

Applicant: BSMF

Respondent: Minister for Immigration and Citizenship

Tribunal Number: 2025/0817

Tribunal: General Member T Eteuati

Place: Brisbane

Date of decision: 23 April 2025

Decision: The Tribunal affirms the reviewable decision.

General Member T Eteuati

Statement made on 06 August 2026 at 1:58pm

Catchwords

MIGRATION – refusal of Applicant’s visa application – consideration of Ministerial Direction No. 110 - Tribunal finding the Applicant does not pass the character test and to exercise the discretion in section 501(1) of the Migration Act 1958 to refuse the Applicant’s visa application

Legislation

Administrative Review Tribunal 2024 (Cth)

Migration Act 1958 (Cth)

Migration Regulations 1994 (Cth)

Cases

DBWG v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs (2023) 97 ALJR 1005

Secondary Materials

Ministerial Direction No. 110 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA (21 June 2024)

Statement of Reasons

1. This is an application by BSMF ("the Applicant") for review of a decision made by a delegate of the Minister for Immigration and Citizenship ("the Minister" or "the Respondent") on 29 January 2025 to refuse the Applicant's application for a Safe Haven Enterprise Protection (Class XE) visa under s 501(1) of the *Migration Act 1958* (Cth) (Act).
2. The Applicant was born 27 April 1973 in Iran.
3. On 20 December 2012, the Applicant and his two sons first arrived in Australia by boat at Christmas Island.
4. On 9 May 2017, the Applicant applied for a Safe Haven Enterprise Protection (Temporary)(Class XE) visa.
5. On 5 December 2017, a protection finding was made in respect of the Applicant in respect of Iran. The Applicant had claimed to fear persecution in Iran owing he and his sons being former adherents of the Ahl-e Haq faith in Iran who converted to Christianity in Australia.
6. On 18 February 2019, the Applicant was convicted of two counts of indecent assault person under 16 years of age. On appeal of sentence, the Applicant was sentenced to an aggregate of 1 year 10 months imprisonment.
7. On 29 January 2025, the Minister's delegate refused the Applicant's visa application under section 501(1) of the Act.
8. On 6 February 2025, the Applicant applied to the Tribunal for review of the visa refusal decision.
9. The matter was heard on 8 and 9 April 2025.
10. On 23 April 2025, the Tribunal handed down its decision without delivering reasons. Following are the reasons for that decision.

ISSUES

11. Pursuant to section 501(1) of the Act, the Minister may refuse to grant a visa to a person if the person does not satisfy the Minister that the person passes the character test.
12. The two issues are:
 - whether the Applicant does not satisfy the Tribunal that the Applicant passes the character; and if so
 - whether the Tribunal considers that the discretion in section 501(1) of the Act, to refuse to grant the Applicant a visa, should be exercised.
13. If the Applicant satisfies the Tribunal that the Applicant passes the character test, the refusal decision must be set aside as the power to refuse to grant the Applicant a visa under section 501(1) of the Act is not enlivened.
14. If the Applicant does not satisfy the Tribunal that the Applicant passes the character test, the discretion in section 501(1) of the Act to refuse to grant the Applicant a visa is enlivened. The Tribunal must consider whether the discretion should be exercised. If the Tribunal decides that the discretion in section 501(1) of the Act should be exercised to refuse to grant the Applicant a visa, the appropriate decision is to affirm the decision under review.
15. If the Tribunal decides that the discretion in section 501(1) of the Act should not be exercised to refuse the Applicant a visa, the appropriate decision would be for the refusal decision to be set aside and for the matter to be remitted for reconsideration with the order that the discretion in section 501(1) of the Act to refuse to grant the Applicant a visa not be exercised.

EVIDENCE

16. The Tribunal has considered all of the evidence permissibly before it including the documents described in section 501G of the Act ("G Documents"), the documents tendered into evidence by the Applicant and the documents tendered into evidence by the Respondent. The evidence contained in these documents is discussed throughout these

Reasons. Although the Tribunal has considered all of the relevant material, the Tribunal has not discussed each potentially relevant document in these Reasons. Rather, the Tribunal has referred to the evidence which was considered to be the most relevant to the decision. The Tribunal has also carefully considered all of the evidence given at the hearing of the matter on 8 and 9 April 2025. The Tribunal has also reviewed the audio/video recording of the hearing.

