

FEDERAL COURT OF AUSTRALIA

Piec v Minister for Immigration and Citizenship [2026] FCA 869

File number: NSD 625 of 2025

Judgment of: **STEWART J**

Date of judgment: 7 July 2026

Catchwords: **MIGRATION** – application for judicial review of a decision by the respondent under s 501BA of the *Migration Act 1958* (Cth) – whether reliance on information that was before the Tribunal 34 months earlier without obtaining more recent information was legally unreasonable – whether an inference about when the applicant had reoffended was open to the respondent – application dismissed

Legislation: *Migration Act 1958* (Cth), ss 476A, 501(3A), 501BA, 501CA

Cases cited: *Ba v Minister for Immigration and Multicultural Affairs* [2025] FCA 1239
CPDL v Minister for Immigration and Citizenship [2026] FCA 342
GRCF v Minister for Immigration, Citizenship and Multicultural Affairs [2025] FCA 415
Wachipa v Minister for Immigration and Citizenship [2026] FCA 806
XPLW v Minister for Immigration and Multicultural Affairs [2026] FCA 210

Division: General Division

Registry: New South Wales

National Practice Area: Administrative and Constitutional Law and Human Rights

Number of paragraphs: 53

Date of hearing: 1 July 2026

Counsel for the Applicant: J Donnelly and W P Calokerinos

Solicitor for the Applicant: Milojkovic Visa & Migration Legal Services

Counsel for the Respondent: H Bevan SC and G Johnson

Solicitor for the Respondent: Minter Ellison

ORDERS

NSD 625 of 2025

BETWEEN: **JANUSZ PIEC**

Applicant

AND: **MINISTER FOR IMMIGRATION AND CITIZENSHIP**

Respondent

ORDER MADE BY: **STEWART J**

DATE OF ORDER: **7 JULY 2026**

THE COURT ORDERS THAT:

1. The name of the respondent to the proceeding be amended to “Minister for Immigration and Citizenship”.
2. The proceeding be dismissed with costs.

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

REASONS FOR JUDGMENT

STEWART J

Introduction

- 1 The applicant arrived in Australia as an immigrant from Poland as a 19-year-old in September 2004. In the ensuing 20 years, he generated a long criminal record mostly in relation to domestic violence offences and often in the context of alcohol or prohibited drug use. Most recently, the applicant was lawfully in Australia on a partner visa.
- 2 Relevantly, in December 2020, the applicant was convicted of domestic violence related offences and sentenced for an aggregate of 18 months imprisonment. His appeal was dismissed on 15 February 2021.
- 3 The following week, on 22 February 2021, the applicant's partner visa was mandatorily cancelled under s 501(3A) of the *Migration Act 1958* (Cth). A year later, on 3 February 2022, a delegate of the Minister decided under s 501CA of the Act not to revoke the mandatory cancellation.
- 4 Following a hearing on 11-12 April 2022, on 27 April 2022 the Administrative Appeals Tribunal revoked the cancellation of the applicant's visa and reinstated it. The applicant was released into the community under the authority of the reinstated visa.
- 5 Thirty-four months later, on 9 March 2025, the Assistant Minister for Citizenship and Multicultural Affairs exercised the personal power under s 501BA of the Act to set aside the decision of the Tribunal and cancel the applicant's partner visa. The Assistant Minister did not provide the applicant with any opportunity to provide further or updated information or submissions following the Tribunal's decision, as expressly allowed by the exclusion of the rules of natural justice in s 501BA(3).
- 6 The applicant seeks judicial review of the Assistant Minister's decision under s 476A of the Act, contending that the decision was affected by jurisdictional error because it was legally unreasonable and/or illogical or irrational. The error is said to arise from the Assistant Minister's adverse reliance on materially stale information, his making of adverse current findings without an adequate up-to-date evidentiary foundation, and his critical reliance on an unsupported inference that the applicant had reoffended after the Tribunal's decision.

