



Administrative
Appeals Tribunal

DECISION AND
REASONS FOR DECISION

Division: GENERAL DIVISION

File Number(s): **2024/1593**

Re: **Bin Chang**

APPLICANT

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

RESPONDENT

DECISION

Tribunal: **Mr Rob Reitano, Member**

Date of decision: **27 May 2024**

Date of reasons: **29 May 2024**

Place: **Sydney**

I set aside the delegate's decision and substitute in its place a decision revoking the cancellation of Bin Chang's BB Subclass 155 Five Year Resident Return visa.



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Mr Rob Reitano, Member

CATCHWORDS

MIGRATION — visa cancellation – protection of the community – serious criminal offending – risk of re-offending – rehabilitation relevant even if not ‘tested in the community’ - expectations of the Australian community — nature duration and ties to community – long period in Australia – close ties to Australia - legal consequence of decision – weight to be given to continued detention whilst awaiting deportation-impediments if removed – weight or respective considerations when compared to one another - satisfaction about other reason - decision to refuse set aside and substituted

LEGISLATION

Migration Act 1958 (Cth)

Crimes Act 1900 (NSW)

CASES

CRNL v Minister Immigration, Citizenship and Multicultural Affairs [2023] FCAFC 138

FYBR v Minister for Home Affairs [2019] FCAFC 185

Hands v Minister for Immigration and Border Protection [2018] FCAFC 225

CKL21 v Minister for Home Affairs [2022] FCAFC 70

SECONDARY MATERIALS

Minister for Immigration, Citizenship and Multicultural Affairs, *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)

Department of Foreign Affairs and Trade Country Information Report People’s Republic of China 22 December 2021

REASONS FOR DECISION

Mr Rob Reitano, Member

29 May 2024

1. Mr Bin Chang ('Mr Chang'), a citizen of the People's Republic of China ('China'), has requested a review of a decision of a delegate of the Minister for Immigration, Citizenship and Multicultural Affairs ('the Minister') who on 12 March 2024 refused to revoke an earlier

decision of another delegate which cancelled his BB Subclass 155 Five Year Resident Return visa ('visa') because he failed the character test in the *Migration Act 1958 (Cth)* ('the Act').

2. Mr Chang wants to have the decision cancelling the visa revoked on the only basis that is available to him, which is that the Tribunal should be satisfied that there is 'another reason' within the meaning of s.501CA(4)(b)(ii) of the Act to revoke the decision cancelling the visa.
3. I am satisfied that there is another reason to revoke the decision cancelling the visa and what follows are my reasons for arriving at that satisfaction.

ANOTHER REASON TO REVOKE THE CANCELLATION?

4. In deciding whether there is another reason to revoke a decision cancelling a visa the Tribunal is required to conform to *Direction No. 99 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* ('the Direction') which is a direction given to the Tribunal by the Minister under the Act.¹
5. The Direction in general provides a methodology which is designed to assist decision makers determine whether there is another reason to revoke a decision cancelling a visa.
6. The Direction contains principles that must be applied and matters that are to be considered in a particular case.² In the usual case the approach laid down will be one that balances the various considerations that might reasonably favour or be against revocation of a decision cancelling a visa. More often than not, failing the character test in the Act will mean that there has been serious criminal or other conduct that will inevitably count against revoking a visa cancellation because the paramount concern of the Australian government is protection of the Australian. So too the expectations of the Australia community will usually count against revocation because enshrined in those expectations is the notion that '*if you break the law that will be held against you...*'.³ But in any given case there may be factors considered that rationally favour revocation of a visa cancellation. These may include things

¹ s.499(2A) of the Act.

² Paragraphs 5.2(6) and 6.

³ *FYBR v Minister for Home Affairs* [2019] FCAFC 185 at [101] (per Stewart J)

like the fact that the person has been in Australia for a long time contributing meaningfully to the community, which is a matter for which credit should be given where it is due. It may also be important that Australian citizens or others living in Australia will be saddened or otherwise poorly affected by the cancellation of the visa. Another matter held dear to the core values of Australian society that may count in favour of restoring a visa is whether there are children living in Australia whose best interests should be prioritised ahead of the protection or expectations of the community. There are many other matters that rationally might favour restoring a visa. These factors that weigh against the factors suggesting once cancelled the visa should remain cancelled are in the jargon known as 'countervailing considerations' because they carry import against cancellation.

