

FEDERAL COURT OF AUSTRALIA

Garratt v Assistant Minister for Immigration and Multicultural Affairs

[2026] FCA 1340

File number(s): QUD 486 of 2025

Judgment of: SARAH C DERRINGTON J

Date of judgment: 14 September 2026

Catchwords: **MIGRATION** – application for review of decision of the Assistant Minister under s 501BA of the *Migration Act 1958* (Cth) to set aside earlier decision of the then-Administrative Appeals Tribunal – whether Assistant Minister’s assessment of the Applicant’s risk of reoffending was legally unreasonable or illogical – ground 2 dismissed – determination of ground 1 stayed pending determination of M 86 of 2026 *XMBQ v Minister for Immigration and Citizenship*

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

Cases cited: *AZX21 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] FCA 1379
CKL21 v Minister for Home Affairs [2022] FCAFC 70; 293 FCR 634
De Silva v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FCA 831
Djokovic v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FCAFC 3; 289 FCR 21
Garratt and Minister for Immigration, Citizenship and Multicultural Affairs [2022] AATA 4857
Healey v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FCAFC 188; 295 FCR 210
Masi-Haini v Minister for Home Affairs [2023] FCAFC 126; 298 FCR 227
Minister for Aboriginal Affairs v Peko-Wallsend Ltd [1986] HCA 40; 162 CLR 24
Minister for Immigration and Citizenship v SZMDS [2010] HCA 16; 240 CLR 611
Minister for Immigration and Citizenship v XMBQ [2026] FCAFC 19; 315 FCR 207
Minister for Immigration, Citizenship, Migrant Services

and Multicultural Affairs v ERY19 [2021] FCAFC 133; 285 FCR 540

Nguyen v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] FCA 769

Pallas v Minister for Home Affairs [2019] FCAFC 149

Sturmey v Minister for Immigration, Citizenship and Multicultural Affairs [2026] FCA 214

YKSB v Minister for Home Affairs [2020] FCA 476

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Date of hearing:	19 June 2026
Counsel for the Applicant:	Dr J Donnelly
Solicitor for the Applicant:	Zarifi Lawyers
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Solicitor for the Respondent:	MinterEllison

ORDERS

QUD 486 of 2025

BETWEEN: **DALE JAY GARRATT**
Applicant

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

ORDER MADE BY: **SARAH C DERRINGTON J**

DATE OF ORDER: **14 SEPTEMBER 2026**

THE COURT ORDERS THAT:

1. Subject to the pending decision of the High Court in M 86 of 2026 *XMBQ v Minister for Immigration and Citizenship* rendering ground 1 of the further amended originating application (**FAOA**) filed on 24 April 2026 arguable, the FAOA be dismissed.
2. The proceeding be stayed until further order.
3. The parties contact the Chambers of Justice Sarah C Derrington within 7 days of the decision in *XMBQ* with a mutually agreed proposal as to the final determination of the proceeding, including whether a further hearing is required.
4. Costs be reserved.

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

REASONS FOR JUDGMENT

SARAH C DERRINGTON J:

INTRODUCTION

- 1 By a further amended originating application filed on 24 April 2026, the Applicant seeks review of a decision of the **Assistant Minister** for Immigration and Multicultural Affairs to exercise the power under s 501BA of the *Migration Act 1958* (Cth) to set aside a decision of the then-Administrative Appeals **Tribunal**, and thereby cancel the Applicant's Class BN Subclass 126 Skilled Independent visa.
- 2 For the reasons that follow, ground 2 of the application cannot succeed. Whether ground 1 may impact on the disposition of the application will be determined once the High Court delivers judgment in M 86 of 2026 *XMBQ v Minister for Immigration and Citizenship*.

