Decision and Reasons for Decision

Administrative Review Tribunal

Applicant/s:	**Mehdi Zeydvand**
Respondent:	**Minister for Immigration and Citizenship**
Tribunal Number:	**2026/0203**
Tribunal:	**General Member S Evans**
Place:	**Sydney**
Date:	**25 November 2026**

Decision: The decision under review is affirmed pursuant to paragraph 105(a) of the *Administrative Review Tribunal Act 2024* (Cth).

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

General Member S. Evans

Catchwords

CITIZENSHIP – *refusal of citizenship – where applicant does not satisfy general residence requirements in section 22 of the Australian Citizenship Act 2007 (Cth) – confinement to prison – taking into account the circumstances that resulted in the person's confinement - application of subsection 22(5A) - decision affirmed*

Legislation

Australian Citizenship Act 2007 (Cth)

Migration Act 1958 (Cth)

Cases

Re Drake and Minister for Immigration and Ethnic Affairs (No 2) [1979] AATA 179

Gow and Minister for Immigration and Citizenship [2013] AATA 662

Minister for Aboriginal Affairs v Peko-Wallsend Ltd [1986] 162 CLR 24

SZTAL v Minister for Immigration & Border Protection (2017) 262 CLR 362

Secondary Materials

CPI 1 – Citizenship by Conferral – General Eligibility

CPI 8 - Residence Requirements and Discretions

Statement of Reasons

INTRODUCTION

1. Mehdi Zeydvand (the **Applicant**) seeks review of a decision of a delegate of the Minister for Immigration and Citizenship (the **Respondent**) made 2 January 2026 refusing his application for conferral of Australian citizenship (the **reviewable decision**). The application was refused because the delegate was not satisfied he met the residence requirement in s 22(1) of the *Australian Citizenship Act 2007* (the **Act**).

2. The Applicant sought merits review of the decision at the Tribunal. The hearing was held on 21 September 2026, after which the Respondent provided written submissions. The Applicant was provided an opportunity to consider the submissions and make further submissions in response, and he declined to do so on 11 October 2026.

3. For the reasons that follow the reviewable decision will be affirmed.

BACKGROUND

4. The Applicant is a 43-year-old citizen of Iran. He arrived in Australia in August 2012 and has lived in Australia for approximately 14 years.

5. On 15 February 2021 the Applicant was convicted in the Parramatta District Court for the Commonwealth offence of *dealing with property reasonably suspected of being proceeds of crime* and the state offence of *obtaining a financial advantage for another person via deception*. He was sentenced to an aggregate term of 3 years and 9 months imprisonment with a non-parole period of 2 years and 3 months. The Applicant commenced his term of imprisonment on 16 August 2020. On 15 November 2022 the Applicant's non-parole period concluded.

6. As a result of the offending, the Applicant's visa was mandatorily cancelled under subsection 501(3A) of the *Migration Act 1958* (Cth) in May 2021. He sought to have the cancellation of the visa revoked and in January 2023 a decision was made not to revoke the mandatory cancellation. The Applicant applied for merits review of the non-revocation

decision at the Administrative Appeals Tribunal (**AAT**), which revoked the cancellation of the Applicant's visa in March 2023.[1]

7. On 7 January 2025 the Applicant lodged the application for Australian citizenship by conferral which is the subject of this review. His application was refused on the basis that he did not satisfy the residence requirement in the Act. The delegate found that the Applicant was not present in Australia for the period of 4 years immediately before the day he made his citizenship application (the **4year period**) as required by s 22(1)(a) of the Act on the basis of his having been confined in prison during part of the 4year period.

RELEVANT LEGISLATION AND POLICY

8. Section 21(1) of the Act provides that a person may make an application to the Minister to become an Australian citizen. Section 24(1) of the Act provides that if a person makes an application under section 21 of the Act, the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen.

9. Section 21(2) of the Act sets out the general eligibility requirements for Australian citizenship. Relevant to this application, section 21(2)(c) requires that *the person satisfies the general residence requirement (see section 22) … at the time the person made the application*.

