Administrative Appeals Tribunal

DECISION AND REASONS FOR DECISION

Division:	GENERAL DIVISION
File Number(s):	**2022/1107**
Re:	**BRWS**
	APPLICANT
And	**Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**
	RESPONDENT

DECISION

Tribunal:	**Senior Member Raif**
Date of decision:	**20 June 2024**
Date of written reasons:	**03 July 2024**
Place:	**Sydney**

The Tribunal sets aside the decision not to revoke the cancellation of the Applicant's Class BC Subclass 100 Partner visa and in substitution, decides that the cancellation of the visa is revoked.

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

Senior Member Raif

CATCHWORDS
MIGRATION — visa cancellation – protection of the community – serious criminal offending – risk of re-offending – expectations of the Australian community — nature duration and ties to community – close ties to Australia - legal consequence of decision - 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

CASES
Afu v Minister for Home Affairs [2018] FCA 1311

FYBR v Minister for Home Affairs [2019] FCAFC 185

FYBR v Minister for Home Affairs [2019] FCA 500

Suleiman v Minister for Immigration and Border Protection [2018] FCA 594

Uelese v Minister for Immigration and Border Protection [2016] FCA 348

YNQY v Minister for Immigration and Border Protection [2017] FCA 1466

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)

REASONS FOR DECISION

Senior Member Raif

03 July 2024

BACKGROUND

1. This is an application for review of a decision of the delegate of the Minister for Immigration, Citizenship and Multicultural Affairs ('the Respondent') not to revoke the mandatory cancellation of a Class BC Subclass 100 partner visa ('the visa'), previously held by the Applicant.

2. The Applicant was born in May 1984 in Lebanon. He previously travelled to Australia on a visitor visa in 2008-2009, entered Australia in July 2011 and was granted a permanent visa on 11 July 2017.

3. The Applicant committed a number of offences between 2016 and 2020. In August 2020 the Applicant was convicted of several offences, detailed below, and sentenced to two years imprisonment. His visa was cancelled as the delegate determined that the Applicant had a substantial criminal record. The Applicant requested revocation of the cancellation. On 2 February 2022 the delegate decided not to revoke the cancellation of the visa.

4. The Applicant sought review of that decision. In April 2022 the Tribunal (differently constituted) affirmed the decision under review. The Applicant sought judicial review and in July 2022 the matter was remitted to the Tribunal for reconsideration.

5. The Applicant appeared before the Tribunal on 18 and 19 June 2024. For the following reasons, the Tribunal has concluded that the decision dated 2 February 2022 not to revoke the cancellation of the Applicant's visa should be set aside.

RELEVANT LAW

6. Subsection 501(3A) of the *Migration Act 1958* (Cth) ('the Act')relevantly states:

> *The Minister must cancel a visa that has been granted to a person if:*
>
> *(a) the Minister is satisfied that the person does not pass the character test because of the operation of:*
>
> *(i) paragraph (6)(a) (substantial criminal record), on the basis of paragraph (7)(a), (b) or (c); or*

7. Subsection 501CA(3) provides that as soon as practicable after making a decision under subsection 501(3A) the Minister must, among other things, notify the person of the decision, provide particulars of relevant information and invite the person to make representations 'within the period and in the manner ascertained in accordance with the regulations, about revocation of the original decision'.

8. Subsection 501CA(4) allows for a revocation of a decision under subsection 501(3A) and relevantly states as follows:

> *(4) The Minister may revoke the original decision if:*
>
> *(a) the person makes representations in accordance with the invitation; and*
>
> *(b) the Minister is satisfied:*
>
> *(i) that the person passes the character test (as defined by section 501); or*
>
> *(ii) that there is another reason why the original decision should be revoked.*

9. Subparagraph 501CA(4)(b)(ii) of the Act requires the Tribunal to examine the factors for and against revoking a mandatory cancellation decision. If the Tribunal is satisfied that the cancellation should be revoked following that evaluative exercise, the Tribunal must revoke the original visa cancellation decision.

10. The 'character test' is defined in subsection 501(6) of the Act. Relevantly, paragraph 501(6)(a) provides in part:

> *(6) For the purposes of this section, a person does not pass the character test if:*
>
> *(a) the person has a substantial criminal record (as defined by subsection (7))…*

11. Paragraph 501(7)(c) relevantly provides that a person has a '*substantial criminal record'* if the person has been sentenced to a term of imprisonment of 12 months or more.

12. On 23 January 2023, Direction No. 99 *Visa refusal and Cancellation under s. 501 and revocation of a mandatory cancellation of a visa under s. 501CA* ('Direction 99' or 'the Direction') was signed, coming into effect on 3 March 2023. Direction 99 is binding on the Tribunal in performing its functions or exercising powers under section 501 of the Act.

13. Direction 99 sets out the principles that provide a framework within which decision-makers should approach their task of deciding whether to exercise the discretion to refuse to grant a visa or revoke mandatory cancellation decisions. The principles set out at paragraph 5.2(2) of Direction 99 states that:

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

14. The primary considerations which are set out in clause 8 of Part 2 of Direction 99 are:

> *(1) protection of the Australian community from criminal or other serious conduct;*
>
> *(2) whether the conduct engaged in constituted family violence;*

(3) the strength, nature and duration of ties to Australia;

(4) the best interests of minor children in Australia; and

(5) expectations of the Australian community.