BACKGROUND

- 3 The Applicant is a citizen of the United Kingdom who first migrated to Australia with his immediate family when he was 15 years old. In 2006, he was granted a Class BN Subclass 126 Skilled Independent visa.
- 4 The Applicant has a criminal history dating back to 2011, although his early offending was minor. Details of the Applicant's criminal history can be found in the reasons for decision of the Tribunal. For present purposes, it suffices to say that, on 8 March 2021, the Applicant appeared before the Supreme Court of Queensland and was convicted of over 70 offences, including unlawful possession of weapons, possessing dangerous drugs and trafficking in dangerous drugs of a commercial quantity. The offending had occurred over a significant period of time. The Applicant received a head sentence of eight years imprisonment. Further, on 6 April 2021, the Applicant was convicted of additional offences in the Magistrates Court of Queensland and was sentenced to various other terms of imprisonment, which were to run concurrently with the sentence received from the Supreme Court. The Applicant was subsequently granted parole on 16 June 2022.
- 5 On 13 May 2021, the Applicant's visa was mandatorily cancelled by a delegate of the **Minister** for Immigration and Multicultural Affairs pursuant to s 501(3A)(a)(i) of the *Migration Act*. The Minister was satisfied that the Applicant did not pass the character test because he had a "substantial criminal record", having been sentenced to a term of imprisonment of 12 months

or more (*Migration Act* s 501(7)(c)), and because he was serving a sentence of imprisonment on a full-time basis in a custodial institution for an offence against a law of a State: *Migration Act* s 501(6)(a).

6 The Applicant subsequently made a request for revocation of this mandatory cancellation and provided material in support of this request. On 14 September 2022, a delegate of the Minister made a decision under s 501CA(4) of the *Migration Act* not to revoke the visa cancellation decision. The Applicant applied to the Tribunal for review of the delegate's decision. On 8 December 2022, the Tribunal set aside the decision of the delegate and substituted a decision to revoke the mandatory cancellation of the Applicant's visa.

7 On 15 November 2024, the Applicant was provided **Notice** of the Minister's intention to consider exercising the power conferred by s 501BA(2) of the *Migration Act* to set aside the Tribunal's decision and cancel the Applicant's visa on character grounds. The Applicant was provided with an opportunity to put forward further material. This further material included an addendum report of Professor James Freeman (**Freeman Report**), a consultant forensic psychologist who had previously provided psychological assessments of the Applicant to the Tribunal.

8 On 8 May 2025, the Assistant Minister exercised the power under s 501BA(2), setting aside the decision of the Tribunal and cancelling the Applicant's visa. He did so on the basis that he was satisfied the Applicant did not pass the character test by operation of s 501(6)(a) and that the cancellation was in the national interest.

GROUND

9 The Applicant seeks to have the decision of the Assistant Minister set aside on two grounds: first, that there was unreasonable delay in the exercise of the power in s 501BA; and secondly, that the Assistant Minister's assessment of the Applicant's risk of reoffending was legally unreasonable or illogical.

Ground 1

10 At the hearing of the matter and in written submissions filed on 23 April 2026, Counsel for the Applicant accepted that ground 1 must fail in light of the decision of the Full Court in *Minister for Immigration and Citizenship v XMBQ* [2026] FCAFC 19; 315 FCR 207. The ground was not withdrawn because an application for special leave had been made to the High Court and

no decision had been made as at the date of the hearing. Special leave was subsequently granted by the High Court on 6 August 2026.

- 11 The Applicant applied to stay determination of ground 1 pending the outcome of *XMBQ*. As outlined below, ground 2 cannot succeed. In this circumstance, the Applicant should be granted the stay as requested.

