



Administrative  
Appeals Tribunal

**DECISION AND  
REASONS FOR DECISION**

Division: GENERAL DIVISION

File Number(s): **2024/1282**

Re: **Manpreet Singh Brar**

APPLICANT

And **Minister for Immigration, Citizenship and Multicultural Affairs**

RESPONDENT

**INTERLOCUTORY DECISION**

Tribunal: **Senior Member Dr N A Manetta**

Date: **29 April 2024**

Place: **Adelaide**

The Tribunal declines to make Ms Seibel a party to the proceeding.

.....[sgnd].....  
Senior Member Dr N A Manetta



## **CATCHWORDS**

*PRACTICE AND PROCEDURE – application for joinder under section 30(1A) of the AAT Act – joinder applicant a victim of visa holder’s criminal actions – visa holder’s visa cancelled – visa holder seeking review of decision not to reinstate his visa – Tribunal required by relevant statutory instrument to consider impact of its decision on victims – joinder applicant’s psychological wellbeing an interest that might be affected – joinder applicant seeking to be made a party to ensure she could observe entirety of proceedings – joinder applicant otherwise able to provide a statement of evidence as part of respondent’s case – application for joinder refused in Tribunal’s discretion*

## **LEGISLATION**

*Administrative Appeals Tribunal Act 1975 (Cth)*

*Migration Act 1958 (Cth)*

## **CASES**

*Re Control Investment Pty Ltd and Others and Australian Broadcasting Tribunal (No 1)* (1980) 3 ALD 74

## **SECONDARY MATERIALS**

Minister for Immigration, Citizenship and Multicultural Affairs (Cth), Direction no. 99 — *Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* (23 January 2023)

## **REASONS FOR DECISION**

**Senior Member Dr N A Manetta**

**29 April 2024**

1. Ms Paula Seibel has applied to be made a party to the proceeding in this matter under section 30(1A) of the *Administrative Appeals Tribunal Act, 1975* (Cth) ('AAT Act'). The proceeding concerns an application by Mr Manpreet Singh Brar, who is seeking a review of the respondent Minister’s decision not to reinstate his visa. The visa had been earlier cancelled under section 501(3A) of the *Migration Act 1958* (Cth) following Mr Brar’s conviction of a serious criminal offence. The respondent’s decision not to reinstate the visa

implies Mr Brar's removal from Australia (as he cannot lawfully remain in Australia without a visa).

2. Ms Seibel represented herself at an interlocutory hearing I recently conducted to consider her application to be made a party. She made submissions to me on that occasion. Mr Donnelly appeared for Mr Brar; Ms Anderson, for the respondent Minister. They also made submissions.

### **STATEMENT OF CONCLUSION**

3. I have decided not to make Ms Seibel a party. My short reasons follow.

### **BACKGROUND FACTS**

4. It is convenient first to summarise the facts that give rise to the decision I am to review, and then to address Ms Seibel's application to be made a party in the proceeding before me. Mr Brar was found guilty in the District Court of Queensland of the serious offence of causing death while operating a vehicle dangerously. He was convicted and sentenced on 11 August 2022.
5. I base myself upon the Court's sentencing remarks that are contained in documents filed with the Tribunal by the respondent. In summary, on 1 November 2020, Mr Brar drove across an intersection despite facing a traffic light that had been red for at least five to eight seconds. He was travelling at 85 km per hour in a 60 km-per-hour zone. He made no attempt to brake. He was also found to have been fatigued at the time. His vehicle collided with another vehicle that was travelling lawfully across the intersection, causing injury to the driver of that vehicle; and Mr Brar's vehicle also struck two pedestrians, Mr and Ms Seidel. Mr Seidel was very seriously injured after being flung over the two vehicles. He

subsequently died from his injuries. Ms Seidel suffered extensive bruising and a broken bone in her foot. She witnessed the extreme injuries suffered by her husband, and, of course, she has had to endure his untimely death.