DOES THE APPLICANT PASS THE CHARACTER TEST?

17. Section 501(6) relevantly provides:

(6) For the purposes of this section, a person does not pass the character test if:

...

(e) a court in Australia or a foreign country has:

(i) convicted the person of one or more sexually based offences involving a child; or

(ii) found the person guilty of such an offence, or found a charge against the person proved for such an offence, even if the person was discharged without a conviction; or

...

18. The Applicant will not pass the character test if a court has convicted him of sexually based offences involving a child.

19. An Australian Criminal Intelligence Commission criminal history report for the Applicant dated 16 May 2024 shows that on 5 October 2022 the Applicant convicted of Indecent assault person under 16 and after appealing his sentence was sentenced to an aggregate sentence of 1 year and 10 months imprisonment.

20. As the Applicant has been convicted of two sexually based offences involving a child, he does not pass the character test.

21. The Applicant does not satisfy me that he passes the character test for the purposes of section 501(1) of the Act. Indeed, the Applicant agrees that he does not pass the character test.

SHOULD THE DISCRETION TO REFUSE THE APPLICANT'S VISA BE EXERCISED?

22. In considering whether to exercise the discretion in section 501(1) to refuse the Applicant's visa application, the Tribunal must comply with any directions made by the Minister pursuant to section 499 of the Act. In this case Direction No 110– Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA ("the Direction") applies. The Direction provides guidance for decision-makers in determining, relevantly, whether to refuse a person's visa application:
23. The Direction contains 8 principles that inform a decision maker in taking into account the considerations in paragraphs 8 and 9 of the Direction. The principles that are found in paragraph 5.2 of the Direction are as follows:

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

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

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

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

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

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

(7) Decision-makers must take into account the primary and other considerations relevant to the individual case. In some circumstances, the nature of the non-

citizen's conduct, or the harm that would be caused if the conduct were to be repeated, may be so serious that even strong countervailing considerations may be insufficient to justify not cancelling or refusing the visa, or revoking a mandatory cancellation.

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

24. Paragraph 8 of the Direction sets out five primary considerations:

- (1) protection of the Australian community from criminal or other serious conduct;
- (2) whether the conduct engaged in constituted family violence;
- (3) the strength, nature and duration of ties to Australia;
- (4) the best interests of minor children in Australia; and
- (5) expectations of the Australian community.

25. Paragraph 9 of the Direction sets out three other considerations:

- (a) legal consequences of the decision;
- (b) extent of impediments if removed; and
- (c) impact on Australian business interests.

26. Paragraph 7 of the Direction provides:

(1) In applying the considerations (both primary and other), information and evidence from independent and authoritative sources should be given appropriate weight.

(2) The primary consideration at 8.1 below (protection of the Australian community) is generally to be given greater weight than other primary considerations. Otherwise, primary considerations should generally be given greater weight than the other considerations.

(3) One or more primary considerations may outweigh other primary considerations.

PRIMARY CONSIDERATION 1: PROTECTION OF THE AUSTRALIAN COMMUNITY

27. Paragraph 8.1(1) of the direction provides:

When considering the protection of the Australian community, decision-makers should keep in mind that the safety of the Australian community is the highest priority of the Australian Government. To that end, the Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens. In this respect, decision-makers should have particular regard to the principle that entering or remaining in Australia is a privilege that Australia confers on non-citizens in the expectation that they are, and have been, law abiding, will respect important institutions, and will not cause or threaten harm to individuals or the Australian community.

28. Paragraph 8.1(2) of the Direction provides:

Decision-makers should also give consideration to:

a) the nature and seriousness of the non-citizen's conduct to date; and

b) the risk to the Australian community, should the non-citizen commit further offences or engage in other serious conduct

The nature and seriousness of the Applicant's conduct to date

29. When considering the nature and seriousness of a non-citizen's criminal offending or other conduct to date, paragraph 8.1.1(1) of the Direction provides that decision-makers must have regard to the following:

- (a) without limiting the range of conduct that may be considered very serious, the types of crimes or conduct described below are viewed very seriously by the Australian Government and the Australian community:*
 - (i) violent and/or sexual crimes;*
 - (ii) crimes of a violent and/or sexual nature against women or children, regardless of the sentence imposed;*