15. The other considerations, which are not exhaustive, are set out of clause 9 of Direction 99:

a) Legal consequences of the decision;

b) extent of impediments if removed;

c) impact on victims; and

d) impact on Australian business interests.

16. Decision-makers should 'generally' give greater weight to primary considerations than other considerations. As noted by Colvin J in *Suleiman v Minister for Immigration and Border Protection*:[1]

> *'Direction 65* [now Direction 99] *makes clear that an evaluation is required in each case as to the weight to be given to the 'other considerations' (including non-refoulement obligations). It requires both primary and other considerations to be given 'appropriate weight'. Direction 65 does provide that, generally, primary considerations should be given greater weight. They are primary in the sense that absent some factor that takes the case out of that which pertains 'generally' they are to be given greater weight. However, Direction 65 does not require that the other considerations be treated as secondary in all cases. Nor does it provide that primary considerations are 'normally' given greater weight. Rather, Direction 65 concerns the appropriate weight to be given to both 'primary' and 'other considerations'. In effect, it requires an inquiry as to whether one or more of the other considerations should be treated as being a primary consideration or the consideration to be afforded greatest weight in the particular circumstances of the case because it is outside the circumstances that generally apply'"*[2]

17. While these comments were made in relation to the earlier Direction, they apply equally in the present case.

18. In this case, it is not in dispute that the Applicant had made representations about the revocation of the cancellation of his visa. The requirements of paragraph 501CA(4)(a) are met. The issues before the Tribunal are:

(a) does the Applicant pass the character test, as defined by section 501 and, if not;

(b) is there another reason why the original decision should be revoked?

---

[1] [2018] FCA 594.

[2] Ibid, [23].

DOES THE APPLICANT PASS THE CHARACTER TEST?

19. The Tribunal has been provided with the Criminal Intelligence Commission Check Results Report. The Applicant's written submissions also sets out his various convictions. Information before the Tribunal indicates that the Applicant had been convicted of the following offences.

09/03/16	Possession of prohibited drug	12 months good behaviour bond
13/08/19	• Destroy or damage property • Affray • Stalk / intimidate intend fear physical harm	9 months Community Corrections Order
13/02/20	Possess / attempt to, prescribed restricted substance	
25/08/20	• Common assault (DV) • Stalk / intimidate intend fear physical harm (2 counts) • Possession of unauthorised prohibited firearm • Multiple driving offences	Imprisonment 2 years (reduced to 18 months Intensive Corrections Order on appeal)

20. The Tribunal finds, having regard to the most recent conviction, that the Applicant has a substantial criminal record as defined in paragraph 501(7)(c) of the Act. As the Applicant has a substantial criminal record, he does not pass the character test. The requirements of subparagraph 501CA(4)(b)(i) are therefore not met.

IS THERE ANOTHER REASON WHY THE ORIGINAL DECISION SHOULD BE REVOKED?

21. The Tribunal's considerations are set out below with regard to Direction 99.

Primary considerations

Protection of the Australian Community

22. Paragraph 8.1 of Direction 99 provides in part as follows:

8.1 Protection of the Australian community

(1) When considering protection of the Australian community, decision-makers should keep in mind that the government is committed to protecting the

Australian community from harm as a result of criminal activity or other serious conduct by non-citizens….

(2) Decision-makers should also give consideration to:

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

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

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

23. The Direction provides that violent and/or sexual crimes; crimes of a violent nature against women or children (regardless of the sentence imposed); or acts of family violence (regardless of whether there is a conviction for an offence, or a sentence imposed) are viewed very seriously by the Australian Government and the Australian community.

24. In considering the nature and seriousness of the Applicant's criminal offending and other conduct to date, the Tribunal has had regard to the police facts sheets and the sentencing remarks. The Tribunal has also been provided with NSW Department of Corrective Services case notes report.

25. In his statement to the delegate, the Applicant described the circumstances of the 2016 offending (possession of prohibited drug). The Applicant states that there were three doses of steroids for his personal use and he was unaware these were illegal and he had not used these. This appears to be consistent with the facts set out in the police facts sheet which states that the Applicant informed the police that the tablets were steroids for gym which he had been using and the police confirmed these were illegal substances. The Applicant is reported to have stated that he did not know these were illegal substances. (The respondent submits that due to the nature of the penalty, the applicant's convictions should not be taken into consideration).

26. The Applicant states that in 2020 he was charged with 'possession of prescribed restricted substance' as he was prescribed back pain medication without original packaging and he later obtained the prescription. The Applicant notes that on both occasions the drugs were for personal use.

27. With respect to the driving charges, the Applicant states that he held a Queensland license but was driving in NSW for work, received many fines and his license became cancelled / suspended. He was unaware of that as he did not receive the letter sent to the Queensland address. He states that he was unable to pay the fines as he did not have sufficient income.

28. The Applicant states in his submission to the delegate, in relation to the September 2019 offending, that he did not break into any property and did not hurt anyone and did not steal anything. His involvement was very limited. The Applicant states that he accepted the plea and was given a good behaviour bond. The Police Facts sheet, which the Applicant provided

with his submission, suggests that his role was limited to taking part in organising a ladder and a power tool for the group.