The Assistant Minister's reasons for decision

- 7 The Assistant Minister rightly recognised that he could set aside the decision of the Tribunal and cancel the applicant's visa on being satisfied of two matters, first, that the applicant does not pass the character test as referred to in s 501BA(2)(a) and, second, that the cancellation is in the national interest. The Assistant Minister rightly understood that he had a discretion not to cancel the visa even if he was satisfied of those two matters ([6]-[7]).
- 8 The Assistant Minister was satisfied that the applicant does not pass the character test ([11]). There is no dispute or issue between the parties about that state of satisfaction.
- 9 In considering the question of whether it is in the national interest to cancel the applicant's visa, the Assistant Minister rightly recognised 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 their satisfaction, provided that that satisfaction is reached reasonably ([14]).
- 10 The Assistant Minister considered that matters of national interest include, among other things, the protection of the community, the prevention of conduct constituting family violence, and the expectations of the Australian community ([15]).
- 11 The Assistant Minister dealt first with the element of "protection of the community". He considered the seriousness of the applicant's criminal conduct, identifying that offending involving family violence, whether actual, threatened or implied, is "viewed very seriously by" and is "of special concern to" the Australian community ([17]-[18]). The applicant's criminal history included repeated domestic AVO breaches, common assault, high-range PCA, drug possession and serious family-violence offending in 2020 involving threats to his former partner and her mother ([17]-[32]). The Assistant Minister considered the offending frequent, escalating and very serious, particularly because the 2020 conduct involved threats to kill and serious family violence ([33]-[36]).
- 12 Specifically relevant to the way in which the applicant puts his case, the Assistant Minister stated as follows:

34. I also consider it significant that Mr PIEC reoffended following his hearing before the AAT. On 26 October 2022, approximately six months after the AAT hearing, Mr PIEC was convicted of *contravene prohibition/restriction in AVO (Domestic)* in the Downing Centre Local Court. Given the date of the sentence, I infer that the offence was committed after 27 April 2022.

- 13 Next, the Assistant Minister considered risk to the Australian community. Under that topic, the Assistant Minister considered factors contributing to past conduct and remorse and rehabilitation.
- 14 With regard to factors contributing to past conduct, the Assistant Minister took into account a psychological report by Professor Woods dated 25 August 2020 (ie more than four and a half years earlier), noting that Professor Woods had found that the applicant satisfied the diagnostic criteria for Alcohol Use Disorder and Substance (Cocaine and Failure) Use Disorder, melancholic grief, with reactive depression. The applicant was also diagnosed with Major Depression (recurrent, severe), and was found to possess severe levels of distress consistent with a diagnosis of a depressive mood disorder and personality disorder ([39]). The Assistant Minister accepted the applicant's submissions that his criminal conduct was influenced and dictated by chronic alcohol addiction ([40]).
- 15 With regard to remorse and rehabilitation, the Assistant Minister accepted that the applicant had demonstrated some remorse for his offending ([45]). The Assistant Minister considered the evidence before him of the applicant having undertaken some rehabilitation, and also that the applicant had recognised the seriousness of his problem with alcohol ([46]-[47]). However, the Assistant Minister stated that it was "a matter of serious concern" to him "that there is a lack of independent evidence before [him] regarding any rehabilitation courses [the applicant] has undertaken relating to domestic violence" ([49]). The Assistant Minister also acknowledged that the applicant had not been given an opportunity to provide him with any updated information about any further rehabilitation he may have undertaken while in the community, and he accepted that it is possible that the applicant may have completed further alcohol and substance intervention since the Tribunal's decision ([52]).
- 16 In stating his conclusion in relation to risk to the community, the Assistant Minister stated as follows:
56. I acknowledge that there is no evidence before me that Mr PIEC has been convicted or charged with any further offences in the past two years, however I find it concerning that he was convicted of *contravene prohibition/restriction in AVO (Domestic)* within six months of being released into the community following the previous AAT decision. I do not consider that a sufficient amount of time has passed to persuade me that the risk of reoffending is negligible. I have found that on balance that there remains an ongoing likelihood that Mr PIEC will reoffend.