- (iii) *acts of family violence, regardless of whether there is a conviction for an offence or a sentence imposed;*
- (b) *without limiting the range of conduct that may be considered serious, the types of crimes or conduct described below are considered by the Australian Government and the Australian community to be serious:*
 - (i) *causing a person to enter into or being party to a forced marriage (other than being a victim), regardless of whether there is a conviction for an offence or a sentence imposed;*
 - (ii) *crimes committed against vulnerable members of the community (such as the elderly and the disabled), or government representatives or officials due to the position they hold, or in the performance of their duties;*
 - (iii) *any conduct that forms the basis for a finding that a non-citizen does not pass an aspect of the character test that is dependent upon the decision-maker's opinion (for example, section 501(6)(c));*
 - (iv) *where the non-citizen is in Australia, a crime committed while the non-citizen was in immigration detention, during an escape from immigration detention, or after the non-citizen escaped from immigration detention, but before the non-citizen was taken into immigration detention again, or an offence against section 197A of the Act, which prohibits escape from immigration detention;*
- (c) *with the exception of the crimes or conduct mentioned in subparagraph (a)(ii), (a)(iii) or (b)(i) above, the sentence imposed by the courts for a crime or crimes;*
- (d) *the impact of the offending on any victims of offending or other conduct and their family, where information in this regard is available and the non-citizen whose visa is being considered for refusal or cancellation, or who has sought revocation of the mandatory cancellation of their visa, has been afforded procedural fairness;*
- (e) *the frequency of the non-citizen's offending and/or whether there is any trend of increasing seriousness;*
- (f) *the cumulative effect of repeated offending;*
- (g) *whether the non-citizen has provided false or misleading information to the Department, including by not disclosing prior criminal offending;*
- (h) *whether the non-citizen has re-offended since being formally warned, or since otherwise being made aware, in writing, about the consequences of further offending in terms of the non-citizen's migration status (noting that the absence of a warning should not be considered to be in the non-citizen's favour).*
- (i) *where the offence or conduct was committed in another country, whether that offence or conduct is classified as an offence in Australia.*

30. The nature of the Applicant's serious offending for which he was resentenced on 134 March 2019 is described by the Appeal judge as follows:

[The Applicant] was convicted in the Local Court on 30 July 2018 after a defended hearing in respect of two charges of indecent assault upon a person under the age of 16 years, namely 11 years, which allegedly occurred on 15 December 2017. Sequentially, the first assault involved the appellant using his foot to touch the buttocks of the complainant, and thereafter, within a short time frame, he took her hand and put it on his penis. This occurred in the Sydney Olympic Park Swimming Centre.

I am conscious of this being an example of misconduct that does occur within that swimming centre. I think this is the third case I have had arising from such misconduct in that place. It is a place where families go with their children and grandchildren to enjoy the facilities that have been provided at a busy swim centre, particularly in the warmer months of course, and conduct such as this must be addressed with the Court having in mind the need to protect children who are often left in circumstances in such an environment not with parents carers immediately at hand, so that they can have the freedom to enjoy their time there.

31. The victim impact statement dated 8 September 2018 (when the victim would have been 11 or 12 years old) made less than a year after the offending against her illustrates how the offending was already affecting the victim and her family: The victim stated:

Every day, I think about what he did to me and his actions still haunt me. Every Friday I go to the same pool to do my singing lesson and I always thought about the abuse in the spa.

It has affectively impacted me and my family had been scared to go to that pool. The feelings of terror what he did to me. The emotional impact was that I couldn't sleep and kept on having nightmares about it. My sisters were depressed and also my dad and mum was sad that it happened.

I used to love going to the Swimming pool to swim every Friday with my family, until the man who abuse me took that away from me. It hurts even physically to make it to the pool on Friday. On Friday when I go to the pool and passed the spa, it reminds me what happened and they get scared many times that he might abuse me again.

My mum and dad took place off work to comfort me. They were in fear on that day. I was shocked, frightened and in pain after he abused me. I was even in fear that he forcefully grabbed my hand towards his shorts.

32. There is no doubt that the Applicant's offences involved sexual crimes against a child in public are considered very serious under the Direction. Even if they had not been, I find that the offences are objectively very serious.

The risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct

33. Paragraph 8.1.2(2) of Direction 110 provides:

In assessing the risk that may be posed by the non-citizen to the Australian community, decision-makers must have regard to, cumulatively:

a) the nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal or other serious conduct; and

b) the likelihood of the non-citizen engaging in further criminal or other serious conduct, taking into account:

i. information and evidence on the risk of the non-citizen re-offending; and

ii. evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since their most recent offence (noting that decisions should not be delayed in order for rehabilitative courses to be undertaken).

c) where consideration is being given to whether to refuse to grant a visa to the non-citizen — whether the risk of harm may be affected by the duration and purpose of the non-citizen's intended stay, the type of visa being applied for, and whether there are strong or compassionate reasons for granting a short stay visa.

34. As outlined above, the nature of the Applicant's serious offences involved sexual crimes against a child in public. If this sort of offending were repeated, it could mean that other children of the Australian community would be similarly sexually abused potentially causing severe physical and mental harm.
35. I have considered all of the material before the Tribunal potentially relevant to the risk of the Applicant re-offending. That material includes a Sentencing Assessment Report dated 15 February 2019 which contained the following under the heading 'Risk Assessment':

[The Applicant] has been assessed at a Low/Medium risk of reoffending according to the Level of Service Inventory - Revised (LSI-R).

Community Corrections has overridden the offender's overall risk of reoffending to *T2 Medium* to match the Sex Offender Supervision Assessment tool, which is a reliable and valid actuarial risk assessment scale for sexual offenders.'

36. The Sentencing Assessment Report attached a note on the Applicant by a senior psychologist which relevantly stated:

On the Static 99R [the Applicant] scored 1. [The Applicant] scored on two items. Namely, the victim of the offence was unrelated and a stranger. The item based on age resulted in lowered risk by one point given older age is generally associated with reduced risk of sexual recidivism (Sanchez, et al., 2012; Phenix, et al., 2016).

A score of 1 would place him at average risk (level III) relative to other sex offenders. This would have been categorised as low in previous iterations of the Static 99R.

Further assessment will be required as the Static 99R (2016) is an actuarial measure and does not account for the dynamic risk factors that contributed to the offence. No dynamic assessment was conducted as part of this consultation; however, from file review there were potential risk factors identified that have likely contributed to the offence and will require assessment. Protective factors were also noted.

...

Based on information from the file review, [the Applicant] would be considered average risk compared with other sexual offenders.

37. The note from the psychologist, but not the assessments in the Sentencing Assessment Report itself, were mentioned by the Judge on appeal of sentence as follows:

He was assessed for the risk of reoffending, and the report upon that assessment is attached to the sentence assessment report; that includes the proposition that he represented there that the victim was looking at him provocatively, suggesting potential sexual preoccupation. This was a factor that informed the decision, and the opinion, that he poses an average risk compared with other sexual offenders. This, upon the old scale of the study of 1999 which was used, would have put him in the low risk of reoffending in such matters.

38. It appears that this assessment was the static 99 Result without dynamic risk factors. The LSI-R risk assessment of "Low/Medium risk" and the Community Corrections assessment of T2 Medium were not mentioned in the judgement on Appeal of sentence. The Appeal judge commented that any connection between the Applicant's psychological condition including his major depressive disorder which began in 2018, and his crimes, was unclear from the material.

39. I have also considered the section 35(1C) assessment by the Department . I have considered that that the section 36(1C) assessment regarding the Applicant was based in

large part on the Appeal judge's identification that the report before his Honour indicated that Applicant posed an average risk compared with other sexual offenders. "This, upon the old scale of the study of 1999 which was used, would have put him in the low risk of reoffending in such matters."