29. In August 2019, Magistrate Crittenden described the relevant offending as follows. Mr B gave evidence that he received a phone call from the Applicant in which the Applicant had made threats. The Applicant then attended work premises and used unlawful violence (sledgehammer) destroying formwork. This conduct resulted in the charges of affray and malicious damage to property. Her Honour noted there was a longstanding dispute about money being owed to the Applicant and that the incident was not a planned incident but 'more like an eruption of frustration'. Her Honour described the offences as being below the mid-range of objective seriousness.

30. In his statement the Applicant explains that there was a long-standing dispute about payment owed to him and his workers and he was told that the payments could not be made. The Applicant states that things got heated and he demolished part of the work with the sledgehammer, which was not planned. The Applicant states that he was frustrated as he had never previously failed to pay his employees.

31. With respect to the firearm and domestic violence offences, the Applicant states that the firearms were replicas. The Applicant states that in the past he held a firearm license and these were a hobby of his. He also had a secure safe at home and followed all the rules and regulations. When he no longer held the license, he surrendered his firearms and legally purchased a replica gun in Queensland. He did not know it was illegal in NSW.

32. There is before the Tribunal the sentencing assessment report prepared by Fatima Ali in August 2019. Ms Ali notes that the Applicant disagreed with the facts sheet and maintained his own version of events. He reported the offending behaviour was due to financial stress. Ms Ali assessed the Applicant as having a low risk of reoffending.

33. The Tribunal has considered the Police Statement of Facts in relation to the September 2019 offending. It is stated that around 1.30 am on 8 September 2019 the police officers attended an address in Yagoona in response to a reported domestic violence incident. The victim ('K') reported to be residing with the Applicant and confronted him when she saw him leave the residence with his ex-partner. K reported that the Applicant grabbed her by the throat and placed what she believed to be a black metal handgun to her head and threatened to shoot her if she did not calm down.

34. In relation to the domestic violence offending, the Applicant notes in his submission to the delegate that his partner ('JAA') stood by him. He states that despite the breakup of their relationship, they remained good friends and he had provided financial support to her and his children. He presented to the delegate a declaration from JAA in support of the Applicant and outlining the impact of separation on children. The Applicant also presented third party statements also addressing the impact of separation on JAA and the children. The Applicant describes his relationship with K and states they were not partners but were merely friends (he told the Tribunal they saw each other on two occasions) even though K claimed there was a relationship between them. The Applicant states that he wished to appeal the

conviction but did not have the funds and said that he is against domestic violence. The Applicant's partner also provided a statement supporting the Applicant and describing his relationship with the children. She also describes incidents in Lebanon which are addressed more fully below.

35. The Tribunal has had regard to the remarks of Magistrate Bugden made in August 2020. His Honour refers to the Applicant having a 'shocking record' for speeding matters and a very lengthy record. In other comments Magistrate Bugden refers to the incident when the Applicant choked K and threatened to kill her.

36. The Tribunal has had regards to the comments of Judge Harris dated 30 April 2021 in relation to the offences of common assault, intimidation, affray and possession of an unauthorised firearm. His Honour upheld some of the convictions, noted the report of Ms Robb which suggested that the Applicant had limited insight based on his continued denial of the offending and has formed the view that rehabilitation would be more likely achieved if the Applicant was permitted to serve the sentence in the community rather than full-time custody.

37. There is before the Tribunal the sentencing assessment report completed by Alison Robb on 28 April 2021. In that report it is noted that the Applicant had attempted to provide justification for each of the offences, denying responsibility on his part. The Applicant also denied the violent offending and stated that the victim told lies in relation to what happened. Ms Robb indicated that the Applicant had limited insight into his offending due to him denying committing the offences. He reported a willingness to undertake intervention but claimed he did not see a need for any particular type of intervention. Ms Robb assessed the Applicant as having a medium risk of reoffending.

38. The Tribunal has also had regard to the psychological assessment report prepared by Andrew Wong. Mr Wong outlines the Applicant's background, education and employment history. The report refers to the Applicant reporting past alcohol and drug use. It is noted that the Applicant reported he was previously diagnosed with schizophrenia, anxiety and depression and prescribed antipsychotic medication. Mr Wong notes that the Applicant's criminal history was not extensive and he did not appear to have an offending career or a pattern of violent behaviours. Mr Wong suggests that the risk of imminent violence or physical harm as in the low range while the risk of future violence is in the moderate range, suggesting that it is unlikely that the Applicant would physically assault another person in the near future and if he did, he is unlikely to inflict serious harm. Mr Wong states that the Applicant had accepted responsibility for all his offences but displayed lack of insight into his mental health issues. Mr Wong recommended that the Applicant would benefit from psychological intervention.

39. In oral evidence Mr Wong confirmed his earlier assessment that the risk of the Applicant reoffending may fluctuate depending on external stressors. Mr Wong notes that the assessment was completed over two years ago and is quite outdated but at that time, he formed the view that if the Applicant was put under stress, or if he faced frustrations or difficulties in life, there would be a risk of him being impulsive or managing his emotions. Mr Wong states that at the time of 2020 convictions, the Applicant did not have the insight into

the trauma he had experienced that had affected his dysregulation issues. Mr Wong noted that the medication that the Applicant had been given may have been used for anxiety (noting there is no specific diagnosis of schizophrenia). Mr Wong suggests that the Applicant's present circumstances (reintegration into the community, employment and family connections, absence of re-offending and ongoing sessions with the psychologist) may have affected his risk assessment, noting that gaining insight would have lowered the risk of the Applicant reoffending.