10. Sections 22(1) and (1C) of the Act provide:

> *(1) Subject to this section, for the purposes of section 21 a person satisfies the **general residence requirement** if:*
>
> *(a) the person was present in Australia for the period of 4 years immediately before the day the person made the application; and*
>
> *(b) the person was not present in Australia as an unlawful non-citizen at any time during that 4 year period; and*
>
> *(c) the person was present in Australia as a permanent resident for the period of 12 months immediately before the day the person made the application.*
>
> …
>
> *Confinement in prison or psychiatric institution*
>
> *(1C) Subject to subsection (5A), the person is taken not to satisfy paragraph (1)(a) if, at any time during the 4 year period mentioned in that paragraph, the person was:*

[1] V241/100.

(a) confined in a prison; or

(b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.

...

11. Section 3 of the Act defines 'prison' as including any custodial institution at which a person convicted of an offence may be required to serve the whole or part of any sentence imposed upon them because of that conviction. Section 9 defines confinement in prison:

> *(1) For the purposes of this Act, the period during which a person is confined to a prison includes a period:*
>
> *(a) during which the person is an escapee from the prison; or*
>
> *(b) during which the person is undergoing a sentence of periodic detention in the prison.*
>
> *(2) For the purposes of this Act, the period during which a person is confined to a prison does not include a period during which the person has been so confined by reason only of the person serving a sentence relating to a conviction that is later quashed.*

12. Section 22(5A) of the Act provides a discretionary exemption to s 22(1C) where individuals are confined in prison or a psychiatric institution:

> *(5A) The Minister may decide that subsection (1C) does not apply in relation to the person if, taking into account the circumstances that resulted in the person's confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the person.*

13. The Respondent Department's Australian Citizenship Policy Statement and Citizenship Procedural Instructions provide guidance to decision makers when assessing applications for Australian citizenship under the Act.

14. The applicable policy is provided in Citizenship Procedural Instruction 1: *Citizenship by Conferral – General Eligibility* (**CPI 1**) and Citizenship Procedural Instruction 8: *Residence requirements and discretion*s (**CPI 8**).

15. When exercising a discretionary power, the Tribunal should have regard to policy as a relevant consideration, however policy is not binding on the Tribunal.[2] It is well established

[2] *Re Drake and Minister for Immigration and Ethnic Affairs (No 2)* [1979] AATA 179; (1979).

that executive policy relating to the exercise of a statutory discretion must be consistent with the relevant statute.

> ***4.4. Confinement in prison or a psychiatric institution - subsection 22(1C)***
>
> *An applicant is taken not to meet the four year residency period if, at any time during the four year residency period, they were confined in a:*
>
> *• prison; or*
>
> *• psychiatric institution by order of a Court made in connection with proceedings for an offence against an Australian law in relation to the person.*
>
> *However, consideration must also be given as to whether the ministerial discretion provided under subsection 22(5A) of the Act may be applied (refer to section 4.7.3 Confinement in prison or psychiatric institution – subsection 22(5A)).*
>
> *...*

16. Paragraph 4.7.3. of CPI 8 sets out further guidance regarding the Minister's discretion under subsection 22(5A), providing that:

> ***4.7.3. Confinement in prison or a psychiatric institution - subsection 22(5A)***
>
> *Subsection 22(5A) of the Act allows the Minister to disregard the confinement in a prison or psychiatric institution if the Minister decides that it would be unreasonable for section 22(1C) of the Act to apply. In making the assessment, the Minister must take into account the circumstances that resulted in the person's confinement.*
>
> - *This discretion may be applied if the conviction is quashed or the person is pardoned.*
> - *If the discretion is not applied, the applicant's four year residency period will commence from the day the person is, or was, released from confinement.*

ISSUE TO BE DETERMINED

17. The parties agree that s 22(1C) of the Act is engaged by virtue of the Applicant being ‘confined in prison’ for part of the 4 year period immediately before the day he made his application for citizenship. Consequently, he is taken not to satisfy s 22(1)(a) of the Act, which is required to meet the ‘general residence requirement’.

18. The issue to be determined is whether the discretionary exception to s 22(1C) provided in s 22(5A) of the Act applies to the Applicant.