40. The assessment of the Tribunal in 2022 in another section 501 matter that the Applicant represented a low risk of re-offending (although unacceptable) also referred to the Appeal judgement. That decision also placed significance on the remorse shown by the Applicant for his serious crimes.
41. I note that the Sentencing Assessment Report discussed as relevant, the Applicant's attitudes towards the offending including that the Applicant appeared to be taking responsibility for his actions and appeared shameful and that he demonstrated empathy for the victim. Both the section 36(1C) assessment and the previous Tribunal decision also rely on the remorse shown by the Applicant in reaching their conclusions that the Applicant did not present a danger to the community and that the Applicant presented a low risk of recidivism respectively.
42. I have considered the Applicant's statements and various letters of support from his family, friends, medical professionals and acquaintances. I note that the many of these do not display a knowledge of the Applicant's offending behaviour.
43. I have also taken into account the intensive and numerous counselling sessions that the Applicant has attended over the years and other rehabilitative courses. I note, that it does not appear that the Applicant has undertaken any courses specifically on sexual offences against minors.
44. While there were some indications directly after the offending that the Applicant either denied the offending or attributed the blame to the 11 year old victim by her indicating a sexual interest in him (this was of course rejected by the Court), the Applicant's recent material, including reports and letters, has indicated that the Applicant accepted that he had committed the crimes (which were recorded on camera), shown remorse and regret for those crimes and expressed empathy and sympathy towards the victim.

45. However, at the hearing, the Applicant denied that he committed the offences and specifically denied that he had placed the victim's hand on his erect penis. I reject this assertion and find that the Applicant was guilty of the offences as found. I note that the evidence before the Court included video footage of the offending.
46. While, I raised some reluctance at the hearing to placing weight on this denial of offending and apparent lack of remorse or regret, I have decided that it should be given some weight. In doing so, I note that both of the parties referred to the remorse shown by the Applicant in their written contentions, and that all other significant reports mentioned in these reasons have discussed acceptance of the offending, remorse or regret expressed by the Applicant in coming to conclusions as to the risk of further offending.
47. While I am no expert in such matters, this acceptance that acknowledgement of crimes and remorse or regret for having committed them, conceptually appears to make sense. However, I am reluctant to go beyond what it appears has been accepted by most others as the risk of re-offending which is that there is a low risk of re-offending. While I am willing to accept that the risk of re-offending is low (as the Applicant submits) or in other words that "he poses an average risk compared with other sexual offenders" I still consider that this is a real and not fanciful risk. This is so especially given the seriousness of the offending and the great harm which could result to children in Australia if repeated.
48. I find that the primary consideration of the Protection of the Australian community weighs in favour of visa refusal and placed very heavy weight on this consideration.

PRIMARY CONSIDERATION 2: FAMILY VIOLENCE COMMITTED BY THE NON-CITIZEN

49. This primary consideration is not relevant.

PRIMARY CONSIDERATION 3: THE STRENGTH, NATURE AND DURATION OF TIES TO AUSTRALIA

50. Paragraph 8.3(1) of the Direction provides:

(1) Decision-makers must consider any impact of the decision on the non-citizen's immediate family members in Australia, where those family members are Australian citizens, Australian permanent residents, or people who have a right to remain in Australia indefinitely.

51. Paragraph 8.3(2) of the Direction provides:

Where consideration is being given to whether to cancel a non-citizen's visa or whether to revoke the mandatory cancellation of their visa, the decision-maker must also consider the strength, nature and duration of any other ties that the non-citizen has to the Australian community. In doing so, decision-makers must have regard to:

a) how long the non-citizen has resided in Australia, including whether the non-citizen arrived as a young child, noting that:

i. less weight should be given where the non-citizen began offending soon after arriving in Australia; and

ii. more weight should be given to time the non-citizen has spent contributing positively to the Australian community

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

52. The Applicant's two sons born on 27 April 2007, and 4 March 2001 respectively reside in Australia with the Applicant. They are not Australian citizens, permanent residents or have a right to remain in Australia indefinitely and as such the impact on them of a visa refusal decision for the Applicant is not strictly a Primary consideration. Similarly, as consideration is being given to visa refusal and not cancellation or revocation, I am not compelled by paragraph 8.3 of the Direction to consider the strength, nature and duration of any other ties that the non-citizen has to the Australian community. However, as these matters have been raised by the Applicant and I consider them very important in this matter. I will treat them as if they were primary considerations and give them weight accordingly.

53. The Applicant arrived in Australia in 2012 aged 39 years with his two sons. They were held in immigration detention until they were granted bridging visas in 2013. They applied for protection visas in 2017 and the Applicant was imprisoned between 2018 and 2020 before being held in immigration detention until 2022 when he was released on a bridging visa. Despite his visa being refused in January 2025 he has as yet not been re-detained. His two

sons are 24 and 17 respectively with the younger son about to turn 18. The Applicant has a brother in Australia who is a permanent resident.