40. The Tribunal finds that many incidents resulting in the convictions involved violence or threat of violence towards a member of the public (his co-worker) and there was also offending in the context against a female (whether or not in the context of a domestic relationship). As noted above, Direction 99 provides that violent offending and violent crimes against women are to be viewed very seriously. There were other offences which could be classified as being violent in nature including common assault and stalking / intimidation. The offending involved multiple instances and spanned over a period of approximately four years.

41. In his first Statement of Facts, Issues and Contentions ('SFIC') the Applicant concedes that the cumulative effects of his repeated serious offences do not weigh in favour of the revocation. In his more recent SFIC, the Applicant also concedes that his offending was frequent, included acts of family violence and a female victim, involved violent offending and would be deemed very serious. The Applicant also concedes that there has been a trend of increasing seriousness resulting in a custodial sentence.

42. The Tribunal has formed the view that the offending was very serious. The Tribunal finds that this factor weighs heavily against the revocation.

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

43. The Tribunal has considered the risk to the community, should the Applicant reoffend. Paragraph 8.1.2(1) provides that in considering the need to protect the Australian community (including individuals, groups or institutions) from harm, decision-makers should have regard to the Government's view that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases. Some of the conduct and the harm that would be caused, if it were to be repeated, is so serious that any risk that it may be repeated may be unacceptable.

44. Paragraph 8.1.2(2) provides that in assessing the risk that may be posed by the non-citizen to the Australian community, decision-makers must have regard to, cumulatively:

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

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

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

ii. evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since their most recent offence; and

45. Assessing the nature of the harm to individuals or the Australian community that may occur if the Applicant were to engage in further criminal or other serious conduct, is informed by the nature of his offending to date, including any escalation in his offending. This assessment also notes that the Direction provides that the Australian community's tolerance for harm becomes lower as the seriousness of the potential harm increases. Some conduct and the harm that would be caused, is so serious that any risk that it may be repeated may be unacceptable.

46. In his SFIC the Applicant argues that his offending was not such that, if it was repeated, is so serious that any future risk is unacceptable. The Applicant submits that there is only a very low risk of reoffending, noting that he has been in the community since December 2022 and has not committed any offences. He claims he has settled back into work and spends time with his family and has no contact with his anti-social peers, having safely reintegrated into the community. The Applicant submits that the prospect of future cancellation will act as a significant deterrent against reoffending as he does not wish to return to detention. The Applicant states that he no longer needs to see his parole officer in person, demonstrating confidence in relation to his conduct. The Applicant refers to the ongoing engagement with health professionals in relation to drug addiction and in the Smart Recovery Program (and he provided to the Tribunal evidence of his regular attendance at counselling sessions). The Applicant has expressed his remorse. The Applicant notes that he was previously assessed as being at medium risk of reoffending but that assessment is dated and does not consider his current circumstances.

47. As noted elsewhere, some of the Applicant's offending involved violence to others. The other offending caused damage to property and thus financial loss to others. The traffic offending may have placed other road users at risk. These are not minor or insignificant offences. In the Tribunal's view, the nature of harm to individuals, should the Applicant engage in further criminal conduct of similar nature, would be significant.

48. The Tribunal has considered the risk of the Applicant reoffending and the evidence of rehabilitation achieved.

49. In his revocation request the Applicant stated that he is trying to 'rectify his problems' by seeking medically trained professional and seeking appropriate medication for his mental health issues such as schizophrenia, depression, anxiety and insomnia. The Applicant stated that he did not believe he would reoffend again, he has four children (now five) who depend on him and he is learning how to cope with his health conditions.

50. In his written submissions to the delegate, the Applicant states that he had made mistakes and is not perfect and he states that he has learned from his mistakes (although he also claims he did not know some of the conduct was against the law, such as possession of replica firearms or possession of certain substances). The Applicant states that being in jail has been a 'wake up' call for him and he is truly regretful for his actions. The Applicant

provided to the delegate a number of character references and other statements, including statements from his children, his partner, mother-in-law, relatives, his co-workers and employees and others. The Applicant's partner refers in her statement to the hardship she experienced in looking after the children without the support of the Applicant. The Applicant also presented evidence of his participation in community activities.

51. The Applicant told the Tribunal that he has been in the community since 2022 without offending. When asked why he would not reoffend, the Applicant stated that most of his offending was related to driving and he has addressed that issue. He also told the Tribunal that he had not committed any family violence offences (and had not sought counselling in relation to family violence.) These statements are of concern to the Tribunal as the Applicant appears to lack appreciation for the seriousness of his conduct other than the driving offences (in particular the family violence and other violent offending). The Applicant also states that much of his past offending was because of the people around him and he no longer associates with them but spends his entire time working and with his family. The Applicant states that he is happy with his life and does not need to reoffend. Again, the Applicant seems to lack appreciation for his culpability if he believes his past offending was caused by his association with others and being influenced by others.