RELEVANT FACTUAL BACKGROUND AND EVIDENCE

The Applicant’s offending

19. The sentencing remarks of Judge Hanley in the District Court of NSW in February 2021 record that between 2015 and 2018 the Applicant assisted and advised various individuals on how to obtain personal loans and credit cards by misrepresenting and inflating their financial position. Specifically, he helped establish false credit profiles for the clients to give them the appearance of being employed and in receipt of income. As part of the service, he would tell clients to acquire different savings accounts with different financial institutions, to obtain credit reports and to look into the quality of their credit scores and if they had a poor credit profile, he advised them of ways to change their name or acquire accounts in a different name variation. He directed clients to tell financial institutions certain information he considered would be favourable to them when they eventually applied for loans. Once the credit card or personal loan was exhausted, they would not be paid in full and many of the Applicant's clients left Australia.

20. The Court found that on any assessment it was a sophisticated set up which was operated by the Applicant in carrying out the false applications for loans or credit cards. It was found to be sophisticated, highly planned fraudulent conduct which required significant management by the Applicant.

21. When the Applicant was arrested at Sydney Airport in December 2018 he declined to answer any questions. Of the $603,000 that was defrauded by multiple transactions $566,000 was not recovered and considered irretrievable. Judge Hanley noted there had been no offer on behalf of the Applicant to reimburse the institutions by way of compensation. The Applicant received between 20 and 25 percent commission on the funds obtained for his clients. The offence occurred over a lengthy period of time being three years and eight months.

22. The Court rejected claims that the offences were committed as a result of the Applicant's purported drug use or gambling addiction due to the lack of evidence. The Court was satisfied that even if the Applicant had a drug use or gambling addiction, they did not form a basis for his primary motivation or mitigate his moral culpability or act as a mitigating factor. The Court accepted that his motivation was substantially for personal financial gain.

Current circumstances

23. The Applicant gave evidence he is remorseful and accepts responsibility for his offending. He said he has been punished for his crimes and that his conviction, sentencing and imprisonment were the consequences imposed by the criminal justice system. The offending also resulted in the cancellation of his permanent visa and a period in immigration detention until merits review before the AAT and reinstatement of his visa.

24. The Applicant submits that his conduct since returning to the community demonstrates sustained rehabilitation. He contends that the evidence supports a finding that he is presently a person of good character. His good character is attested to by his family and particularly his wife and adult daughter who have provided evidence of his rehabilitation, responsibilities and the person he has become since the offending. The Applicant says his active participation in his church community is also indicative of his reform and good character.

25. The main reason the Applicant wants to become an Australian citizen is because Australia is his permanent home and he wishes to complete his integration into the community.

26. He acknowledges that obtaining an Australian passport would be a practical consequence of his citizenship being granted. The Applicant's mother is 79 years old and an Iranian citizen. Due to her age and health conditions travelling to and from Australia is increasingly difficult. Maintaining in-person contact is best achieved by shorter, more manageable journeys to suitable third countries. The Applicant says that holding an Australian passport would improve his international mobility and enable him to meet his mother without requiring her to undertake substantially longer journeys to Australia.

27. The Applicant has converted from Islam to Christianity. He has no intention of returning to Iran permanently but notes that his conversion has not caused difficulties with his family in Iran or prevented him from returning. The Applicant emphasised that his Iranian nationality and Christian faith are not advanced as a substitute for a protection claim. Nor does he submit that conversion to Christianity creates an entitlement to Australian citizenship.

28. The Tribunal heard evidence from the Applicant's wife, daughter and Pastor. They spoke to his remorse for his offending, rehabilitation and change. His wife and daughter also spoke to the impact his imprisonment and detention had on them, the practical implications and emotional benefits a grant of citizenship will bring.

29. The Applicant's wife and daughter are Australian citizens. The Applicant's wife operates her own businesses and is a registered NDIS provider. She says the Applicant plays an important role in her business and Australian citizenship will enable him to make a greater contribution and provide the ability to travel internationally for work-related commitments. The Applicant's present 'passport circumstances' create practical limitations upon their ability to travel together and his capacity to assist her with their business. The Applicant's daughter is a student and relies on her parents for emotional, practical and financial support.

30. The Applicant notes that he has passed the Australian citizenship test and has consistently complied with requests for information in relation to his application. While he may lodge a new application from November 2026 - which on available information may not be affected by s 22(1C) - he is concerned that doing so will significantly delay his obtaining citizenship and an Australian passport. He submits that delays could extend substantially beyond November 2026, and he would presently continue to experience the family, travel, religious and business impediments he experiences as a consequence of not being an Australian citizen.