7. It is also important that some of the things to be considered generally carry more importance than others. The protection and expectations of the community, the existence of conduct involving family violence, the best interest of children and ties to the community generally will be more important than things like the existence of Australia's obligation not to send someone back to a country where they might suffer harm, impediments to re-establishing life in the country of origin, the views of victims and the impact on Australian business interests. The first four matters most probably have their position as being more important than others because they affect the Australian community very directly. That may not necessarily be so in all cases.⁴ The matters that need to be considered do not dictate the result, the decision is always one that rests with the decision maker and her or his evaluation of the circumstances of a particular case.

8. The process involves evaluating each of the matters and comparing them to one another in order to determine which of them, or group of them, is of greater or lesser importance. The entire process has as its focus arriving at a decision about whether there is a rational basis for revoking a visa cancellation.⁵ To that end the process does not involve mechanically completing a checklist.⁶ It is important to give real and active consideration to all matters.⁷ The consequences of any decision one way or the other are in all cases likely to be serious and so it is necessary to approach the exercise with care, weighing up the importance of

⁴ Ibid at [76] (per Charlesworth J).

⁵ *CRNL v Minister Immigration, Citizenship and Multicultural Affairs* [2023] FCAFC 138 at [34].

⁶ Ibid at [38].

⁷ *Hands v Minister for Immigration and Border Protection* [2018] FCAFC 225 at [3].

the private and public interests that might or will be affected, and reaching a firm and reasoned conclusion about their respective and relative importance.

9. The approach I have adopted in these reasons is first to consider each of the matters that are relevant to this case on their own so to identify and then consider their importance and, second, to compare each of the matters one to the other. That will ensure that all relevant matters are evaluated and given the relative importance that is justified to arrive at a conclusion about whether there is a reason to revoke the cancellation of the visa.

PROTECTION OF THE COMMUNITY

10. The first matter that needs to be considered is the nature and seriousness of Mr Chang's conduct which involves criminal offending, and the risk to the Australian community, should Mr Chang offend again or engage in other conduct inimical to the welfare of the community.
11. A convenient starting point is the offending that gave rise to Mr Chang failing the character test in the Act and having his visa cancelled in the first place.
12. That conduct was examined and explained when Mr Chang was convicted and sentenced on 23 September 2022 in respect of three offences of aggravated break and enter, knowing persons present and committing a serious indictable offence, namely intimidation and three offences of common assault, two of which were in the context of domestic violence. I will refer to the offences as the 'break and enter offences' and the 'common assault offences' respectively. The break and enter offences were offences under s.112(2) of the *Crimes Act 1900 (NSW)* and each offence carried a maximum penalty of 20 years imprisonment which suggest that are regarded as very serious by the community. The common assault offences were offences under s.61 of the *Crimes Act 1900 (NSW)* and each of them carried maximum sentences of two years imprisonment.
13. It is unnecessary to set out all the facts relevant to the offences because their seriousness is apparent from the sentence imposed and the fact that almost all of them except one involved violence against a woman. A short summary does help to put them in some context and cast a little light on their nature and seriousness.
14. In July 2020, Mr Chang commenced a relationship with Ms Chang Lu (Ms Lu). Mr Chang was married at the time, but his marriage was not on solid ground. Ms Lu lived in an

apartment block which, during their relationship, Mr Chang visited often late at night. The relationship did not continue for long and had so it seems, at least in Ms Lu's mind, ended by the time of the first offence. On 1 August 2020, Ms Lu was at home at about 2.00am watching videos on her phone. Mr Chang opened the front door of her apartment and entered uninvited. Ms Lu was scared by Mr Chang entering the apartment in the early hours of the morning. She told him to leave. They had a short conversation. Mr Chang left. That was the first break and enter offence. I should note here that it was apparently the common practice during Mr Chang's relationship with Ms Lu for him to come to her house and let himself in late at night. What was not the usual practice was that Ms Lu told him to 'get out' and he did not and nor was it 'common practice' in a relationship that had by then ended.