52. In his written submission to the Tribunal the Applicant states that he is serious about rehabilitation and changing his violent behaviour, which is demonstrated by the courses he has undertaken. (The Applicant provided to the Tribunal evidence of course participation.) The Minister notes that there is no evidence of the applicant engaging in any rehabilitation program relating specifically to domestic violence. The Applicant has expressed 'deep regret' for his past actions and acknowledges that his conduct falls short of the expectations of the Australian community, for which he has expressed his apology. The Applicant's spouse, who gave oral evidence to the Tribunal, spoke about the Applicant becoming more mature and a 'changed person' compared to what he was before.

53. The Applicant presented to the delegate a report by Mr Awit who sets out the Applicant's background and personal circumstances. The report refers to the circumstances of offending, stating that the Applicant had been suffering from severe anxiety and severe depression in the lead up to the offending. The report states that that once he is released from prison, the Applicant would commence individual psychological sessions and will seek other treatment. The Tribunal has considerable concerns about the findings concerning the circumstances prior to (or contributing to) the offending, given that Mr Awit's assessment was largely based on the Applicant's self-reporting (which could be considered to be self-serving) and completed some years after the offending. Nevertheless, the Tribunal is prepared to accept the professional views expressed by Mr Awit.

54. The Applicant submits that he has completed a number of rehabilitation programs and he provided to the Tribunal his appointment list showing that he had attended multiple online consultations since February 2023.

55. The Applicant refers to protective factors including a stable relationship with his wife, children and step-children, supportive siblings, friends and other relatives, noting that his family members are keen for him to remain in Australia. The Tribunal acknowledges that

evidence but finds it unpersuasive, noting that most of these protective factors were present during the past offending. The Applicant also states that the possibility of removal to Lebanon and the serious danger he may face there will also act as a protective factor and the Tribunal is prepared to accept that this is so. The Applicant also refers in his statement to the Tribunal to future plans, including working in the construction industry, spending time with his family and providing them with support, staying 'out of trouble' and continuing with rehabilitation.

56. The Applicant submits that he is willing to engage in a mental health treatment plan and any offending, if it occurs, is unlikely to involve any real threat or danger to other members of the society. The Applicant told the Tribunal that he has been seeing a psychologist regularly and has learned patience and to understand other people's perspectives. The Applicant spoke about his involvement in the Smart Recovery program. The Applicant states that he intends to continue with counselling as it has been helpful and helped him to think 'in the right way'.

57. The Tribunal has had regard to the written report and oral evidence of Mr Bechara. In his written report dated 17 October 2023 Mr Bechara states that the Applicant is attending ongoing psychological treatment since March 2023 and presents with symptoms of anxiety and distress. Mr Bechara states that the Applicant has acknowledged and expressed remorse and regret for his transgressions and that it is unlikely that he will re-offend, nor does he seem to pose a threat to the Australian community while engaging in therapy and other support systems.

58. Mr Bechara stated in oral evidence that the Applicant experiences stress due to past traumatic events in his childhood and he describes the nature of the treatment the Applicant had engaged in, stating that the Applicant had attended 16 sessions and there was improvement. Mr Bechara notes that he has made the assessment, based on his conversations with the Applicant, his lawyer and his wife, that there is not an imminent risk of violent offending. Mr Bechara could not comment on whether there is ongoing risk of family violence, given that the Applicant had not engaged in any family violence specific rehabilitation. Mr Bechara has expressed the view that the Applicant has emotional regulations issues, noting the past offending, and states that this would has been the main focus of their sessions and will continue to be.

59. Mr Bechara told the Tribunal that if the Applicant is to continue to see him, the risk of reoffending would decrease but if the Applicant was to stop seeing a health profession, such a risk could increase but he could not predict the future.

60. The Tribunal acknowledges that the risk of offending has been differently assessed by various professionals, as noted above and has been variously assessed as being low or medium. None of the assessments refer to the risk being non-existent. The Tribunal acknowledges that some of the assessments occurred a number of years ago and are now somewhat outdated. Significantly, the Applicant had not reoffended since 2020. He has been living in the community for approximately one and a half years. In the Tribunal's view, the time that has passed since the Applicant's last conviction, and the time he has spent in the community without reoffending, can be considered as evidence that the risk of

reoffending has been lowered but in the Tribunal's view, it still exists. The Tribunal also places some weight on the evidence of Mr Bechara that if the Applicant was to disengage from supports, it is possible that the risk of reoffending might increase.

61. The Tribunal has formed the view that there remains a risk of reoffending. This is because the Tribunal is concerned that the Applicant does not have a meaningful insight into his conduct, at times blaming others or the circumstances for the offending. It is also of some concern to the Tribunal that in his first SFIC the applicant refers to the family violence offending – which involved choking of the victim – as a 'relatively minor assault'. That comment does not suggest that the applicant appreciates the seriousness of his conduct.

62. The Tribunal is also concerned that the Applicant's may re-engage in criminal or anti-social conduct if he does not receive regular and ongoing support from health professionals and, in the long term, there can be no guarantee that the Applicant will continue with such support. As noted above, none of the assessors had expressed the view that the risk of reoffending is non-existent.