Ground 2

- 12 The only remaining ground for present consideration is the second concerning legal unreasonableness.
- 13 The characterisation of a decision, or a state of satisfaction, as legally unreasonable because of illogicality or irrationality is not easily made: *Djokovic v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 3; 289 FCR 21 at [33] per Allsop CJ, Besanko and Colvin JJ; *Masi-Haini v Minister for Home Affairs* [2023] FCAFC 126; 298 FCR 227 at [50] per Markovic, Meagher and Kennett JJ. The threshold to establish illogicality or irrationality is very high, and a court ought not lightly, and should be slow, to conclude that it is met: *Minister for Immigration and Citizenship v SZMDS* [2010] HCA 16; 240 CLR 611 at [130]-[131] per Crennan and Bell JJ; *AZX21 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] FCA 1379 at [46] per Derrington J. The question is whether the decision is so lacking in a rational or logical foundation that it is one which no rational or logical decision-maker could reach: *Djokovic* at [34]; *Masi-Haini* at [51]-[52]; *SZMDS* at [130]-[131].
- 14 The second ground is directed to the Assistant Minister's findings on the Applicant's likelihood of recidivism while assessing the Applicant's risk to the Australian community at [32] to [50] of the Statement of **Reasons**. The Applicant submits that the Assistant Minister's reasoning was legally flawed because it proceeded in a manner that was illogical and/or irrational when compared with the expert evidence that the Assistant Minister had purported to accept, namely, the Freeman Report.
- 15 In oral submissions, Counsel for the Assistant Minister expressed the concern that the Applicant had framed ground 2 differently in his oral address from that disclosed in writing. Whether that was in fact so, both parties were given the opportunity to put on short supplementary submissions addressing the concern. In the end, nothing turned on the apparent subtle difference between the Applicant's written and oral submissions.

16 The Freeman Report contained the following information about the Applicant's condition:

Clinical Assessment

7.2 -Methamphetamine Dependency (sustained remission)

...

7.3 Consistent with the first assessment, [the Applicant] developed a chronic methamphetamine dependence disorder that created impairments in psychosocial functioning. The **disorder can now be considered in "sustained remission"** as he has not experienced any relapse (e.g., maintains abstinence) since being released back into the community e.g., over two years...

8. **ACTUARIAL RISK ASSESSMENT**

8.1 ...Consistent with the most recent assessment (dated 03/11/2023), the **risk of recidivism appears almost exclusively related to his capacity and motivation to avoid relapse into illicit drug use**...He has been able to maintain sustained abstinence for more than two years (since release from detention), which further supports the reliability of the calculated **low-risk classification**.

...

10. **CLINICAL SUMMARY, RISK ASSESSMENT AND CONCLUDING REMARKS**

10.1 ...He also continues to demonstrate a sufficient level of insight into the origins of his offending and has now demonstrated a capacity to maintain sustained abstinence. He appears to have successfully implemented a relapse prevention plan (e.g., avoiding high-risk situations and past pro-drug support networks) and has not engaged in any further criminal activity. Rather, he consistently abides by the conditions of a parole order, and has progressed to a **low-risk classification**...

10.4 In summary and given he has reportedly been able to demonstrate consistently pro-social behaviours in the community since release from detention (over the past two years) there **do not appear to be any direct or tangible risks that can be clearly identified**. Rather, he appears to have achieved his initial stated goals and his prognosis for the future can be considered positive if he maintains his current lifestyle stability and avoids future high-risk situations e.g., relapse and/or association with a negative peer support group.

(Emphasis added.)

17 The Applicant advanced six bases in support of this ground.

Risk of reoffending

18 The **first** basis relied upon by the Applicant concerns the following findings (Reasons [45], [50]):

While I acknowledge the rehabilitative efforts made by [the Applicant] since his offending and the stability and insight he has gained as a result, Professor Freeman has very recently re-confirmed that **there remains a likelihood, albeit low, of [the**

Applicant] falling back into the same offending behaviour... I find in accordance with Professor Freeman's assessment of the risk of reoffending. In doing so, I reject [the Applicant's] submission that the risk is "very low"..., as that is not supported by the expert evidence before me.

...

On balance, I consider there to be a **low, but not negligible, likelihood** that [the Applicant] will relapse into drug abuse and reoffend...

(Emphasis added.)

19 The Applicant submits that the ultimate finding of a “low” risk of relapse and reoffending was not supported by evidence before the Assistant Minister, as the Freeman Report concluded that there did not appear to be any “direct or tangible risks that can be clearly identified”. The Assistant Minister contends that there was no material point of difference between the views in the Reasons and Professor Freeman’s report, in that both identified a low risk of reoffending: Reasons [45]; Freeman Report [8.1].