CONSIDERATION

31. The Applicant accepts that he was confined in prison during the 4year period and that unless the discretion in s 22(5A) is exercised in his favour, s 22(1C) operates in relation to the general residence requirement.[3]

32. The issue to be determined rests largely on the interpretation of s 22(5A). In *SZTAL v Minister for Immigration & Border Protection* (2017) 262 CLR 362, the plurality of the High Court (Kiefel CJ, Nettle and Gordon JJ) said at [14] (citations omitted):

> *The starting point for the ascertainment of the meaning of a statutory provision is the text of the statute whilst, at the same time, regard is had to its context and purpose. Context should be regarded at this first stage and not at some later stage and it should be regarded in its widest sense. This is not to deny the importance of the natural and ordinary meaning of a word, namely how it is ordinarily understood in discourse, to the process of construction. Considerations of context and purpose simply recognise that, understood in its statutory, historical or other context, some other meaning of a word may be suggested, and so too, if its ordinary meaning is not consistent with the statutory purpose, that meaning must be rejected.*

[3] A SFIC [6].

33. The Applicant contends that having regard to the circumstances resulting in his confinement, it would be unreasonable for s 22(1C) to apply to prevent him from satisfying the general residence requirement. Further, he should not be required to 'abandon' the existing citizenship application when Parliament has provided the discretion in s 22(5A) to address his circumstances.[4]

34. The Respondent submits that when considering the application of the discretion in s 22(5A), whether the application of s 22(1C) would be unreasonable is intended to be made in reference to the circumstances of confinement. It is not a 'starting point' from which decision makers may take into account other considerations or matters.

35. The Applicant argues that the application of s 22(5A) ought not be confined to circumstances involving wrongful or quashed convictions, pardons or comparable legal defects. Should the Tribunal accept that lawful imprisonment is sufficient to determine the discretion adversely to the Applicant, the discretion will be limited to just that consideration. The Applicant's interpretation is that the matters that may be taken into account when determining it would be unreasonable for s 22(1C) to apply are far broader than the circumstances that led to the person's confinement. The broader interpretation advanced by the Applicant provides for consideration of his current character, remorse and rehabilitation since confinement, as well as any adverse consequences for the Applicant should his application be refused.

36. Counsel for the Applicant submitted that consideration of other factors identified by the Applicant are not expressly identified in the Act, but in the context of an unconfined discretion, they fall within the subject matter, scope and purpose of the Act. Identifying that something must be considered – the circumstances that resulted in confinement – does not establish that other matters cannot be considered. The circumstances that resulted in confinement should be viewed as a mandatory consideration when exercising the discretion, with other permissible considerations to be taken into account and the Tribunal determining the weight afforded to each.[5]

---

[4] A SFIC [28].

[5] See *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] 162 CLR 24.

37. The Applicant also notes that the definition of confinement in prison in s 9(2) of the Act provides an exemption for periods confined on the basis of a conviction that is later quashed. I do not accept this supports the Applicant's argument for a broader interpretation of s 22(5A), as s 9(2) is a definitional provision that excludes these periods from the definition of confinement, meaning a quashed conviction would not engage the provision in s 22(1C) in the first instance.

38. The Applicant's interpretation is that the unreasonableness is not required to arise exclusively from the circumstances of confinement. The discretion in s 22(5A) requires consideration of whether it would be 'unreasonable' for s 22(1C) to apply. It must be read in the context of the words that qualify it – that is 'taking into account all the circumstances that resulted in the person's confinement'. The Respondent argues that in circumstances where the Applicant does not dispute he was lawfully imprisoned, there is nothing unreasonable about the application of s 22(1C).