15. On 1 September 2020, Ms Lu was home when Mr Chang, again uninvited, entered her apartment through the front door. The front door was not locked, although the entry to the apartment block was closed and locked. Ms Lu was in bed starting to fall asleep when she saw Mr Chang's face 'on top of her'. Ms Lu asked Mr Chang why he was there, and he said it was his home as well as hers. They had a conversation or argument which included Ms Lu saying that they no longer had any relationship. Mr Chang eventually left. That was the second break and enter offence. Sometime after this incident, in approximately October 2020, Ms Lu told Mr Chang that she was pregnant. She asked for a large amount of money which was apparently so she could support the child.
16. On 17 January 2021, Mr Chang organised to go to Ms Lu's apartment whilst she was out. He contacted a friend of his who Ms Lu was with at the time by phone to ascertain when she would be home. He waited for her to come home by hiding in her garage. When Ms Lu arrived home and was walking to her apartment, she saw Mr Chang and ran back to her motor bike. Mr Chang chased her, grabbed her keys and put his arms around her. Ms Lu told him to let her go and not to touch her. There was a short struggle. Mr Chang let go of her and gave her the keys back. Ms Lu ran away. Mr Chang ran after her and grabbed her again and held her. He told Ms Lu not to run. They then had a conversation. Mr Chang wanted to know whether Ms Lu was, in fact, pregnant or not. Ms Lu made several attempts to leave which were blocked by Mr Chang standing in her way. This continued for about four minutes when eventually Ms Lu was able to leave and go into the street where there were some other people. This was the first common assault charge.

17. On 19 January 2021, the remaining three offences were committed when at 1:00am Ms Lu and her male friend Mr Zuo were at the apartment with all the doors locked. Mr Chang went inside. Ms Lu saw him entering and was frightened. She made clear to him that he was not welcome. Mr Chang then pushed her with both hands on to the couch. Mr Chang then went to the bedroom where Mr Zuo was asleep, jumped on the bed and placed both his hands around Mr Zuo's neck, saying the words 'Why are you sleeping with my wife?' Mr Chang said at one stage 'I have a gun in the car. Shall I give you a shot?' and later "You know that I have a gun in my possession'. Ms Lu and Mr Zuo both felt threatened. Mr Chang remained at the apartment with Ms Lu and Mr Zuo for about four hours. This conduct was the third break and enter charge and the remaining two common assault charges.
18. The same day Mr Chang went to a police station and was charged. He was again charged a few days later and an apprehended violence order was made. That order has a life of ten years, and its object is to protect Ms Lu.
19. Judge North who sentenced Mr Chang concluded, despite Mr Chang's denial, that the offences were the result of Mr Chang's unwillingness to accept the fact that his relationship with Ms Lu had come to an end.
20. The offences are very serious especially because at least two of them involve physical violence towards a woman such as the offence of holding her and grabbing her near the garage and pushing her onto the couch. The offences are also very serious when it is considered that each one of them occurred in a place where Ms Lu was entitled to feel safe, namely her home. Likewise, the offence involving putting hands around Mr Zuo's neck, even though not strangling or choking him, was very serious because it involved violence. The premeditation involved in the offences also makes them objectively very serious. The aggregate sentence imposed of 22 months imprisonment confirms the offending should be viewed as overall being very serious. Twenty-two months is a long time out of anyone's life.
21. The offences occurred over a period of slightly more than three months, albeit each of them occurred only on one day or night for short periods. There was an escalation in seriousness from the 1 September 2020 offence to the 19 January 2021 offences. The former offence involved no physical violence and was fleeting, while the final offence comprised three separate offences, involving physical violence against two people one of whom was a woman, references to a 'gun' and being 'shot', and occurred over about four hours. There

is obviously an increasing trend in seriousness. That trend, the frequency of the offending and the cumulative effect of the offending makes the offending more serious.