6. Mr Brar was sentenced to five years' imprisonment on the principal charge of causing death through the dangerous operation of a vehicle. He was required to serve 20 months in jail before being eligible for parole. Mr Brar had a history of breaching traffic regulations and of unlicensed driving at the time of the accident. In fact, he was not licensed to drive when he drove on 1 November 2020.
7. As a result of the Court's sentence of imprisonment, Mr Brar's Partner visa was cancelled. Mr Brar sought a timely internal review of that decision. The internal-review delegate was obliged to apply Direction no. 99<sup>1</sup> issued under section 499 of the *Migration Act 1958* (Cth) ('the Direction') when deciding whether to reinstate the visa. The delegate weighed the various considerations required to be addressed under the Direction and decided, on balance, not to reinstate Mr Brar's visa.
8. Mr Brar has sought a further review in this Tribunal of the decision not to reinstate his visa. Like the delegate, I shall be obliged to apply the Direction in my review. One of the matters I am required to address under the Direction is the impact of my decision on victims: see paragraphs 9(1)(c) and 9.3 of the Direction. If information is available, I shall be required to consider the impact of my decision on Ms Seibel and on members of the Seibel family.

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<sup>1</sup> Minister for Immigration, Citizenship and Multicultural Affairs (Cth), Direction no. 99 — *Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* (23 January 2023).

9. At the hearing before me, I was informed that Ms Seibel has been approached by the respondent to provide a statement to the Tribunal, which the respondent intends to tender. Ms Seibel said to me that she is not yet aware of the content of the Direction. I do not criticise her for that at all, but simply state it neutrally as a fact.

### **MS SEIBEL'S APPLICATION**

10. Section 30(1A) of the *Administrative Appeals Tribunal Act, 1975* (Cth) ('AAT Act') governs Ms Seibel's application to be made a party. The section is in the following terms:

Where an application has been made by a person to the Tribunal for a review of a decision, any other person whose interests are affected by the decision may apply, in writing, to the Tribunal to be made a party to the proceeding, and the Tribunal may, in its discretion, by order, make that person a party to the proceeding.

11. Section 30(1A) of the AAT Act specifies, as a threshold condition, that Ms Seibel's interests be 'affected by the decision'. Both the applicant and respondent opposed Ms Seibel being made a party. The respondent maintained that Ms Seibel's interests were not affected because no legal or financial interest of hers was affected by the decision. I do not accept that submission.
12. The range of eligible 'interests' should not be narrowly confined, in my opinion, to legal and financial interests.<sup>2</sup> Ms Seibel indicated to me her strong view that Mr Brar should not be permitted to remain in Australia; and, whilst I did not have any formal evidence before me, I proceed on the basis that the decision concerning Mr Brar's visa has been one with the potential to affect substantially her psychological wellbeing. It seems to me that Ms Seibel's psychological wellbeing is an 'interest' that falls within section 30(1A). Furthermore, a

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<sup>2</sup> See, for example, *Re Control Investment Pty Ltd and Australian Broadcasting Tribunal (No 1)* (1980) 3 ALD 74, 79 (Davies J).

person whose interests are affected beneficially by a decision under review may apply to be made a party to support the original decision.<sup>3</sup> This is just such a case because the decision under review is one that Ms Seibel strongly supports.

13. Although Ms Seibel has an interest that may be affected, section 30(1A) of the AAT Act expressly confers a discretion on the Tribunal;<sup>4</sup> and I must decide whether it is appropriate to exercise the power in Ms Seibel's favour. If evidence from Ms Seibel about the impact of my decision on her and her family as victims were not going to be received, that situation might well have warranted an order making her a party since I am expressly required by paragraph 9.3 of the Direction to consider the impact of my decision on victims where that information is available. That is not the case, however, on the evidence before me: Ms Seibel has been approached by the respondent to prepare a statement for use before the Tribunal.
  