63. The Tribunal has formed the view that there remains a risk of reoffending. That risk may be low but it is not insignificant. The Tribunal notes that the Applicant's past convictions involved violence and damage to property. His offending had escalated between 2016 and 2020 and took place over approximately a four year period. The offending posed, or had the potential of causing, significant harm to others. Having regard to these factors, the Tribunal has formed the view that the protection of the Australian community weighs very heavily against the revocation.

Whether the conduct engaged in constituted family violence

64. Paragraph 8.2 of the Direction provides:

> *(1) The Government has serious concerns about conferring on non-citizens who engage in family violence the privilege of entering or remaining in Australia. The Government's concerns in this regard are proportionate to the seriousness of the family violence engaged in by the non-citizen*

65. The Applicant had been convicted of offending that involved domestic violence. The Tribunal acknowledges that this does not mean that the conviction would be considered as relating to family violence under Direction 99 as assessment is required of the nature of the relationship between the applicant and the victim.

66. The Applicant has consistently denied having a relationship with the victim, and he told the Tribunal that they only had two dates. This is not consistent with the other evidence before the Tribunal. Mr Awit in his statement refers to the Applicant claiming he had remarried after his relationship with JAA broke down (there is no suggestion of legal marriage but reference to Islamic marriage) and the conviction itself refers to the context of domestic violence. Judge Harris in the judgment of 30 April 2021 refers to the offences of domestic violence and an Apprehended Domestic Violence Order was issued to protect the victim. The transcript of the hearing before Magistrate Bugden in July 2020 also refers to the

circumstances where the victim came home to see the Applicant with another person and the police was called around 1.30 am, suggesting the applicant and the victim were residing in the same household. The police facts sheet suggests that the Applicant and the victim lived in the same house. The Tribunal accepts the Applicant's evidence that this evidence has not been tested while the applicant's oral evidence has not been seriously challenged. The Tribunal also considers it notable that at paragraph 87 of his first SFIC the applicant appears to concede that there was an isolated incident of domestic violence assault which the Tribunal should conclude is within the relevant consideration in terms of definition and conduct by the applicant. In that document, the applicant also refers to the victim as his partner at the time of offending.

67. The Tribunal does not consider that the evidence in the police facts sheets and other evidence noted above is unreliable and that the applicant's oral evidence – denying the relationship - is to be preferred. The Tribunal is unconvinced by the Applicant's evidence that he had merely two dates with the victim and there was never more to their relationship as this is not consistent with other evidence that is before the Tribunal. The Tribunal is of the view that the Applicant has deliberately – and untruthfully – misrepresented the nature of his relationship with K. The Tribunal has formed the view that the incident constituted domestic violence. This factor weighs heavily against the revocation.

The strength, nature, and duration of ties to Australia

68. Paragraph 8.3 of the Direction provides:

> *(1) Decision-makers must consider any impact of the decision on the non-citizen's immediate family members in Australia, where those family members are Australian citizens, Australian permanent residents, or people who have a right to remain in Australia indefinitely.*
>
> *(2) In considering a non-citizen's ties to Australia, decision-makers should give more weight to a non-citizen's ties to his or her child and/or children who are Australian citizens, Australian permanent residents and/or people who have a right to remain in Australia indefinitely.*
>
> *(3) The strength, duration and nature of any family or social links generally with Australian citizens, Australian permanent residents and/or people who have a right to remain in Australia indefinitely.*

69. The Applicant has been residing in Australia since the age of 27, for a period of about 13 years. The Applicant claims that his partner and children (including step-children) are in Australia and he states that the non-revocation decision would result in significant emotional, financial, and practical detriment to his wife and children. The Applicant refers to the provision of emotional, financial and practical support to his family and states that an adverse decision would have devastating consequences for his family. The Applicant provided to the Tribunal medical reports relating to his son and other evidence concerning his family.

70. The Applicant's partner also provided a statement outlining the close relationship between the Applicant and the children and the effect of separation on the children. She also refers

to the hardship she would experience in raising the children without the Applicant's support. In oral evidence the Applicant stated that during their past separation he and his partner remained friends and now that they have reconciled, their relationship is much better. The Applicant explained to the Tribunal that he and his partner had been separated in 2012 and remarried in 2020 but even during the separation they remained good friends and saw each other regularly and shared parental responsibilities. The Applicant's spouse gave oral evidence and spoke about the Applicant's connection to his family and the children.

71. The Applicant refers to his close connection to his two siblings in Australia. The Tribunal is prepared to accept that evidence and accepts the Applicant has significant family connections in Australia.

72. The Applicant refers to the company which is owned by his wife and he is a director of the company. The Applicant refers to the work he does in that company. The Applicant states that if he was to return to Lebanon, the company could not continue to operate. The Tribunal accepts the Applicant has business and employment links in Australia.

73. The Tribunal accepts that the Applicant has extensive family connections in Australia and that he has been providing support to his partner and children. The Tribunal accepts that the Applicant's immediate family, including his partner, children and siblings, are Australian citizens or permanent residents. The Tribunal accepts that removal of the Applicant from Australia may adversely affect these connections and may have an adverse effect on his partner and children.

74. The Tribunal accepts that, given the length of his residence in Australia and the presence of family in Australia, the Applicant has extensive family, social and employment links in this country. The Tribunal finds that this consideration weighs heavily in favour of the revocation.

