BA(2) confers on the Minister a discretionary power to do two things at once: (1) set aside a decision to revoke the cancellation of a person’s visa; and (2) cancel the visa.
- (ii) In this case, in bringing matters to bear on the exercise of his discretionary power in s 501BA(2), the Minister reasoned as if the power was, and was only, a power to cancel a visa: see, in particular, the use of the word ‘cancel’ or ‘cancellation’ at paragraphs 59, 60, 66, 73, 84, 86, 87, 90, 92 of the reasons.
- (iii) The error was material.

41 Plainly the cancellation of a person’s visa under s 501BA(2) is consequent upon, and connected with, the setting aside of the original decision made under s 501CA(4): *CRRN v Minister for Immigration and Multicultural Affairs* [2025] FCA 192 at [33]; Horan J at first instance in *XMBQ v Minister for Immigration and Multicultural Affairs* [2025] FCA 553 at [63] (**XMBQ at first instance**) (where this aspect of his Honour’s judgment was not challenged). I note that a similar ground was argued before Horan J in *XMBQ* at first instance. There, his Honour relevantly observed:

64. However I do not accept that the Minister was acting under any

misapprehension that the power he was exercising did not involve setting aside the original decision of the Tribunal to revoke the cancellation of the applicant's visa. The Minister's statement of reasons is replete with references to the Tribunal's decision. First, the decision itself is expressed in terms that refer to the exercise of discretion to set aside the Tribunal's decision and cancel the applicant's visa: at [1], [94]. Second, the fact of the Tribunal's decision is expressly recorded in the Minister's reasons: at [7]. Third, the Minister's reasons directly engage with the findings made by the Tribunal, as well as the evidence that was before the Tribunal: at [11], [36], [37], [40]–[43], [59], [62], [70]–[72], [82].

65. The applicant pointed to various paragraphs in the Minister's statement of reasons which refer to the discretion whether or not to cancel the applicant's visa, and the consequences of the cancellation of the applicant's visa, without directly referring to setting aside the Tribunal's decision: see at [57], [65], [74]–[76], [79], [84]–[85], [87], [91] and [93]. However, on a fair reading of the Minister's reasons as a whole, there is nothing in those paragraphs to suggest that the Minister was treating the power as involving cancellation divorced from setting aside the Tribunal's decision. It was both permissible and appropriate for the Minister to address whether the discretion under s 501BA(2) should be exercised by reference to the consequences of cancelling the visa that had been granted to the applicant. The Minister was clearly cognisant of the fact that the discretion arose in the context of the original decision by the Tribunal to revoke the cancellation of the applicant's visa, and that he was deciding whether to set aside that decision and cancel that visa.

42 In considering ground 1, a key question is whether, in respect of the Minister's Discretionary Decision made on 11 June 2024, the Minister treated the power as only involving cancellation, rather than also involving the setting aside of the AAT Decision. In particular, the applicant noted the use of the word "cancel" or "cancellation" at [59], [60], [66], [73], [84], [86], [87], [90] and [92] of the reasons of the Minister.

43 Similarly to the case of *XMBQ*, I am satisfied that, taking the reasons of the Minister as a whole, the Minister was conscious of his power both of setting aside the AAT Decision and cancelling Mr Ceitinn's Visa. I have formed this view for the following reasons.

44 First, s 501BA(2) specifically empowers the Minister to "set aside the original decision and cancel a visa". The "original decision" is defined by s 501BA(1) as either a decision of a delegate of the Minister or a decision of the ART which revoked a decision under s 501(3A) to cancel a visa that has been granted to a person. The "original decision" in this case was the decision of the (then) AAT. It is plain from the reasons of the Minister as a whole that the Minister was well aware that he was exercising a power under s 501BA to set aside that decision and to cancel Mr Ceitinn's Visa. So, for example:

- At [1] of his reasons the Minister said:
 1. This statement relates to my decision under s501BA of the *Migration*

Act 1958 (the Act) to set aside a decision made by the Administrative Appeals Tribunal (AAT) and to cancel the Class BS Subclass 801 Partner visa held by Mr CEITINN at the time of my decision.