- 17 The Assistant Minister, taking into account the nature and seriousness of the applicant's conduct, the potential harm to the Australian community and the likelihood of the applicant reoffending, concluded "that the need to protect the Australian community from criminal or other serious conduct weighs heavily in support of cancellation in this case in the national interest" ([57]).
- 18 Next, the Assistant Minister considered the expectations of the Australian community. He concluded that the broader Australian community's general expectations about non-citizens should be attributed significant weight towards a finding that it is in the national interest to cancel the applicant's visa ([62]).
- 19 Finally on the aspect of national interest, the Assistant Minister stated as follows:
64. In the specific case of Mr PIEC and his criminal history which includes actual family violence, I have considered the nature and seriousness of his conduct and have concluded it to be very serious. I have also considered the harm which would result if Mr PIEC reoffended and the government's concerns regarding family violence. I have also considered the likelihood of Mr PIEC reoffending and have found that there is not a negligible risk of reoffending. It is my view that 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 because of the harm to members of the community. I have also considered the expectations of the community.
- 20 Next, the Assistant Minister considered discretionary considerations that might support a decision not to set aside the decision of the Tribunal and cancel the applicant's visa ([66]). The Assistant Minister concluded that the interests of the applicant's two sons, then aged 10 and 8, weigh significantly against cancellation of the visa ([74]). The Assistant Minister concluded that the strength, nature and duration of the applicant's ties to Australia weigh moderately against cancellation of the visa ([83]). The Assistant Minister also considered the legal consequences of the decision, the impediments likely to be faced by the applicant if he was removed to Poland and the impact on Australian business interests ([84]-[93]).
- 21 Finally, the Assistant Minister drew the various strands of his reasoning together in his conclusion ([94]-[104]). He stated that he had given the highest priority to the safety of the Australian community and to protect its safety ([96]). He stated that he gave very significant weight to matters weighing in favour of cancellation. He considered the serious nature of the family violence committed by the applicant, and reasoned that although the applicant has undertaken a number of rehabilitative efforts, he gave those less weight in circumstances where the applicant "has reoffended by breaching an AVO order since being returned to the

community”. He considered the nature of the offending, in particular family violence, to be so serious that any chance of it being repeated is unacceptable ([99]).

22 With reference to the applicant’s extensive history of breaching AVOs and other family violence with multiple victims ([100]), the Assistant Minister concluded that the Australian community could be exposed to significant harm should the applicant continue to breach the law and judicial orders ([101]). He stated that he could not rule out the possibility of further criminal and other serious conduct by the applicant ([101]). He stated that he was of the view that the Australian community generally would expect non-citizens who have an extensive history of family violence not to continue to hold a visa, “especially where the non-citizen continues to pose a significant risk to the Australian community” ([103]).

23 In the result, the Assistant Minister found that the considerations against cancellation were outweighed by the serious national interest considerations in the case, and thus decided to exercise his discretion to set aside the decision of the Tribunal and cancel the applicant’s visa ([104]-[105]).

The applicant’s case

24 The first strand of the applicant’s case is that the Assistant Minister made adverse “present-tense” findings that there remained “an ongoing likelihood” that the applicant would reoffend (at [56]), and that the applicant continues to pose a “significant risk” to the Australian community (at [103]) on the basis of “stale information”; and that the stale information was converted into adverse current findings about present risk without an adequate evidentiary foundation.

25 The so-called stale information identified by the applicant is principally Professor Woods’ report dated 25 August 2020, but also the absence of any updating information in the 34 months since the Tribunal’s decision about any further rehabilitation undertaken by the applicant in the community and whether the applicant had completed further alcohol and substance intervention (at [52]).

26 The applicant submits that it was legally unreasonable for the Assistant Minister to treat the historical risk material as sufficient to support current findings of “ongoing likelihood” of reoffending without obtaining or considering updated information, particularly where he expressly acknowledged that no such updated information had been sought.