54. The Applicant is particularly close with his two sons, the younger, who is about to turn 18, resides with the Applicant and both sons are in contact with the Applicant every day. Both have written a number of statements about their closeness with their father, how he raised them and how he is still the central support figure in their lives. Both have indicated their concern that their father may be detained for a significant period or worse, removed from Australia. They have indicated how they are dependents on their father's protection visa application. The Tribunal finds that each son would be greatly impacted if their father's visa application remains refused.
55. I note that while I have discussed the potential for a decision against the Applicant to affect the Applicant's son's ability to remain in Australia under 'Legal consequences' below. I have also factored that matter in under this consideration and for the youngest son, the best interests of the child consideration also.
56. The Applicant's brother assisted in caring for the boys while their father was detained but has more recently suffered a serious work-related injury and the Applicant is currently assisting in caring for him. The Tribunal finds that the Applicant's brother would be greatly impacted if their father's visa application remains refused.
57. The Applicant has been employed in Australia including since his last release in 2022. Since then, the Applicant has been employed as a panel beater. If allowed to remain, the Applicant wishes to open an automotive repair business with his sons.
58. The Applicant is also a devout Christian and is heavily involved in church activities and events.
59. The Applicant has provided letters of support from his family, friends, and employers. The Tribunal accepts that the Applicant has formed strong connections with the community during his time in the community especially those formed through his Christian faith and employment. There is also evidence that the Applicant did voluntary work in an auto repair shop before being detained. The Tribunal accepts that the Applicant's friends and

acquaintances would be upset if the Applicant's visa application remains removed, especially if he is removed from Australia.

60. The Tribunal accepts that the Applicant has strong connections with the Australian community and considers that this primary consideration weighs against visa refusal and placed heavy weight on this consideration.

PRIMARY CONSIDERATION 4: THE BEST INTERESTS OF MINOR CHILDREN IN AUSTRALIA

61. This primary consideration necessitates a determination to be made about whether visa refusal is, or is not, in the best interests of each child under the age of 18 in Australia affected by the decision.

62. In considering the best interests of a child, the following factors must be considered where relevant:

- (a) *the nature and duration of the relationship between the child and the non-citizen. Less weight should generally be given where the relationship is non-parental, and/or there is no existing relationship and/or there have been long periods of absence, or limited meaningful contact (including whether an existing Court order restricts contact);*
- (b) *the extent to which the non-citizen is likely to play a positive parental role in the future, taking into account the length of time until the child turns 18, and including any Court orders relating to parental access and care arrangements;*
- (c) *the impact of the non-citizen's prior conduct, and any likely future conduct, and whether that conduct has, or will have a negative impact on the child;*
- (d) *the likely effect that any separation from the non-citizen would have on the child, taking into account the child's or non-citizen's ability to maintain contact in other ways;*
- (e) *whether there are other persons who already fulfil a parental role in relation to the child;*
- (f) *any known views of the child (with those views being given due weight in accordance with the age and maturity of the child);*
- (g) *evidence that the child has been, or is at risk of being, subject to, or exposed to, family violence perpetrated by the non-citizen, or has otherwise been abused or neglected by the non-citizen in any way, whether physically, sexually or mentally;*
- (h) *evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen's conduct.*

63. One of the Applicant's two sons is about to turn 18, but until then is a minor to whom this consideration applies.
64. As discussed above, this son still lives with the Applicant and is cared for by the Applicant. He was cared for by his elder brother and uncle when the Applicant was detained previously. This son is employed on a full-time basis by an auto repair company. The son is very close with the Applicant and has written a number of statements about their closeness, how he raised him and how he is still the central support figure in his. The son has indicated his concern that his father may be detained for a significant period or worse, removed from Australia. He has indicated how he is a dependent on the Applicant's protection visa application. The Tribunal has found that each of the Applicant's sons would be greatly impacted if their father's visa application remains refused.
65. The Tribunal finds that the refusal of the Applicant's visa application and the Tribunal affirming that visa refusal is not, in the best interests of the Applicant's 17 year old son.
66. I give this consideration moderate weight against visa refusal.