14. I note that Ms Seibel raised her concern before me that she might be excluded from the proceeding until she had given her evidence as a witness; but if she were a party, she believed she would not be excluded at all. Ms Seibel further said that if she were permitted to observe the proceeding from beginning to end, that would meet her concern and she would not need to be made a party. From that I infer that Ms Seibel's principal concern is, in fact, to ensure that she observes the proceedings in their entirety. She made plain to me her frustration at having been excluded from the criminal proceedings (because she was a potential witness).

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<sup>3</sup> Ibid, 81.

<sup>4</sup> Despite the use of the word 'discretion', I note that the exercise of the power under section 30(1A) is not at large.

15. The question arises, then, whether or not this is a sufficient reason to warrant an order making Ms Seibel a party. I do not believe it is. I do not think it would be a proper exercise of the discretion in section 30(1A) to facilitate a person's desire, as understandable as it may be, to remain as of right in the hearing room for the entirety of the proceeding before the Tribunal. This is not a case, as I have said, where evidence concerning the impact of my decision on the Seibel family will be unavailable unless Ms Seibel is made a party to the proceeding.
16. I do not believe, therefore, that the decision I am to make will be better assisted by Ms Seibel being made a party since I shall have the benefit of her written statement (and her oral evidence if she is called). I further note that as at the date of my decision today, I am unable to conclude that Ms Seibel will be likely to make a useful submission to the Tribunal concerning the Direction since she is not yet aware of its content.
17. On the other hand, I accept that the respondent will provide me with appropriate assistance in its submissions concerning the proper evaluation of the factors required to be addressed under the Direction, and the respondent will also argue that the decision under review should be affirmed.
18. I should add that I remain unpersuaded by both the applicant's and the respondent's view that the hearing would be made more complicated by Ms Seibel's presence as a party. Appropriate orders could be made to limit Ms Seibel's participation, and Ms Seibel herself was open to such a limitation. Finally, I note that I do not accept the respondent's submission that I should decline Ms Seibel's application because a decision in her favour would establish an undesirable precedent. I do not think that should form part of my thinking at all. Either I am persuaded that Ms Seibel should be made a party or I am not: the question of the precedent I might establish is irrelevant in my opinion.

## **SUMMARY OF CONCLUSION**

19. All in all, my view on the evidence before me is that making Ms Seibel a party is not likely to assist me in my consideration of the matters I shall be required to address under the Direction. So far as factual matters are concerned, Ms Seibel's evidence is proposed to be adduced by the respondent. Moreover, her application, understandable though it is, is principally directed towards ensuring she can observe the entirety of the proceeding, rather than assisting the Tribunal as such.
20. I have decided on balance not to make her a party.

## **PRACTICAL POSSIBILITY TO FACILTATE MS SEIBEL'S CONCERNS**

21. I raised at the hearing the possibility of Ms Seibel giving her first evidence first (if she is called to give oral evidence). That way, she could withdraw to the public seating area at the end of her evidence and observe the proceedings. The applicant did not oppose this course and, indeed, commended it as a sensible suggestion. The respondent indicated that it needed to consider the matter further. For my own part, I cannot see what harm would be done in following this approach, and I would encourage the respondent not to oppose it unless it perceives some serious difficulty. It seems to me that Ms Seibel might well benefit personally from observing the proceeding in its entirety. She has suffered grievously, and her desire to observe the proceedings in their entirety is completely understandable from a human perspective.



**FORMAL DECISION**

22. My formal decision will be to decline Ms Seibel's application to be made a party.

*I certify that the preceding twenty-two (22) paragraphs are a true copy of the reasons for the decision herein of Senior Member Dr N A Manetta*

.....[sgnd].....  
Associate

Dated: 29 April 2024

Date of hearing: **17 April 2024**

Advocate for the Applicant: **Dr Jason Donnelly  
Latham Chambers**

Advocate for the Respondent: **Hannah Anderson  
Clayton Utz**