22. In December 2001, Mr Chang was convicted of two other criminal offences, one of goods in personal custody suspected of being stolen and one of receiving stolen goods. They involved the sale to him of a 'PlayStation' which he did not know was stolen. He received a fine of \$300 for one of them and was placed on a good behaviour bond for 18 months in respect of the other. The offences do not appear, in subject matter or from the sentence imposed, to have been serious. They occurred a long time ago. They do not materially affect the seriousness of the other offending, which I find is very serious, but they do over a period of about 20 years show some increase in the level of seriousness of Mr Chang's offending.
23. I should add, there was some suggestion based on a police report that Mr Chang had engaged in another act of violence against a young woman many years ago. There were no charges laid and no convictions recorded. When it was put to him in cross-examination that he had struck the woman he denied it. His evidence is the only direct evidence I had about the matter. I found, as I refer to in a moment, that Mr Chang was a credible witness who I accept as a witness of truth. I am unable to find that this conduct occurred both because there is no direct evidence about it and because I accept Mr Chang's denial.
24. Next, I need to consider the harm that would be caused to the community if Mr Chang is permitted to stay in Australia and he offends again. There are two separate aspects to be considered. In this case there was obvious psychological harm to Ms Lu. She identified in a victim's impact statement that the 'negatives psychological impact' upon her as well as the fact that it 'aggravates my depression symptom'. It appears that she suffered suicidal ideation because of what happened to her. Ms Lu said that she suffered a range of consequences that included the inability to sleep, nightmares and panic attacks. She was required to take medication. Mr Zuo suffered an inability to concentrate and sleeplessness. These kinds of consequences, albeit psychological, are serious and should be viewed as such. If Mr Chang were to reoffend, they are the some of the types of consequences that might follow. They are serious consequences for members of the community if the offending were repeated.
25. There is also the prospect that the consequences could have been far more serious for all involved. Although they did not descend to physical violence, in the circumstances, it is not

difficult to envisage how they may have. There is of course also the prospect of the cost of law enforcement measures for the community that rather pales when compared to the potential impact on members of the community. The consequences for members of the community of repeated offending would be serious.

26. Next, I must consider the likelihood of Mr Chang reoffending. There is an array of matters that strongly suggest that Mr Chang is unlikely to reoffend.
27. Before dealing with those matters, I should indicate that I found Mr Chang to be a very impressive witness who was very careful, thoughtful, and measured when answering the questions, he was asked. I accept his evidence generally, although I note that some of his recollection of dates and time periods may have been imprecise, a matter which he himself recognised as a likely shortcoming in his evidence. It is also clear that there are some things that he clearly was mistaken about, but I do think they involved anything other than mistakes rather than involving any deliberate attempt to do anything other than tell the truth.
28. Turning then to the matters that suggest Mr Chang is unlikely to reoffend. First, a sentencing assessment report was prepared for Mr Chang's sentencing which identified his risk of offending again as low. That report is less than two years old. The sentencing judge considered Mr Chang's prospects of rehabilitation and of not reoffending to be positive. It is true that the sentencing assessment report recorded that Mr Chang sought to 'justify and minimise' his offending, but that did not prevent its author, a person presumably well qualified and experienced in preparing such reports, as well as the sentencing judge who had expressly referred to that aspect of the report, concluding that the risk of reoffending was low.
29. Second, a more recent report dated 20 May 2024, by Mr Tim Watson-Munro, a consultant psychologist with expertise in matters related to recidivism, considered that the risk of Mr Chang reoffending 'remains low'. In drafting the report, Mr Watson-Munro had available to him most of the information and material that I had available to me. As well, Mr Watson-Munro had three meetings by telephone with Mr Chang which gave him the opportunity to explore the issues fully. It may have been better if Mr Watson-Munro had met Mr Chang in person but the fact that he did not does not lead me to reject his evidence especially given its consistency with the view expressed in the pre-sentence report and by the trial judge. There is no reason to call into question Mr Watson-Munro's expert opinion and,

fairly, he is qualified and experienced to express the opinion he did. I accept Mr Watson-Munro's opinion which is a significant factor in my assessment of the risk of repeat offending.