20 It is important to acknowledge that the Reasons and the Freeman Report address two kinds of risk; the risk of reoffending and, separately, the risk of relapse into drug use. On the face of the Freeman Report, it is difficult to discern, at times, which risk is being addressed. On balance, the Freeman Report (read in light of Professor Freeman’s two previous reports) makes the following relevant findings:

- (1) The Applicant has been given a “low-risk classification” in respect of his parole conditions: [5.1].
- (2) The Applicant has sporadically engaged in psychological treatment: [6.2].
- (3) The Applicant’s drug dependency disorder is in sustained remission: [7.2]-[7.3].
- (4) The Applicant’s risk of recidivism is almost exclusively related to his ability to avoid relapse into drug use: [8.1].
- (5) The Applicant’s sustained remission supports the reliability of his “low-risk” classification: [8.1].
- (6) There are no direct or tangible “risks” that can be identified should the Applicant maintain his current lifestyle and avoid high-risk situations: [10.4].

21 It was not contested that the Freeman Report supports a conclusion that the Applicant was at a low risk of reoffending. In light of this, it cannot be said that there is any discernible error in the Assistant Minister’s conclusion as to risk because there is plainly a logical basis for reaching that conclusion.

22 Even if the conclusion reached by the Assistant Minister was contrary to the findings of Professor Freeman, this alone does not establish any error in the Assistant Minister’s reasoning. The Assistant Minister was entitled to reach a conclusion different from that expressed in the Freeman Report, so long as the conclusion was made on a probative basis: *CKL21 v Minister for Home Affairs* [2022] FCAFC 70; 293 FCR 634 at [77]. In doing so, the Assistant Minister was not required to articulate every detail of the consideration process: *Healey v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 188; 295 FCR 210 at [36] per Burley, Thomas and Abraham JJ citing *Pallas v Minister for Home Affairs* [2019] FCAFC 149 at [45] per Derrington J, Greenwood and Logan JJ agreeing.

23 Additionally, it is well established that the assessment of an applicant's risk of reoffending is a matter for the decision-maker, who may derive assistance from expert evidence but is not bound to adopt the conclusions in it: *De Silva v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 831 at [35] per Abraham J; *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v ERY19* [2021] FCAFC 133; 285 FCR 540 at [86] per Wigney, Lee and Wheelahan JJ. As was said by Mortimer J in *YKSB v Minister for Home Affairs* [2020] FCA 476 at [45]:

[The decision-maker] could make its own assessment, within the bounds of rationality and logic. That is what it did. The assessment of the level of risk posed by the applicant was a matter for the [decision-maker]. It could derive assistance from expert evidence but ultimately its task was to reach its own conclusion, which it did.

24 When assessing any risk of relapse or reoffending, the Assistant Minister must necessarily form a view on the likelihood of the occurrence of an event in the future. When doing so, the Assistant Minister will consider a variety of matters, which can go beyond the Freeman Report. As the Full Court observed in *Djokovic* at [38]-[39]:

The notion of “risk” involves possibility in the future: *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v ERY19* (2021) 285 FCR 540 at [81] and [82]; *Leota v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 1120 at [63]. Thus, consideration of what may or might happen in the future by reference to the presence of the visa holder in Australia is what is called for...

The task is the consideration of future possibilities which “proceeds by drawing inferences from known facts”: *Lewis v Australian Capital Territory* (2020) 271 CLR 192 at [35] (Gageler J) and is based on “reasonable conjecture within the parameters set by the historical facts”: *MZAPC v Minister for Immigration and Border Protection* (2021) 95 ALJR 441; 390 ALR 590 at [38] (Kiefel CJ, Gageler, Keane and Gleeson JJ). To these considerations should be added as legitimate bases for the assessment process: common sense, a reasonable appreciation of human experience, and personal knowledge or specialised knowledge of the Minister or his or her Department: see

generally *Viane* 96 ALJR 13; 395 ALR 403 at [17]-[21].