The best interests of minor children in Australia

75. Paragraph 8.4(1) of the Direction requires a decision-maker to make a determination about whether cancellation or refusal under section 501, or non-revocation under section 501CA is in the best interests of a child affected by the decision.

76. Paragraphs 8.4(2) and 8.4(3) respectively contain further considerations. The former provides that for their interests to be considered, the relevant child (or children) must be under 18 years of age at the time when a decision about whether or not to refuse or cancel the visa or not to revoke the mandatory cancellation decision is being made. The latter provides that if there are two or more relevant children, the best interests of each child should be given individual consideration to the extent that their interests may differ.

77. The Applicant claims in his written statement that he is the father of two Australian citizen children, aged 11 and 10, and a step-father to his ex-wife's elder children aged 15 and 14 and the only father they have known. The Applicant presented to the Tribunal evidence that he has another child born in May 2024. He submits that he is likely to play a significant

positive role for his children in the future, noting that his past criminality did not relate to the children. The Applicant also refers to the presence of extended family in Australia.

78. In his written submission to the delegate the Applicant stated that he is very close to his son SM and his daughter MM and sees them every weekend and during school holidays and long weekends and public holidays. The Applicant states that their mother works and they have shared custody. The Applicant states that he supports his children physically and financially, they live in close proximity and he cannot live without them. The Applicant states that his children will be severely impacted if he was to leave Australia. He presented to the delegate his children's school reports and awards, family photographs, statements and other materials and he presented to the Tribunal evidence relating to the birth of his youngest daughter.

79. In his written submission to the Tribunal the Applicant refers to the care and support he provides to his children and states that his ex-wife is having difficulties with the children's behaviour since his incarceration and detention. The Applicant refers to his son's psychological issues requiring counselling and states that if he was to leave his son, it would impact his son mentally and emotionally. The Applicant states that his daughter will also be impacted. The Applicant also stated that he is in regular contact with his step-children, by phone and physically, and they celebrate occasions together. He is the main father figure to them and provides them guidance and advice. The Applicant states that his step-son lost his father as a toddler and would be impacted if he was to lose him as well.

80. In oral evidence the Applicant confirmed that he had raised his two step-children as their biological father died when they were very young and he is the only father they know. The Applicant also refers to his three biological children and the close relationship he has with them. The Applicant stated that when he was separated from the children's mother, he continued to look after the children and now that they live together, he is the main source of support and guidance to the children.

81. The Applicant's partner gave oral evidence to the Tribunal in which she referred to the close relationship between the Applicant and the five children and the reliance by the children on the support and guidance that the Applicant has provided.

82. The Applicant's children have provided written statements to the Tribunal. The Applicant claims that if he is to leave Australia, the children will be deprived of any meaningful contact and will not be able to visit him in Lebanon due to their personal safety. The Applicant submits that if deported, he may lose his personal and emotional connection with the children. In oral evidence the Applicant stated that initially he and his wife were concerned about things like schooling, medication, petrol and lack of employment in Lebanon and now they feel they cannot go to Lebanon due to the war. The Applicant's son A gave oral evidence in which he refers to the close relationship he has with the Applicant and states that he considers the Applicant as his father. He refers to the support and guidance he receives from the Applicant and the detrimental effect that the separation from his father had on his health and well-being. A states that if his father's visa is cancelled, he would follow his father to Lebanon and lose everything he has acquired in Australia, such as his university place, scholarship, etc.

83. The Applicant presented a statement from a psychologist Mr Mustapha Alameddine dated 25 August 2021 which refers to the Applicant's children being referred for assessment as a result of their diagnoses of separation anxiety, mixed anxiety and depression. The report indicates that the children have formed a good, close, safe and loving relationship with the Applicant, who provided them with consistency, routine, affection stability, predictability and love. Mr Alameddine states that the children have reported persistent and excessive worry, distress, far and grief as a result of the Applicant being placed in detention and away from them and their mother also reported worry and distress, fear and anxiousness. There are other medical reports before the Tribunal, including medical evidence and a care plan relating to the Applicant's son.

84. The Applicant submits that if he is removed to Lebanon, this would cause emotional, financial and practical hardship to his children in Australia as he is providing financial support to his family. The Applicant states that if his children join him in Lebanon, this would not be in their best interests, given that Lebanon is significantly disadvantaged economically, socially, and politically, and has poor and volatile security situation.

85. The Minister suggests that the applicant's older children are more independent and less reliant on the Applicant. While that may be the case, the Tribunal is of the view that there remains the need for emotional support for these children.

86. The Tribunal accepts that the Applicant has a close relationship with his children and that there are five minor children who consider the Applicant to be their father and rely on him for emotional, physical, financial, and other support. The Tribunal acknowledges the evidence of the Applicant and his partner that it would be difficult for the family to relocate to Lebanon as they consider the situation there unsafe and because the children may lose the opportunities that they have in Australia. the Tribunal finds that it is in the best interests of the children that they remain in Australia and also that they maintain their relationship with the Applicant. That consideration weighs strongly in favour of the revocation.

Expectation of the Australian Community

87. Paragraph 8.5 of Direction 99 provides that the Australian community expects non-citizens to obey Australian laws while in Australia. Paragraph 8.5(1) of the Direction sets out the government's view in relation to community expectations:

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

88. Paragraph 8.5(3) of the Direction provides that the above expectations of the Australian community apply regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.