30. Third, as Mr Watson-Munro observed Mr Chang has actively engaged in rehabilitation whilst in gaol. Apart from the usual programs such as the Self-Management and Recovery Training program and the Real Understanding of Self Help programs, he also completed quite a few other courses such as Domestic Violence Awareness, Drug and Alcohol Abuse 101, Anger Management, Positive Parenting Techniques, Stress Management, Child Abuse Recognition and Investigation & Protection. According to Mr Watson-Munro, Mr Chang has also undertaken some skills based courses: Criminology, Legal Terminology 101, Negotiation Skills, Sexual Harassment Compliance, Conflict Resolution Techniques and Workplace Violence. He has done Gender Sensitivity Training and Diversity and Inclusion Training. These courses Mr Chang has completed illustrate that he has been equipping himself to be a better person in the community and that he has a genuine desire to be such a person. It also suggests he will undertake further treatment which was recommended by Mr Watson-Munro if he is allowed to remain in Australia. His evidence about the things he learnt from these courses, especially so far as the Domestic Violence Course and the Conflict Resolution Techniques was concerned, was impressive. It demonstrated that he has developed an insight into the wrongs associated with his past conduct and how he should conduct himself in future.

31. I reject the suggestion that because his rehabilitation has 'not been tested in the community' that it has not materially contributed to the likelihood that he has learnt from it and his risk of reoffending is mitigated.⁸ On the contrary the two aspects I have identified, namely a strong desire to rehabilitate and to do things in that direction and what is learnt from the various courses suggest that the low risk of reoffending identified in the sentencing assessment report is likely to have been reduced further.

32. Fourth, Mr Chang has faced a considerable period in gaol, 12 months, and in detention for about a further nine months after that. He has been brought to the brink of deportation. Mr

⁸ *CKL21 v Minister for Home Affairs* [2022] FCAFC 70 at [79]

Chang told Mr Watson-Munro that he has been significantly impacted by the criminal justice system, which appears to be the case. His fear of returning to China, where he has no social or familial ties, is in my assessment as real as his fear that is associated with him being excluded from the country he has lived in for all of his adult life. Mr Watson-Munro gave this aspect of the matter, Mr Chang's understanding of the consequences of reoffending significance in concluding that reoffending is unlikely. I do too. They are rationally deterrents to any future offending.

33. Fifth, overall having seen Mr Chang give evidence and read the material he prepared for submission to the Minister, I am persuaded that he is genuinely very remorseful and contrite. There was great deal of reality about his expression of complete shame and his recognition of the harm he caused to his victim.
34. Finally, there are some matters that accompany Mr Chang's rehabilitation that suggest that he will have some important support for remaining out of trouble, In the jargon these are often referred to as 'pro-social' factors. Firstly, he has a strong relationship with his young daughter, whom he clearly loves, which he wishes to resume. I will deal a little more with her and that relationship later. Secondly, Mr Chang's employer before getting into trouble, a large, registered club in Sydney, has offered him permanent employment should he remain in Australia. Lastly, Mr Chang has arranged somewhere to live, with a friend, should he be able to remain in Australia. These factors provide a reasonably strong foundation for his reintegration into the community and will count against him re-offending. He will be off to a good start should he be able to stay in Australia.
35. I do not consider that the seriousness of the harm caused is so serious that any risk of harm is out of the question. This is a case where the risk is so low that the community could wear the risk.
36. I also do not accept that Mr Chang has a 'history' of domestic or family violence offences involving offences other than those to which I have referred in the absence of any evidence of them. I do not accept that records containing untested claims about such matters are appropriate for proving such significant matters. Nor do I accept that Mr Chang's misunderstanding about what he was required to divulge about his offences in 2001 on an incoming passenger card in 2018 and 2019 suggests that he is a person who is likely to reoffend in the way that is reflected by his criminal offences.

37. Mr Chang's criminal offending is very serious and the harm to the community should he reoffend on the future is significant. Mr Chang's is unlikely to reoffend. The protection of the Australian community weighs against restoring the visa.