(emphasis added)

- At [6]-[7] of his reasons the Minister said:
 6. On 23 March 2023, *the AAT decided* in substitution that the mandatory cancellation of Mr CEITINN's Class BS Subclass 801 Partner visa should be revoked pursuant to s501CA(4) of the Act (AAT decision). As a consequence of that decision, Mr CEITINN's Class BS Subclass 801 Partner visa was reinstated.
 7. Section 501BA of the Act enables me, acting personally, *to set aside a decision of the AAT* that, in effect, reinstated a person's visa, and to cancel that visa...

(emphasis added)

- At [10] of his reasons the Minister said:
 10. I have, however, given consideration to information given by Mr CEITINN in relation to the original request for revocation and the evidence provided to the AAT, *as well as the decision record of the AAT* in revoking the decision to cancel Mr CEITINN's visa.

(emphasis added)

45 Further, the Minister at numerous points during his decision made reference to the AAT proceedings: see, for example, paragraphs 42, 43, 45 and 50.

46 As the Minister correctly submitted:

- the cancellation of the Visa and the setting aside of the original decision are intertwined;
- the use of the conjunctive “and” in the statutory text suggests that the setting aside of the original decision is a necessary component of the decision under section 501BA(2) if the power is to be exercised to lead to the outcome that the Visa is cancelled; and
- there is nothing to suggest that the Minister could set aside the decision of the Tribunal under s 501BA(2), but not also cancel the Visa.

47 Ground 1 is not substantiated.

Ground 2

48 I have already noted that ground 2 cannot be substantiated in light of the decision of the Full Court in *XMBQ*. The remaining question that the parties have asked me determine is a factual one, namely whether the time in which the Minister made his decision was “reasonable”. In particular I note the following particulars to ground 2:

- (ii) The Minister's decision in this case was made 14½ months after the Tribunal's decision.
- (iii) In the circumstances of this case – including the fact that the Minister did not seek any further information from the Applicant or the Department and the fact of the Minister only requiring 3 hours and 45 minutes to consider the decision – 14½ months was not a reasonable time.

49 The submissions of the applicant reflected and expanded on these particulars. In particular the applicant submitted that:

- the Minister could have made inquiries of the Department or the applicant, which would have extended the concept of “reasonable time”, however he did not; and
- there was no explanation for the 14½ month delay between the AAT's decision and the Minister's decision. That engaged the principle stated by Bromberg J in *BMF16 v Minister for Immigration and Border Protection* [2016] FCA 1530 at [27] that a delay which has not been justified or satisfactorily explained is to be regarded as unreasonable.

50 The Minister submitted, in summary, that:

- the onus rests on the applicant to establish that there was unreasonable delay affecting the jurisdiction to make the decision; and
- it was not self-evident that a delay of 14 months and 19 days was unreasonable.

51 There is no implied time limit within which a decision is required to be made by the Minister under s 501BA(2). In circumstances where the onus is on the applicant to substantiate his claim, there is no material before me to find that the Minister's delay in making a decision was unreasonable, other than the passage of that time. There is nothing before me, for example, to support any findings concerning whether there is any backlog of cases for the Minister which may have made the making of the decision more or less prompt after the decision of the AAT. There is no material before me indicating the length of time ordinarily required for material to be prepared for the Minister's consideration leading to the making of his decision. I do note however that the decision of the Minister is quite lengthy, being 93 paragraphs, and that a decision to set aside the decision of the (then) AAT and cancel the applicant's visa is a decision of utmost seriousness which I can only assume requires extensive preparation of materials.

52 I am not satisfied that the length of time it took for the Minister to decide the applicant's case was unreasonable.

Ground 3

53 Ground 3 has overlap with ground 2 in that it raises the length of time taken by the Minister to make his decision, but focuses on the fact that the Minister did not seek further information prior to making the decision, as he was entitled by reason of the power vested in him by s 501BA(2).