- 27 The applicant submits that the Assistant Minister's approach is analogous to the errors identified in *GRCF v Minister for Immigration, Citizenship and Multicultural Affairs* [2025] FCA 415 (**GRCF**), *Ba v Minister for Immigration and Multicultural Affairs* [2025] FCA 1239 (**Ba**) and *XPLW v Minister for Immigration and Multicultural Affairs* [2026] FCA 210 (**XPLW**) as discussed in *CPDL v Minister for Immigration and Citizenship* [2026] FCA 342 (**CPDL**). In oral submissions, the applicant also referred to *Wachipa v Minister for Immigration and Citizenship* [2026] FCA 806 (**Wachipa**).
- 28 The second strand of the applicant's case is an attack on the Assistant Minister's inference that the offending for which the applicant was convicted on 26 October 2022 was committed after 27 April 2022 when the applicant was released from immigration detention. The applicant submits that the only stated basis for the inference was the date of conviction and sentence, there being no evidence at all when the offences were committed. The Assistant Minister then referred to the offending having taken place after the applicant was released into the community at different places in the reasoning.
- 29 In that regard, in the context of considering remorse and rehabilitation, the Assistant Minister referenced a submission that had been made on behalf of the applicant that the trauma associated with a protracted period in jail and detention would act as a disincentive for the repetition of past offending. In response to that, the Assistant Minister was not satisfied that that jail and detention was a disincentive in circumstances where the applicant continued offending after incarceration (at [50]). In the context of reaching conclusions with regard to risk to the Australian community, as quoted above, the Assistant Minister found it concerning that the applicant was convicted within six months of being released into the community following the Tribunal's decision (at [56]).
- 30 Finally, in his closing conclusions the Assistant Minister gave less weight to the applicant's rehabilitative efforts in circumstances where he had reoffended by breaching an AVO since being returned to the community (at [99]).
- 31 The applicant submits that as the only stated basis for the inference was the conviction or sentence date, it lacked a probative foundation. It was thus an illogical or irrational critical step in the reasoning process to rely on that inference as the Assistant Minister did.

Consideration

- 32 Before turning to the Assistant Minister’s process of reasoning and the applicant’s case against them, it is convenient to say something about each of the cases relied on by the applicant as posing relevantly analogous circumstances.
- 33 In *GRCF*, Bennett J upheld an unreasonableness challenge to the Minister’s reasons where the evidence before the Minister was 10 months old. That was on the basis that the Minister had “proceeded on the positive basis that the position as it was 10 months earlier persisted at the time of his decision” (at [51]). The Minister had considered that the attitude of the applicant to psychological treatment or counselling up to the time of the decision had remained the same since evidence on that question was given 10 months earlier (at [52]). Her Honour considered that the case was of the type of case where it was illogical to draw a positive inference that an event had not occurred merely by reference to the absence of evidence as to whether or not it had in fact occurred (at [53]-[54]). “[T]he Minister has stepped outside the bounds of logical reasoning and proceeded without evidence to reach an impermissible conclusion about the **current** status of GRCF’s rehabilitation and his **current** attitude towards rehabilitation at the time of the decision” (original emphasis) (at [54]).
- 34 In *Ba*, Neskovic J upheld an unreasonableness challenge to the Assistant Minister’s reasons where the relevant evidence before the Minister was nine months old. Her Honour concluded that the Assistant Minister used a psychological assessment undertaken nine months previously “to make a current assessment on the risk of the applicant reoffending” (at [95]). The Assistant Minister had adopted the psychologist’s assessment and found that there remained an unacceptable, ongoing risk of the applicant reoffending in the absence of evidence that the applicant had addressed certain matters to reduce that risk, to make a current assessment on risk (at [95]).
- 35 In *XPLW*, Horan J held that critical findings by the Minister were directed to current and future demands on the applicant in providing support to family members, based on historical evidence of their specific needs at a point in time more than two years previously (at [86]). His Honour held that the Minister had made unfounded assumptions as to the continued existence of past circumstances, without any logical or rational basis on which to infer that those or similar circumstances would still exist at the date of his decision (at [87]).
- 36 In *CPDL*, Hill J upheld an unreasonableness challenge to the Minister’s decision that was made 25 months after the Tribunal’s decision. His Honour held that the extent of that delay, the

centrality of the issue at stake – being whether the applicant could abstain from alcohol in the community, and the fact that 25 months provides a meaningful period of time to assess that issue, “means that it was legally unreasonable for the Minister to rely solely on out of date information to reach a decision on the risks of the Appellant (sic) reverting to alcohol” (at [79]).