25 In *CKL21*, the Full Court made the following comments about such an assessment (at [74], [77]):

In curial and administrative decision-making, the task of assessing the degree of likelihood of an event occurring in the future requires more than mere speculation. It must be based on a logical process of reasoning based on the known facts. A conclusion that a risk ‘cannot be ruled out’ does not, of itself, logically establish the existence of a risk. Further ... a risk may be so low that it must properly be disregarded. In assessing the likelihood of a future event, the key facts will include the regularity with which the event has occurred in the past, the conditions under which the event occurred in the past and the likelihood that those conditions have since changed or other events have intervened to interrupt the cycle of regularity.

...

...the relevant question is whether there was a probative basis for a finding that the appellant posed a risk of reoffending ...

26 As was required, the Assistant Minister set out the findings of fact and referred to the evidential bases on which they were made. The Assistant Minister outlined his operative reasons at Reasons [44] to [47]. The finding that the Applicant was at a low, but not negligible, risk of relapse, and therefore reoffending, was based on more than mere conjecture and was supported by evidence: cf *CKL21* at [86].

Structured and consistent rehabilitation

27 **Secondly**, the Applicant contests the following findings of the Assistant Minister (at Reasons [44]):

However, I am guarded in reaching a firm conclusion as to the success of [the Applicant’s] plan, given that **he has not engaged in structured and consistent rehabilitation aimed at his drug dependency disorder** since his release as he told the AAT he would, because in his words he has ‘not needed to’ Attachment A1. Consequently, **I cannot fully discount the risk that [the Applicant] may fall back into drug use in the absence of structured and consistent professional assistance...**

(Emphasis added.)

28 The Applicant submits that these findings were illogical or irrational because there is no probative evidence to suggest that it is necessary for the Applicant to engage in structured and consistent rehabilitation, and they were contrary to the material in the Freeman Report at [10.1].

29 The Applicant accepted that he had not engaged in this form of rehabilitation in his statement in response to the Notice (at [25]). As noted by the Assistant Minister at Reasons [41] and [44], the Applicant told the Tribunal that he *would* continue to engage in drug rehabilitation treatment programs following his release from custody. Further, the Tribunal’s reasons for its

decision evidence that the Tribunal Member raised concerns about the Applicant's continuing to engage in such programs in the community and was reassured by the Applicant's Counsel that he would do so (*Garratt and Minister for Immigration, Citizenship and Multicultural Affairs* [2022] AATA 4857 at [63]).

30 As outlined above, the consideration of risk of relapse requires the Assistant Minister to make an assessment of what might happen in the future based on drawing inferences from known facts.

31 It was evident on the material before the Assistant Minister that the Applicant had benefitted from participation in structured rehabilitation programs and that these programs formed a useful part of the Applicant's recovery, as well as a basis for the Tribunal's decision. I accept the submission of the Assistant Minister that, based on this material, a rational person could conclude that participation in structured and consistent rehabilitation could contribute to reducing the Applicant's risk of relapse. In light of this, and justifiably so, the Assistant Minister gave consideration to the Applicant's non-participation in further structured and consistent rehabilitation mechanisms as a factor in finding that the risk of relapse could not be fully discounted. There is no irrationality or illogicality that can be discerned from the Assistant Minister's decision to do so.

32 To the extent that this finding can be said to contradict the information in the Freeman Report, this objection can be dismissed for the reasons I have outlined above regarding the making of findings contrary to those in expert evidence.

Remaining bases

33 The remaining bases relied upon by the Applicant did not form part of oral argument. Nonetheless, as they were advanced in the further amended originating application and written submissions, they should be addressed.