FAMILY VIOLENCE

38. The next matter I must turn to, given that the offences involve family violence, is the seriousness of those offences. I have already considered them, although strictly speaking the offence against Mr Zou is not in that category. That makes little difference overall. The reason why the offences are regarded as offences involving family violence is because Ms Lu was person with whom Mr Chang had an intimate personal relationship.
39. It is necessary to reiterate some of the matters I have already addressed. The offences occurred at three different times over a little more than three months. They escalated in seriousness with the third set of offences being the most serious. Taken together they were cumulatively very serious. Mr Chang accepted responsibility for his actions, albeit belatedly, by his plea of guilty and clearly accepts his responsibility for them now.
40. An aspect of the sentencing assessment report to which I did not refer to earlier was that, despite Mr Chang's playing down the seriousness of the offending, he clearly showed from very early 'some insight into the impact of his offending, noting the emotional distress his actions caused to the victim.' He has expressed remorse for his offences which, in my assessment, is genuine. I have identified earlier that the risk of him engaging in conduct involved in the offences again is low. I have already identified the significant rehabilitative steps Mr Chang has taken by undertaking many courses that have been available to him and do not repeat what I have already said about that again.
41. I do not accept that records of complaints concerning Mr Chang should be treated as evidence of the facts recorded in them. To the extent that it was suggested that records proved that Mr Chang had engaged in other acts of family violence, I am unable in the absence of evidence to make any finding about those matters.
42. These matters weigh against revocation of the visa but a measured approach suggests not heavily so given the importance of Mr Chang's rehabilitation and, more significantly, the low likelihood I attach to him reoffending.

TIES TO AUSTRALIA

43. The next matter that I am required to consider is the impact of my decision upon Mr Chang's immediate family members, especially children, in Australia who are Australian citizens or people permanently living lawfully in Australia. This requires some assessment of the strength, duration and nature of family ties or social links generally to those people. Also relevant is the strength, nature and duration of other ties to the Australian community having regard to the length of time Mr Chang has lived in Australia.
44. Mr Chang has close familial ties to his daughter who is an Australian citizen. His father, stepmother and younger stepsister are Australian citizens, but Mr Chang has not seen them for some years. He has some other relatives who live in Australia who he has ties with which include his mother-in-law and father-in-law. Mr Chang spoke reasonably fondly of his ex-wife, despite the complete breakdown of his marriage, who he met in about 2010. He spoke positively of the time when their relationship was good. Further, Mr Chang provided references from people in the community, many of whom are his friends, who have known him for a long time and who do not wish to see him leave Australia. These people will be obviously poorly affected by a decision that results in Mr Chang having to leave Australia.
45. Mr Chang has been in Australia for about 27 years. He was 15 years old when he arrived. Although he committed some very minor offences in late 2000 or early 2001, the very serious offending to which I have referred, did not happen for more than 25 years after his arrival. His very serious offending happened a very long time after he arrived in Australia. As I suggested early his positive contribution to the community over that period is something for which he should be given credit.
46. In the many years before his criminal offending Mr Chang has made a positive contribution to the Australian community through his engagement as a school and university student and, more significantly through paid employment. He has worked for almost all his time in Australia since finishing university including after he was charged and bailed awaiting sentencing when he worked as barista. He longest period of employment was as a Team Leader at the registered club I referred to earlier for about 11 years. His contribution to that club can be measured not just against the long time he worked there but also by the fact that despite his time in gaol and detention he has been offered employment there again albeit in a different position should he be permitted to remain in Australia.

47. He has very favourable references from the Chairman of the Board, the Chief Executive Officer, and the Chief Operating Officer of the club. The Chief Executive Officer of the club referred to the sadness that his colleagues, club members and the broader community would have if he were to leave Australia. The other significant contribution he has made to the Australian community has seen him involved in raising money for charity which he started doing during the pandemic. He was, before going to gaol, a member of a large motor cycle group and he would have made some contribution there.
48. It is the long time that Mr Chang has been in Australia making a positive contribution to the community, the impact it will have on his young child and his other friends in Australia that leads to me to give this consideration a great deal of importance in favour of revoking the cancellation of the visa.

BEST INTERESTS OF CHILDREN

49. Next, it is necessary to consider the best interest of any children who are under the age of 18 years who may be affected by the decision to revoke the cancellation. The relevant enquiry concerns the best interests of children and not that of an applicant.
50. Mr Chang has a young daughter who is now almost five years of age. Mr Chang is her father. Mr Chang had regular contact with his daughter prior to going to gaol, despite this separation from his wife. He was important in her first few years of life too, regularly waking to feed her in the early hours of the morning until she was about 18 months old. He generally cared for her, doing the types of things that fathers do with young children, playing with them at home and in parks, entertaining and caring for them, and in doing so making them feel safe. Mr Chang also referred to the fact that when he was on bail before his sentencing he stayed home with his daughter and cared for her. Since he went to gaol Mr Chang has maintained contact with her, talking to her on the phone or by video call four or five times a week. The child often asks her mother about 'when daddy is coming home.' She often asks Mr Chang the same question and he tells her he is busy with work. I infer from that that the child's preference is for Mr Chang to be in her life.
51. It is more likely than not that his parental role in his daughter's life will continue throughout her childhood and adolescence and his ex-wife will facilitate that. It is relevant that that will

be a period of something like thirteen years. There is no sound basis for concluding his past conduct in offending will adversely affect his daughter.