54 In this respect the applicant relied on the decision of the Full Court in *Ibrahim v Minister for Home Affairs* [2019] FCAFC 89; (2019) 270 FCR 12 where their Honours said:

26. We are inclined to think that the appellant's characterisation is inappropriate, as it tends to equate the power with an express statutory discretion. Instead, it is simply an incident of the power vested in the Minister by s 501BA(2). That being so, it is not "extra-statutory". Section 501BA(3) is to be understood as removing any obligation on the Minister to afford natural justice when exercising the power under s 501BA(2), but not as prohibiting the Minister from doing so. It is for the Minister to decide, within the limits of the Act, how he or she will go about making the decision contemplated by s 501BA(2). ***Just as the Assistant Minister had had the power to seek more information from the Department before making his decision, so also did he have the power to seek information from the appellant.***

(emphasis added)

55 The power of the Minister to seek more information also, of course, incorporates a power on the part of the Minister **not** to seek more information prior to making his decision. As the Full Court found in *Candemir v Minister for Home Affairs* [2019] FCAFC 33; (2019) 268 FCR 1 at [25] there is no duty on the part of the Minister to make further inquiries.

56 In his amended originating application the applicant pleaded:

3. The Minister erred jurisdictionally by failing to exercise his power to seek information from the Applicant or the Department

...

- (ii) In all of the circumstances of this case – including that the Tribunal's decision was made 14½ months earlier, the Minister had no information as to any developments in respect of the Applicant since that time, the Applicant was assessed as a low risk of re-offending and was the subject of parole conditions – it was legally unreasonable not to seek information from the Applicant or the Department before making a decision.

- (iii) The error was material.

57 The applicant contended that the incidental power of the Minister to seek more information prior to making a decision must be exercised reasonably. In particular, the applicant submitted

that the Minister's failure to seek updated information was unreasonable in this case because, in summary:

- the Minister's reasons advanced no explanation for the failure to seek updated information despite the passage of 14½ months since the AAT Decision, and there was no evident and intelligible justification for that failure;
- the applicant had been assessed as a "low risk" of re-offending and was the subject of strict parole conditions, meaning that there was no particular urgency to the Minister making the decision; and
- logic required that the Minister seek an update to any information that might bear upon the risk the applicant posed.

58 I have already observed that, while the Minister is empowered to seek further information prior to the making of his decision, he is equally empowered not to do so. However it appears that, while it is a matter for the Minister to consider material and make such inquiries as will permit him or her to reach the required state of satisfaction of the existence of preconditions to the exercise of the power under s 501BA, the Minister must reach his state of satisfaction in a legally reasonable way: *Ozer* at [43].

59 Having said that, however, the threshold for a finding of legal unreasonableness is high: *Eden*. In *Ozer* Steward J considered an argument similar to that currently before me, namely referable to whether a decision-maker has acted unreasonably in not making inquiries prior to the decision being made. In the course of a detailed and lengthy discussion of the decisional freedom accorded to the Minister by s 501BA, Steward J observed in *Ozer* at [43]:

- (9) Ninthly, I do not think it is of assistance to ask, in abstract form, whether there was or was not here a duty to inquire, or whether the test should turn upon whether fulfilment of such a duty "could have" altered the outcome, or "would have" been decisive or critical of the ultimate result. Generally speaking, there is no duty on an administrative decision-maker to inquire or conduct investigations, save in the limited circumstances described by the High Court in *SZIAI*; *Westlake v Attorney-General* [2017] FCA 1058 at [27] per Bromwich J; *Gondarra* at [128] per Kenny J; *Minister for Immigration and Border Protection v Maioha* [2018] FCAFC 216 at [48] per Rares and Robertson JJ. Prescriptions or formulae that make distinctions between what "could have" or "would have" occurred are not apt to define the evaluative analysis a court must undertake with respect to the particular facts before it in determining whether the Minister's state of satisfaction for the purposes of s 501BA was reached in a legally unreasonable way. Having said that, I accept that ***the obligation to exercise the power in s 501BA in a legally reasonable way could, in an extreme case, require a decision-maker to make an inquiry. The content and nature of that inquiry would turn upon the particular applicable***

facts.