PRIMARY CONSIDERATION 5: EXPECTATIONS OF THE AUSTRALIAN COMMUNITY

67. Paragraph 8.5 of the Direction provides:

(1) The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has engaged in serious conduct in breach of this expectation, or where there is an unacceptable risk that they may do so, the Australian community, as a norm, expects the Government to not allow such a non-citizen to enter or remain in Australia.

(2) In addition, visa cancellation or refusal, or non-revocation of the mandatory cancellation of a visa, may be appropriate simply because the nature of the character concerns or offences is such that the Australian community would expect that the person should not be granted or continue to hold a visa. In particular, the Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they raise serious character concerns through conduct, in Australia or elsewhere, of the following kind:

a) acts of family violence; or

b) causing a person to enter into, or being party to (other than being a victim of), a forced marriage;

c) commission of serious crimes against women, children or other vulnerable members of the community such as the elderly or disabled; in this context, 'serious crimes' include crimes of a violent or sexual nature, as well as other serious crimes against the elderly or other vulnerable persons in the form of fraud, extortion, financial abuse/material exploitation or neglect;

d) commission of crimes against government representatives or officials due to the position they hold, or in the performance of their duties; or

e) involvement or reasonably suspected involvement in human trafficking or people smuggling, or in crimes that are of serious international concern including, but not limited to, war crimes, crimes against humanity and slavery; or

f) worker exploitation.

(3) The above expectations of the Australian community apply regardless of whether the non-citizen poses a measureable risk of causing physical harm to the Australian community

(4) This consideration is about the expectations of the Australian community as a whole, and in this respect, decision-makers should proceed on the basis of the Government's views as articulated above, without independently assessing the community's expectations in the particular case.

68. Most relevantly in the current case, the Applicant breached the statement of Australian community expectations set out in 8.5(1) of the Direction when he failed to obey Australian laws. By engaging in serious crimes in breach of this expectation, paragraph 8.5(1) expresses the Australian community expectation, as a norm, that Government not allow the Applicant to remain in Australia.

69. The Tribunal notes that the wording of the Direction does not appear to allow for any subjective evaluation by the Tribunal of what the expectations of the Australian community are. Rather, the Government has provided a statement of policy in relation to community expectations which decision-makers must comply with and consider as a primary consideration.
70. The weight to be given to this primary consideration is of course a matter for the Tribunal, and I place weight on this consideration primarily by considering the nature and seriousness of the Applicant's offending which informs severity of the breach of the community expectation to obey the law: see *DBWG v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 301 FCR 344 per curium at [53] to [64]. I will of course consider the relative weight of all considerations at the conclusion of my decision-making process.
71. I consider that this primary consideration weighs in favour of the visa refusal and places heavy weight on this primary consideration.

OTHER CONSIDERATIONS

Other Consideration (a): Legal consequences of the decision

72. At present, the Applicant is living in the community despite having his visa refused in January 2025 and not holding another visa.
73. The legal consequences of this decision being set aside would be for the Applicant's visa application being remitted for reconsideration.
74. If the application is unsuccessful, the Applicant would continue not to hold a visa and he would continue to be required to be detained detention under section 189 of the Act.
75. Once detained, that detention would likely continue until the Applicant was removed from Australia, deported, or granted a visa. It would also end if it was not reasonably practicable to remove the Applicant from Australia in the reasonably foreseeable future as his continued immigration detention could not be said to be for the purpose of removal and would therefore not be permitted under the Constitution: see *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 97 ALJR 1005.