52. I have no doubt that, if permitted to remain in Australia, Mr Chang will have a positive parental relationship with his daughter over the years until she turns eighteen. He has in the past been a devoted father. That is unlikely to change. His evidence about wishing to make his daughter a 'better version of me' was telling. In particular, he referred to his desire to teach her to swim and to teach her music. Mr Chang is a singer who has some achievements in choir singing which included a performance at the Sydney Opera House in a choir. I have already considered the likelihood of Mr Chang re-offending as being unlikely or low, so he is unlikely to find himself back in gaol or detention. There is no other sound basis for finding that Mr Chang is unlikely to be in his daughter's life, positively contributing to her welfare and her life.
53. In the material that Mr Chang submitted to the Minister he referred to him and his ex-wife being committed to a lifestyle that is in the best interests of their daughter. In the evidence before me he referred to the fact that he has an agreement with his ex-wife about phone calls and video calls every Sunday. Mr Chang referred to the conversation that his ex-wife and he had concerning the best interests of child as involving him being involved in a real way in his daughter's upbringing. That is likely to be so, given his ex-wife's cooperation in him maintaining contact with his daughter whilst he has been gaol and in detention. Although his ex-wife did not give evidence as she did not wish to be involved in the matter, I accept that what Mr Chang said about her views on the matter was the truth.
54. I should deal with one other matter. Mr Chang gave evidence that before he went to gaol and whilst he was on bail, he regularly drank a great deal and abused prescription medication over a long period. Mr Chang explained that this related much to the position he found himself in awaiting trial and being confined by his bail conditions to his home. He had not had a drinking problem before then and nor had he ever engaged in substance abuse before. Mr Watson-Munro described this as 'binge drinking'. This, it appears, was the result of Mr Chang's desire to escape the situation he found himself in. I accept Mr Chang's evidence that he would not be returning to that situation again. Again, his rehabilitation included courses in drug and alcohol abuse. I do not consider that that kind of issue will arise again such that it will affect his relationship with his daughter.

55. Finally, I do not consider contact by telephone or by video as any substitute for a daughter having her father in her life in a physical and practical way. Nor is the fact that the child has one parent in her life, her mother, in her best interests. She should have, like most children, the opportunity to share her life with both a mother and a father. There is no evidence of anyone who has, or is capable of, stepping into the role of the daughter's father and even if there was, I would take great caution in coming to a conclusion that that person is better placed to fill that role than Mr Chang because of his obvious commitment and love for her.
56. As a result of the strength of the findings I have made about the best interests for Mr Chang's daughter and her relatively young age, I consider that this consideration is very important in favour of restoring the visa.

COMMUNITY EXPECTATIONS

57. Next, I must consider the importance of the expectations of the Australian community. Those expectations are deeply rooted in the notion that people who are allowed to live and be in Australia will obey Australian laws, and the corollary to that which is that where someone who has been permitted to stay in Australia has engaged in serious criminal offending contrary to that expectation or where there is unacceptable risk that they may offend the expectation is that they should not be able to stay in Australia. The nature of any concerns about a person's character or of their offences may mean that not revoking the cancellation of a visa is consistent with that expectation. In this case there were family violence offences and offences involving violence against a woman so the expectation is that the visa would remain cancelled.
58. The issue then is what weight I should give to that expectation of the community that the visa should not be restored.⁹ The criminal offending is very serious such that the community expectation in favour of cancelling the visa is well and truly engaged. The nature of the criminal offending is very serious, but the risk of re-offending is neither unacceptable nor great. In those circumstances it is not necessary to give this consideration much importance especially when I come to compare the competing consideration later.

⁹ *FYBR v Minister for Home Affairs* [2019] FCAFC 185 at [77] (per Charlesworth J).