(emphasis added)

60 Interestingly Steward J later continued:

45. Secondly, Mr Wood submitted that it was unreasonable for the Minister to have failed to obtain an update about the applicant’s compliance with the CCO. I respectfully agree with Mr Wood that the Minister should have obtained an update directed to the applicant’s compliance with the CCO before making his decision in January 2018. However, that criticism does not sound in jurisdictional error. It went, in my view, to the manner in which the Minister exercised the power in s 501BA and fell within the broader boundaries of decisional freedom conferred upon him by that provision. The Minister’s failure to obtain an update, notwithstanding a delay of six months, was not an abuse of his power and did not take what he did beyond power. ***It was imprudent but was not, I find, legally unreasonable. That is not to say that there may not be cases where extreme delay in the exercise of a power will require a decision-maker to seek an update of the evidence before her or him if the power is to be exercised reasonably. Each case, however, will turn on its facts*** and will require the Court to “evaluate the quality of the decision, by reference to the statutory source of the power and thus, from its scope, purpose and objects to assess whether it is lawful”: *Stretton* at [12] per Allsop CJ.

46. The applicant’s reliance upon *Prasad*, *Luu*, *Le* and *SZIAI*, does not justify any contrary conclusion. ***That is because, in the particular circumstances of this case, the need to make a further inquiry was not so “obvious” as to render the decision one made beyond the boundaries of decisional freedom.***

(emphasis added)

61 Turning now to the present case I find as follows.

62 First, I have already found that the applicant’s claim of unreasonable delay on the part of the Minister in making his decision was not substantiated. The reference by Steward J to “cases [of] extreme delay in the exercise of the power” does not describe this case.

63 Second, the threshold for a finding of legal unreasonableness is high: *Eden* at [58] *et seq.* A decision based on findings which were, on the facts, open to the decision-maker, cannot be said to be legally unreasonable: *Eden* at [69]; *Minister for Immigration and Citizenship v Li* [2013] HCA 18; (2013) 249 CLR 332 at 363, 375. In the present case the Minister, at paragraph 9 of his reasons, stated that he chose to proceed without giving the applicant an opportunity to be heard before making the decision, notwithstanding his recognition at paragraph 8 of his reasons that s 501BA(3) did not prohibit the Minister from giving the applicant an opportunity to be heard.

64 Third, there is plainly a very broad ambit of decisional freedom in the power of the Minister exercisable under s 501BA: *Ozer* at [43]. As Steward J additionally pointed out in *Ozer* at [43],

the evaluation of whether a decision was made within the boundaries of power is conducted by reference to the relevant statute, its terms, scope and purpose in the factual and legal context of the decision in question, as well as from the values drawn from the common law, in particular, of reasonableness. In this context, as also noted in *Ozer* at [29], the breadth of decisional freedom vested in the Minister by s 501BA is exemplified by such factors as:

- the exclusion of the rules of natural justice by s 501BA(3);
- the reposing of the power of cancellation in the Minister “personally”;
- the inherently political nature of deciding what is in the national interest; and
- the fact that no merits review of the Minister’s decision is available.

65 It follows that, even if the Minister was imprudent in failing to seek further information from the applicant prior to making the Minister’s Discretionary Decision, that imprudence would not constitute legal unreasonableness: see *Ozer* at [43]-[45].

66 Fourth, the applicant made submissions concerning his low risk of re-offending and his strict parole conditions, to the effect that the Minister should have sought an update as to any information that might bear on the risk the applicant posed. However in his reasons the Minister discussed, in detail, the nature of the applicant’s offending. The Minister noted, for example:

34. Mr CEITINN's offending in Australia has also increased in seriousness culminating in the commission of very serious fraud offending.
35. The cumulative effect of Mr CEITINN's fraud offending has been truly devastating. The effect was financial loss to some 160 members of the Australian community and, for some, psychological harm which I consider further below.
36. Overall, I find that Mr CEITINN's criminal offending in Australia is very serious.

67 The Minister later said:

50. I have considered the evidence before me providing some independent assessments as to the likelihood of reoffending. The sentencing judge commented that it was unlikely that Mr CEITINN would reoffend **Attachment B**. Mr CEITINN also provided the AAT with evidence from the Queensland Corrective Services which stated that he had been assessed as having "*a Risk of Reoffending (RoR-PV) score of 1 which indicates you fall into the category of prisoners who pose a low risk of further general offending*" **Attachment G**. Having regard to the available evidence, ***I consider there to be a low, but not negligible likelihood that Mr CEITINN will reoffend.***
51. Mr CEITINN has committed very serious fraud offences. Should he engage in similar conduct again, it would be likely to result in serious financial,

psychological and/or physical harm to members of the community. I consider that this conduct, and the harm that would be caused if it were to be repeated, *is so serious that any risk that it could be repeated is unacceptable.*