76. As there a protection finding has been made with respect to the Applicant, he will not be returned to Iran or anywhere else which would return him to Iran. That protection finding was made on the basis that the Applicant and his sons, are former adherents of the Ahl-e Haq faith who converted to Christianity shortly after arriving in Australia. While the Applicant was the primary Applicant in that application, I note that both of the Applicant's sons are also former adherents of the Ahl-e Haq faith who converted to Christianity.
77. A concern arose at the hearing that a legal consequence of the affirmation of the Applicant's visa was that the Applicant's sons, as dependents on their father's protection visa application would also have their visa applications refused and would be unable to apply for another visa. The concern was that, as a consequence, they would also be detained and removed from Australia if the Applicant's application before the Tribunal was unsuccessful. The Applicant allowed the parties to put on post hearing written submissions on this issue and the Respondent did so.
78. In short, the Respondent assured the Tribunal by written submissions that the application for each son was still on foot and would be determined substantively regardless of the outcome of the Tribunal's proceedings. The Respondent indicated that the sons had been invited to provide their own claims and supporting material. The Respondent submitted that even if the sons did not make their own express claims that the Department must consider implied claims and determine their implied claims independently of the Applicant's application.
79. While the Tribunal can not influence the outcome of those applications, it would appear for these purposes that as the sons' situation is identical the Applicant's as relates to their religious history and the Applicant has had a protection finding made in his favour, there appears to be a very good chance that the sons may be granted protection visas in their own right allowing them to remain in Australia.
80. Whether, what the respondent proposes regarding the sons would be found by a Court to be legally possible is in some doubt, as pointed out by the Applicant's Barrister. But for my purposes I am satisfied that, unless a Court determined otherwise, the Respondent would be likely to act as they have told the Tribunal they will with respect to the Applicant's sons and that a decision against the Applicant will not necessarily or even be likely to, lead to the detention and removal of the Applicant's sons.

81. If removed the Applicant is removed from Australia, he would likely be prevented from ever returning to Australia (because of the operation of special return criterion 5001 in Schedule 5 to the *Migration Regulations 1994*).
82. I find that this consideration weighs against visa refusal and place moderate weight on this consideration.

Other Consideration (b): Extent of impediments if removed

83. Paragraph 9.2 of the Direction provides:

(1) Decision-makers must consider the extent of any impediments that the non-citizen may face if removed from Australia to their home country, in establishing themselves and maintaining basic living standards (in the context of what is generally available to other citizens of that country), taking into account:

a) the non-citizen's age and health;

b) whether there are substantial language or cultural barriers; and

c) any social, medical and/or economic support available to them in that country

84. The parties both agree, as does the Tribunal, that the Applicant will not be removed to Iran so this consideration is not technically relevant. However, I have considered that the Applicant will face certain hardship if removed to a third country, especially if it is a country with an unfamiliar language, and/or culture. How severe that hardship might be would depend on the conditions in the particular country and services available including medical care noting that the Applicant has medical conditions including major depressive disorder.
85. I find that this consideration weighs against visa refusal and place heavy weight on this consideration.

Other Consideration (c): Impact on Australian business interests

86. The parties submit that this consideration is not relevant and the Tribunal agrees.

Conclusion: should the discretion to refuse the Applicant's visa application be exercised?

87. The Tribunal has found that the primary consideration of the protection of the Australian community weighs very heavily in favour of visa refusal. The Tribunal has found that the Applicant's offending was very serious, that there could cause great harm to Australian children if they were repeated and that there is a low yet real risk that the Applicant will re-offend. The Tribunal has placed heavy weight on this consideration in favour of affirming the visa refusal decision. The Tribunal has also found that the consideration of the expectations of the Australian community weighs in favour of affirming the refusal decision and placed heavy weight on this primary consideration.
88. The Tribunal has found that the consideration of the strength, nature and duration of ties of the Applicant and the best interests of children each weigh against affirming the visa refusal decision and has attributed heavy weight to the former and moderate weight to the latter primary considerations.
89. The Tribunal found that the consideration of legal consequences for the Applicant (and hardship to the Applicant) of refusing the Applicant's visa application and impediments if removed each weigh against visa refusal and attributes moderate weight to the former and heavy weight to the latter consideration.
90. After considering all of the relevant considerations in this matter and the weight that I have attributed to them, informed by the principles in paragraph 5.2 of the Direction, I have decided that the primary considerations of the protection of the Australian community and the expectations of the Australian community outweigh all other considerations in the Applicant's favour.
91. The Tribunal has found that the Applicant does not pass the character test and decided to exercise the discretion to refuse the Applicant's visa application.
92. Therefore, the Tribunal finds that the Minister's delegate's decision, to refuse the Applicant's visa application, is the correct decision.

DECISION

93. The decision under review is affirmed.

*I certify that the preceding 93 paragraphs are a true copy of the reasons for the decision herein of Ge
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Date of reasons: 6 August 2026

Counsel for the Applicant: **Dr Jason Donnelly**

Solicitors for the Respondent: **Ms Sophia Xian
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