LEGAL CONSEQUENCES

59. This consideration requires me to consider what will happen should Mr Hong's visa not be restored, although contextually the concern with which this consideration is directed is confined to matters that involve a claim that if a visa is not restored a person may face return to a country where they have a well-founded fear of persecution or harm. That does not arise in this case as Mr Chang has made no such claim.
60. But reliance on Mr Chang's continuing detention may be another thing I should consider because of the attendant loss of liberty between the date of any decision and his removal. His continued detention is a significant matter simply because loss of the fundamental human right liberty is so significant. This weighs in favour of revocation but as will be seen when I compare the various considerations, it is not as significant as the other primary considerations that weight in favour of revocation.

IMPEDIMENTS IF REMOVED

61. The final matter to be considered in this case directs attention to the difficulties Mr Chang may have if he is returned to China in establishing and maintaining a basic standard of living comparable to other people living in China.
62. Mr Chang is in the middle of life at 42 years of age. He is physically in good health but has suffered depression and anxiety in recent years according to Mr Watson-Munro, such that his mental health is not good. Mr Chang reads Cantonese which is one of the main languages spoken in China, but he cannot write in Cantonese. There was an issue about whether he had learnt to write in in Cantonese at school about 27 years ago with Mr Chang suggesting he had not. I In any event it is unlikely that much of that would have remained with him given that it was so long ago. He also speaks Mandarin but cannot write in Mandarin. Mr Chang may not qualify for unemployment benefits in China because of his long absence. He may also have some difficulty obtaining treatment for his mental health condition due to the limited resource that China directs to mental health and the social stigma that attaches to people suffering from such conditions.
63. Mr Chang has no family or friends in China and has not participated in Chinese life as an adult at any time. His familiarity with Chinese culture is at least 25 years old.

64. This matter is important to restoring the visa, but care should be taken not to overstate its relevance. That Mr Chang can speak the languages spoken in China, that he has some familiarity with Chinese culture and that he is relatively healthy and in the middle of life suggest he will have a reasonable opportunity to re-establish himself in China. His doing so whilst suffering from depression and anxiety and in the absence of any familial or other social support will make things difficult for him, perhaps very difficult, but the obstacles will not be insurmountable. That matter weighs in favour of restoring the visa but in my assessment not overwhelmingly or compellingly so.

RELATIVE IMPORTANCE OF THE MATTERS CONSIDERED

65. It is finally necessary to evaluate the relative importance of each of the matters I have considered. In that respect I have concluded that Mr Chang is unlikely to reoffend which means that the protection of the community is not so important as to be given decisive or anything like decisive importance. The consideration of family violence for much the same reason, the unlikelihood of its repetition, stands in much the same position. Likewise in circumstances where the offending is unlikely to be repeated and where other more practical considerations, the countervailing considerations, have greater importance, it too does not weigh decisively. In my assessment the other two primary considerations, the best interests of Mr Chang's young daughter and his strong connection over a long time to the Australian community provide far more important private and public interests that weigh very strongly in favour of restoring the visa.
66. The practical obstacles to Mr Chang establishing and maintaining a new life when compared to others in China, whilst important, do not in my assessment carry as much importance as the last mentioned two matters. It would not, in the absence of them, constitute a reason to restore the visa. The other consequence of continued deprivation of liberty before being deported is significant, but it too is less significant than the primary considerations that favour revocation of the decision cancelling the visa.

THERE IS ANOTHER REASON

67. The evaluation I have undertaken leads me to being satisfied that there is another reason to revoke the cancellation of the visa. This is because of the best interest of Mr Chang's young daughter and his longstanding strong ties to Australia. The strong countervailing considerations outweigh the other factors that way in against revocation.

68. I set aside the delegate's decision and substitute in its place a decision revoking the cancellation of Bin Chang's BB Subclass 155 Five Year Resident Return visa.

I certify that the preceding sixty-eight (68) paragraphs are a true copy of the reasons for the decision herein of Mr Rob Reitano, Member.

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Associate

Dated: 29 May 2024

Date(s) of hearing:	27 May 2024
For the Applicant:	Dr Jason Donnelly
Solicitor for the Respondent:	Mr James Fyfe