(emphasis added)

68 It follows that the Minister recognised the low likelihood of the applicant re-offending. Updated information would, in the best case scenario for the applicant, have confirmed that assessment. However the Minister made it clear in his reasons that, notwithstanding that assessment, the history of the applicant's offending and the remaining (albeit low) risk of the applicant reoffending was such that the risk of reoffending was unacceptable. In light of the decisional freedom of the Minister to make decisions in the national interest pursuant to s 501BA, it was open to the Minister to form the view that he had sufficient material before him on which a decision pursuant to s 501BA can be made. In such circumstances I am not satisfied that the failure of the Minister to seek updated information was unreasonable.

69 Ground 3 is not substantiated.

Ground 4

70 In ground 4 the applicant claimed error on the part of the Minister in forming his state of satisfaction as to the "national interest" unreasonably, illogically or irrationally. The particulars on which the applicant relied were as follows:

- (i) The Minister's state of satisfaction as to the national interest was informed by his assessment of the risk the Applicant posed to the Australian community.
- (ii) In assessing the risk the Applicant posed to the Australian community the Minister failed to take into account:
 - a. The deterrent effect of the mandatory cancellation of the Applicant's visa and the delegate's decision not to revoke that cancellation;
 - b. The deterrent effect of the time the Applicant had spent in prison;
 - c. The deterrent effect of the remainder of the Applicant's prison sentence, which he was serving on parole; and/or
 - d. The protective effect of the parole conditions.
- (iii) Further, in assessing the risk the Applicant posed to the Australian community the Minister had regard to the Applicant's purported failure in immigration detention to engage in rehabilitation or counselling targeted at the factors that led him to offending in the first place – see, particularly, paragraph 45 of the reasons (see also paragraph 49 of the reasons). In fact, the Applicant was not at any time detained in immigration detention prior to the Minister's decision.
- (iv) Those failures, either individually or in combination, rendered the Minister's state of satisfaction unreasonable, illogical or irrational.

71 The starting point for consideration of this ground is the overall statutory object, as expressed in s 4 in the *Migration Act*, to regulate, in the national interest, the coming into, **and presence in**, Australia of non-citizens. Importantly, s 4(2) of the *Migration Act* provides:

- (2) To advance its object, this Act provides for visas permitting non-citizens to enter or remain in Australia and the Parliament intends that this Act be the only source of the right of non-citizens to so enter or remain.

72 Second, it is well-settled that the Minister has a broad, almost absolute, power to determine what is in the “national interest” for the purposes of the *Migration Act*. As Gleeson CJ and Gummow J observed in *Jia Legeng*:

102. Although it would require some qualification in the light of later developments in the law, Lord Thankerton's speech in *Franklin v Minister of Town and Country Planning* stands as a useful reminder that lawyers usually equate “bias” with a departure from the standard of even-handed justice which the law requires from those who occupy judicial, or quasi-judicial, office. ***The Minister is in a different position. The statutory powers in question have been reposed in a political official, a member of the Executive Government, who not only has general accountability to the electorate and to Parliament, but who, in s 502, is made subject to a specific form of parliamentary accountability. The power given by s 502 requires the Minister to consider the national interest.*** As Brennan J observed in *South Australia v O’Shea*: “The public interest in this context ***is a matter of political responsibility***”. The powers given by s 501 and s 502, as has already been held, enabled the Minister in effect to reverse the practical consequences of decisions of the Tribunal in the cases of the persons involved, even though no new facts or circumstances had arisen; and even though the Minister had been involved in the proceedings before the Tribunal. As the circumstances of the radio interview demonstrate, the Minister himself can be drawn into public debate about a matter in respect of which he may consider exercising his powers. He might equally well have been asked questions about the cases in Parliament. The position of the Minister is substantially different from that of a judge, or quasi-judicial officer, adjudicating in adversarial litigation. It would be wrong to apply to his conduct the standards of detachment which apply to judicial officers or jurors. There is no reason to conclude that the legislature intended to impose such standards upon the Minister, and every reason to conclude otherwise.