34 Broadly, the remaining bases go to the following:

- (1) the Assistant Minister's speculation about the Applicant's future risk, which for reasons already identified, involves a degree of permissible speculation based on known facts: *Djokovic* at [38]-[39]; *CKL21* at [74]; *ERY19* at [81]; *Sturmey v Minister for Immigration, Citizenship and Multicultural Affairs* [2026] FCA 214 at [34]-[37] per Derrington J; and

(2) the weight afforded to particular evidence, which is a matter solely within the remit of the primary decision-maker: *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40; 162 CLR 24 at 41 per Mason J; *Nguyen v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCA 769 at [27] per Moshinsky J.

35 **Thirdly**, the Applicant contends that the Assistant Minister treated his employment as both a protective factor and a renewed source of risk and had no rational basis for concluding that the risk factors identified outweighed the protective aspects.

36 This submission evidences no error in the relevant reasoning. As the Assistant Minister submitted, it was accepted that the Applicant's employment was a positive factor in terms of mitigating against future risk: Reasons [43]. Nonetheless, consistent with established evidence that the Applicant first used drugs recreationally among work colleagues on job sites, the Assistant Minister was mindful that it was conceivable that the Applicant may be exposed again to drug use at work: Reasons [44]. It was then a matter for the Assistant Minister to weigh these factors in reaching his ultimate findings of fact.

37 **Fourthly**, the Applicant argues that the Assistant Minister's reliance on commercial and financial motivation (at Reasons [37] and [46]) as ongoing risk factors was not rationally connected to the information in the Freeman Report, which identified that the current risk of recidivism was "almost exclusively" related to the Applicant's capacity to avoid relapse into illicit drug use: Freeman Report [8.1]. Further, the Applicant submitted that the Assistant Minister did not identify any current evidence that the Applicant remained motivated by these factors.

38 There are a number of difficulties with that submission. Primarily, the submission overstates the weight of the Freeman Report; an assessment that the risk is "almost exclusively" related to relapse is not exhaustive and plainly leaves room for the assessment of other factors. The Assistant Minister expressly considered that the "primary driver" for the Applicant's offending was his drug addiction: Reasons [26].

39 In any event, I accept the submissions of the Assistant Minister that there is nothing illogical about relying on previous motivating factors when making an assessment of present risk. The financial motivation behind the offending had been referenced in the sentencing remarks of the Supreme Court and was addressed in the proceedings before the Tribunal. I accept the Assistant

Minister's submission that there was nothing illogical about that considering a factor which had motivated a person to offend in the past had the potential to motivate him again in the future.

40 **Fifthly**, the Applicant submits that the Assistant Minister illogically transformed the prognosis provided in the Freeman Report into a basis for increasing the level of apprehended risk. The Assistant Minister noted that the positive prognosis provided by the Freeman Report was premised on the Applicant's maintaining current lifestyle stability and avoiding future high-risk situations.

41 I accept the submission of the Assistant Minister that, in the context of assessing protection of the Australian community, this reasoning did no more than acknowledge there was a *potential* for adverse conditions to arise in the future, such that there was still a risk of reoffending, while continuing to acknowledge that this risk was low. From this, the Assistant Minister exercised his discretion to conclude that the risk, albeit low, was not one to which the community should continue to be exposed. No error can be discerned from this line of reasoning.

42 **Finally**, the Applicant argued that the positive post-release circumstances identified in the Freeman Report were given substantially less exculpatory force than "speculative" factors, such that the post-release matters had no logically meaningful work in the ultimate risk conclusion. This argument, in substance, is directed to the weight afforded to evidence before the Assistant Minister, which, as addressed above, is a matter for the decision-maker and not amenable to judicial review. This argument cannot succeed.

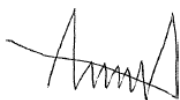
DISPOSITION

43 For these reasons, ground 2 of the further amended originating application filed on 24 April 2026 must be dismissed. Determination of ground 1 should be deferred pending the outcome of *XMBQ*, and the proceeding stayed.

44 Costs should be reserved pending determination of the entire application.

I certify that the preceding forty-four (44) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Sarah C Derrington.

Associate:



Dated: 14 September 2026