37 In *Wachipa*, Jackson J upheld an unreasonableness challenge to the Minister’s decision that was made on information that was 15 months old. The Minister had placed significance on the applicant’s family circumstances, and in particular had identified emotional hardship likely to be experienced by family members, not only as relevant, but as forming part of the applicant’s ties to Australia that weighed strongly against visa cancellation (at [122]). There was a real possibility that those circumstances could have changed in the intervening period (at [123]). His Honour concluded that “a decision maker who has chosen to embark on consideration of [the applicant’s] family circumstances, and to treat the best interests of any affected minor children in Australia as a significant consideration, would, acting reasonably, seek to understand those circumstances and those children as at the date of the decision” (at [124]).

38 In summary, those cases stand for the proposition that an assessment of circumstances as at the time of the s 501BA decision that is based on evidence of circumstances at some significantly earlier time, or that assumes the circumstances at both points in time to be the same, may be legally unreasonable, but that each case will turn on its own facts and circumstances. Inevitably, each case must turn on the particular reasoning process at issue.

39 Turning now to the present case, the principal complaint that the applicant makes is with regard to the Assistant Minister’s reliance on Professor Woods’ report that was four and a half years old.

40 The Assistant Minister’s first instance of reliance on that report was in identifying what the applicant’s mental health issues were as factors contributing to the applicant’s past conduct (at [39]-[40]). The Assistant Minister then concluded with reference to a decade long history of multiple breaches of DVOs that there remained an unacceptable risk of further family violence (at [41]). There was nothing impermissible in that way of reasoning; the reasoning did not assume that the applicant’s mental health was the same as it was at the time of Professor Woods’ assessment, nor did he base his conclusion as to risk of reoffending on that assessment remaining current.

- 41 The Assistant Minister then referenced the report to identify the applicant’s risk factors in the context of considering relevant remorse and rehabilitation, identifying that Professor Woods had noted the applicant’s inability to obtain the requisite level of treatment in a correctional facility and his need for intensive psychological treatment with external monitoring (at [51]). The Assistant Minister expressly acknowledged that the applicant had not been given an opportunity to furnish updated information about any further rehabilitation he may have undertaken, and that it was possible that the applicant had completed further alcohol and substance intervention since the Tribunal’s decision (at [52]).
- 42 Unlike the cases relied on by the applicant that are surveyed above, the Assistant Minister did not then go on to assume that the applicant’s psychological condition was the same as it had been at the time of the much earlier report. Rather, having acknowledged that the applicant may have undertaken further rehabilitation and alcohol and substance intervention about which he had no information, the Assistant Minister concluded that he was in any event unpersuaded that a sufficient amount of time had passed to be able to conclude that the risk of the applicant reoffending was negligible (at [56]).
- 43 It is also not to the point that the state of the applicant’s mental health is variable, such that it may have greatly improved in the intervening period. That is because even if it had greatly improved, that same variability means that it could deteriorate again. Although the Assistant Minister did not expressly rely on the possibility of deterioration again, he also did not rely on the poor past state of the applicant’s mental health. Rather, his relevant conclusion was, in effect, that whatever rehabilitation and alcohol and substance intervention the applicant may have engaged in, insufficient time had passed to satisfy him that the risk of reoffending was negligible. That is a conclusion on which reasonable minds may disagree, but it is not a conclusion that can be said to be illogical, irrational or so unreasonable as to be affected by jurisdictional error.
- 44 A potential issue arises in relation to the Assistant Minister’s further conclusion that “on balance there remains an ongoing likelihood” that the applicant would reoffend (at [56]). That issue arises in relation to a possible inconsistency between the conclusions, in successive sentences, that “the risk of reoffending is (not) negligible” and there is an “ongoing likelihood” that there will be reoffending. In my view, taking the reasons as a whole, any apparent inconsistency there is cleared up by what was said by the Assistant Minister a little later (at [64]): “I have also considered the likelihood of Mr PIEC reoffending and have found that there