(footnotes omitted, emphasis added)

(See also *Plaintiff S156/2013 v Minister for Immigration and Border Protection* [2014] HCA 22; (2014) 254 CLR 28 at 46; Kiefel CJ, Gageler and Jagot JJ in *ENT19 v Minister for Home Affairs* [2023] HCA 18; (2023) 278 CLR 75 at [11])

73 Third, in the present case the Minister particularly noted:

17. I consider that matters of national interest include, amongst other things, the protection of the community and the expectations of the Australian community.

74 At paragraph 18 of his reasons the Minister went on to state that, in determining whether it was in the national interest to cancel the applicant's Visa, he had considered the need to protect the Australian community, and in turn, the seriousness of the applicant's criminal conduct having regard to the circumstances and nature of the conduct, the likelihood of him reoffending, and the risk he poses to the Australian community if such a likelihood eventuated. In my view these observations of the Minister are uncontroversial.

75 Fourth, however, the applicant contended that the view of the Minister referable to the national interest was unreasonable in light of the Minister's apparent disregard of the deterrent effects of the mandatory cancellation of the applicant's Visa, his prison sentence and time, and parole conditions. The applicant also contended that the Minister had made an error of fact in referring to the applicant's purported failure in immigration detention to engage in rehabilitation or counselling.

76 In my view these contentions of the applicant are not substantiated.

77 In respect of the applicant's custodial imprisonment and parole conditions:

- The Minister was plainly aware of the applicant's imprisonment. The Minister referred repeatedly in his reasons to the applicant's eight-year prison sentence.
- The Minister was plainly aware of the strict parole conditions to which the applicant was subject, which included a condition that the applicant not commit an offence (at [49]).

78 Further, the Minister was plainly aware that the effect of a decision by him under s 501BA would be the cancellation of the applicant's Visa.

79 Overall however, and notwithstanding the Minister's awareness of such issues – and the remorse expressed by the applicant – the Minister formed a view that the risk of the applicant reoffending was unacceptable, and that it was in the national interest for the AAT Decision to be set aside and for the applicant's Visa to be cancelled. That was a decision which the Minister was empowered to make.

80 Finally, to the extent that the Minister may have erred in stating in his reasons at [45] that the applicant had been in immigration detention, I consider such a comment to be immaterial against a background of very lengthy and detailed discussion of the applicant's offending and imprisonment. In any event however, as the Minister had pointed out in submissions, there was

material before the Minister indicating that the applicant **had** spent time in immigration detention, including a reference by the AAT to the applicant's time in detention at [122] of the AAT's reasons. Any error of this nature would have been within jurisdiction.

81 Ground 4 is not substantiated.

Ground 5

82 In ground 5 the applicant contended that, notwithstanding paragraphs 74-78 of the Minister's reasons, the Minister failed to consider all of the legal consequences of the decision, in particular:

- that the applicant would become an unlawful non-citizen liable to mandatory detention by reason of ss 189 and 196 of the *Migration Act*; and
- that the applicant would be precluded from applying for another visa by reason of s 501E of the *Migration Act*.

83 In my view this ground lacks merit.

84 In respect of the prospect of mandatory detention, the Minister clearly noted the prospect of the applicant being detained under s 189 of the *Migration Act* pending removal from Australia. In any event I am not satisfied that this issue is material in circumstances where:

- the prospect of mandatory detention is an obvious and well-known statutory consequence of visa cancellation for non-citizens; and
- the applicant had not sought protection under the *Migration Act*, and there was nothing otherwise preventing his removal to his country of citizenship.

85 I further note that the preclusion of the applicant from making a future visa application and his removal from Australia are statutory consequences of the cancellation of his Visa under s 501BA. The Minister clearly was aware of the prospect of the applicant being permanently removed from Australia, and took into account that issue in the course of his reasons.

86 I am not persuaded of jurisdictional error in this respect. Ground 5 is not substantiated.

CONCLUSION

- 87 The Amended Originating Application for Review of a Migration Decision filed on 4 October 2024 is dismissed. The applicant is to pay the costs of the Minister, such costs to be taxed if not otherwise agreed.

I certify that the preceding eighty-seven (87) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Collier.

Associate: *M. Seen*

Dated: 10 July 2026