39. In *Gow and Minister for Immigration and Citizenship* [2013] AATA 662 (**Gow**), the Tribunal considered exercising the discretion in s 22(5A) in similar circumstances. The Tribunal considered the list of examples provided in the departmental policy at that time (**ACI**), observing that the list was 'not exhaustive' and that there may be other circumstances that warrant exercise of the discretion in s 22(5A) of the Act. The Tribunal said at [30]:

> *Mr Gow provided no evidence of any other relevant circumstances that resulted in his confinement that are of a similar nature to the examples set out in the ACIs. Even if a far broader interpretation were available – and I do not think this to be the case – the evidence provided by Mr Gow was of a general character nature and, other than his contrition, noting his previous good character, the sentencing remarks that suggest the risk of recidivism is low, and that there was no violence involved in the offence, he did not otherwise address the circumstances that led to his imprisonment. All these matters, it is clear from the totality of the sentencing remarks, were taken into account in sentencing him to a term of imprisonment. I find there to be no circumstances that resulted in his confinement such that it would be unreasonable for the discretion in s 22(1C) of the Citizenship Act to be exercised in favour of Mr Gow.*

40. The decision in *Gow* is not binding on the Tribunal, but I take into account that the Tribunal considered that the circumstances referred to in s 22(5A) were those that resulted in his confinement. The Tribunal did not find that a broader interpretation was intended.

41. The Respondent has directed me to the Revised Explanatory Memorandum to the *Australian Citizenship Bill 2005* (Cth) (**Explanatory Memorandum**) which relevantly explains the discretion in s 22(5A):

> *Subclause (5A) gives the Minister a discretion to decide that ...(1C) does not apply in relation to a person if, taking into account the circumstances that resulted in the person's confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the person.*
>
> *Subclause (1C) provides that subject to subclause (5A), the person does not satisfy paragraph (1)(a) if, at any time in the 4 years immediately before making the application, the person was confined in prison, or confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law.*
>
> *Subclause (5A) recognises that there may be cases in which a person is confined to prison or to a psychiatric institution where the circumstances resulting in that confinement are such that it would be appropriate for the Minister to have the discretion in subclause (5A) that the person would not be required to restart the 4 year period to meet the residence requirement for citizenship.*

42. In my view, the Explanatory Memorandum supports the Respondent's interpretation that the discretion is centred on circumstances prior to confinement, and the confinement itself, rather than the broader interpretation advanced by the Applicant. This is also consistent with CPI 8 which provides the discretion may be appropriate if a conviction is quashed or the person is pardoned.

43. It is also consistent within the context of s 22, which sets out the general residence requirement and how a person may satisfy it. The expectation is that the person was present in Australia during the 4 year period prior to making the application. Sections 22(1A)-(11) provide exemptions and discretions to the rule. Section 22(1C) provides that a person confined in prison during the 4 year period is not taken to satisfy the requirement to be present in Australia. It is a rule, not an exemption or discretion, and the meaning is clear.

44. The Applicant does not contend, and there is no evidence to suggest, that the circumstances that resulted in his confinement make it unreasonable for s 22(1C) to apply. I do not accept that the broader interpretation of s 22(5A) suggested by the Applicant is what was intended by the provision. Even if I was to take into account the other considerations identified by the Applicant, there is scant evidence that the application of s 22(1C) would be unreasonable or inconsistent with the objective of the general residence requirement.

CONCLUSION

45. The Applicant does not satisfy the general residence requirement at s 22(1)(a) of the Act by reason of s 22(1C) because he was confined in prison during part of the 4year period.

46. Section 22(5A) provides the discretion to decide that s 22(1C) does not apply. The requirement for exercise of the discretion is that *taking into account the circumstances that resulted in the person's confinement, it would be unreasonable* for s 22(1C) to apply to the person.

47. Having regard to the policy, I am satisfied that the application of s 22(1C) would not be unreasonable and s 22(5A) should not be exercised. Consequently, the Applicant does not satisfy s 22(1)(a) of the Act. As the Applicant does not meet the general eligibility requirement in s 21(2)(c), his application cannot succeed. It follows that the reviewable decision will be affirmed.

48. As the requirements for grant of citizenship are cumulative, I have not made a determination as to the Applicant's character for the purposes of s 21(2)(h). The question of whether it is preferable to continue the current application over making a new application is not a matter that arises for determination by the Tribunal, particularly as I have found the discretion in s 22(5A) does not apply.

DECISION

49. For the reasons outlined above the decision under review is affirmed pursuant to paragraph 105(a) of the *Administrative Review Tribunal Act 2024* (Cth).

Date of hearing:	**21 September 2026**
Applicant:	**Ms W Milojkovic, Milojkovic Visa & Migration Services**
Counsel for the Applicant:	**Dr J Donnelly**
Solicitor for the Respondent:	**Ms M Trimboli, Clayton Utz**