is not a negligible risk of reoffending. It is my view that 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 because of the harm to members of the community.” That makes it tolerably clear that the Assistant Minister was not concluding that there was a more likely than not chance of the applicant reoffending, but rather that there is an ongoing risk of the applicant reoffending which, if it materialises, would cause serious harm to members of the community and is thus unacceptable.

45 In oral submissions, the applicant placed some reliance on the Assistant Minister’s statement (at [49]) that it was a matter of serious concern to him that there was a lack of independent evidence before him regarding any rehabilitation courses the applicant had undertaken relating to domestic violence. The submission is that for all the Assistant Minister knew, the applicant had engaged in rehabilitation courses relating to domestic violence in the period between the Tribunal’s decision and the s 501BA decision and in circumstances where the Assistant Minister decided not to afford the applicant the opportunity to bring any new information forward, it was legally unreasonable for the Assistant Minister to rely on the lack of evidence of the applicant having engaged in such courses.

46 It is important to understand the context in which the relevant statement by the Assistant Minister was made. It follows the Assistant Minister’s identification of rehabilitation efforts undertaken by the applicant in relation to alcohol and substance abuse ([46]-[48]). The reasoning in that regard is all focused on the period prior to the Tribunal’s decision, save for the observation (at [48]) that the applicant was ordered on 26 October 2022 to participate in a treatment/rehabilitation program and that the Assistant Minister accepted, in the applicant’s favour, that that had occurred. It is then that the Assistant Minister moved on to consider rehabilitation efforts in relation to domestic violence, observing that there was no evidence of any such efforts, ie at any time. The most reasonable reading, in context, is that the observation with regard to those efforts was also directed at the earlier period, rather than the later period. There is no subsequent reasoning, and there are no ultimate conclusions, that build on that observation.

47 Finally, there is the challenge to the Assistant Minister’s inference (at [34]) that the offence for which the applicant was convicted and sentenced on 26 October 2022 occurred after the applicant was released from immigration detention on or about 27 April 2022. It is true that there is no evidence as to when the relevant conduct occurred. However, it is not the case that there is no basis upon which to draw the inference that the conduct occurred after the applicant

was released from immigration detention. That is to say, there is a basis to conclude that the conduct probably occurred after the applicant had been released again into the community.

48 First, the applicant had been continuously incarcerated from 19 July 2020 (AB240/6) or, possibly, 8 September 2020 (AB35). When he was released from imprisonment, he was immediately taken into immigration detention. The result is that he had not been in the community for more than 18 months and then, within six months, he was convicted of “contravene prohibition/restriction in AVO (Domestic)”. Also, the applicant’s previous convictions of similar offences were within 3 to 6 months of the relevant conduct, as was apparent from the materials before the Assistant Minister.

49 Although it is possible that the relevant conduct occurred while the applicant was in immigration detention, if that conduct had been in the nature of telephone calls or text messages, it cannot be said to be illogical, irrational or unreasonable for the Assistant Minister to have drawn the relevant conclusion in the circumstances identified in the preceding paragraph. There was some basis to draw the inference, and to the extent that that basis may be regarded as too thin and therefore an error, it cannot be said that such an error was not within the Assistant Minister’s jurisdiction in making a decision under s 501BA.

50 Once the inference stands, then reliance on it by the Assistant Minister, such as at [56] and [99], is unobjectionable.

Disposition

51 For those reasons, the application must be dismissed.

52 The parties accept that the costs should follow the result. The applicant must accordingly pay the respondent’s costs of the proceeding.

53 Finally, I express my appreciation to counsel on both sides of the case for the careful, skilful and efficient manner in which they presented their client’s respective cases.

I certify that the preceding fifty-three (53) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Stewart.

Associate:

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the left.

Dated: 7 July 2026