89. Paragraph 8.5(4) of the Direction provides guidance on how the expectations of the Australian community are to be determined. This paragraph states:

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

90. Paragraph 8.5(4) is consistent with the decision of the Full Court of the Federal Court in *FYBR v Minister for Home Affairs*,[3] which affirmed the approach established in previous authorities that it is not for the Tribunal to determine for itself the expectations of the Australian community by reference to an Applicant's circumstances or evidence about those expectations. Instead, the Tribunal is to be guided by the Government's views as to the expectations of the Australian community, which are to be found in the Direction.[4]

91. Paragraph 8.5(2) contains a statement of the Government's views as to the expectations of the Australian community, which operates to ascribe to the whole of the Australian community an expectation aligning with that of the executive government which the decision maker must have regard to.

92. The Tribunal has formed the view that, given the seriousness and violent nature of some of the Applicant's conduct, and the potential of his conduct to cause harm to others, the community expectations would weigh heavily against the revocation.

Other considerations

Legal consequences of the decision

93. Paragraph 9.1 of the Direction directs a decision-maker to take into account the following:

> *(1) Decision-makers should be mindful that unlawful non-citizens are, in accordance with section 198, liable to removal from Australia as soon as reasonably practicable in the circumstances specified in that section, and in the meantime, detention under section 189, noting also that section 197C(1) of the Act provides that for the purposes of section 198, it is irrelevant whether Australia has non-refoulement obligations in respect of an unlawful noncitizen…*

94. The Applicant is not a person who is covered by a protection finding.

---

[3] [2019] FCAFC 185 ('*FYBR*')

[4] See *Uelese v Minister for Immigration and Border Protection* [2016] FCA 348; *Afu v Minister for Home Affairs* [2018] FCA 1311; *YNQY v Minister for Immigration and Border Protection* [2017] FCA 1466 and *FYBR v Minister for Home Affairs* [2019] FCA 500.

95. In his revocation request the Applicant states that there is a high risk of bombings in Lebanon and the economic status in Lebanon is very bad. The Applicant refers to an unstable situation, pain and suffering, no work, low medical supplies, food shortage, etc. He provided in his submission to the delegate a copy of the DFAT advice on Lebanon.

96. The Applicant's evidence has now changed substantially and he refers to his service in the army and the police and being threatened as a result. In his written submission to the Tribunal the Applicant stated that he served as a police officer for two years and was receiving threats before his departure for Australia. The Applicant states that he decided to leave Lebanon on a Visitor visa as he decided it was best for the family to move to Australia after a shooting attack on him and his father. The Applicant's former spouse JAA in her unsigned and undated statement entitled 'annexure A' also refers to incidents in Lebanon when she claims there were multiple threats which she family received due to the Applicant's previous work as a police officer and in the army. She states that the family had left their newly built home and cars and fled Lebanon because she was afraid for the family's well-being.

97. In oral evidence to the Tribunal, when questioned why he could not return to Lebanon, the Applicant's reference to past threats was very vague and the Applicant did not refer to a shooting attack on him or his father. (He referred instead to a shooting that occurred nearby but did not specifically claim it was directed at him.) The Applicant stated in his oral evidence to the Tribunal that he has serious concerns about his safety if he were to return to Lebanon and he believes he would be harmed by those who threatened him in the past. The Applicant states that if he is to live in Lebanon, his ex-wife and children will move with him and the entire family would be in danger.

98. In oral evidence the Applicant told the Tribunal that he was in the army and worked as a police officer for three years between 2001 and 2005 and was seen as the enemy by the local people while the government could not protect him. The Applicant refers to a shooting near a school and his wife's decision to relocate to Australia. The Applicant refers to many instances when his family had to move houses.

99. The Respondent, in the SOFIC, notes that these claims had never been made previously and in his initial revocation request the Applicant made only generalised claims about economic situation in Lebanon and the risk of bombs. The Respondent notes that the Applicant's claims are vague and unsupported by any evidence and also that in his communication with the psychologist Mr Awit, the Applicant made no reference to any threats in Lebanon and expressly stated 'no' in response to a question whether he had any concerns or fears about returning to Lebanon, referring only to generalised harm. The Respondent submits that the Tribunal should defer the assessment of non-refoulement obligations, noting that the Applicant would not be prevented from making an application for a protection visa.

100. Paragraph 9.1.2(2) relevantly states that:

> *…where it is open to the non-citizen to apply for a protection visa, it is not necessary at the section 501/section 501CA stage to consider non-*

refoulement issues in the same level of detail as those types of issues are considered in a protection visa application. The process for determining protection visa applications is specifically designed for consideration of non-refoulement obligations as given effect by the Act and where it is open to the person to make such an application a decision-maker, in making a decision under section 501/section 501CA, is not required to determine whether non-refoulement obligations are engaged in respect of the person. Having considered the person's representations, the decision-maker may choose to proceed on the basis that if and when the person applies for a protection visa, any protection claims they have will be assessed, as required by section 36A of the Act, before consideration is given to any character or security concerns associated with them.

101. The Tribunal has considerable concerns about the veracity of the Applicant's more recent claims, given that he had not raised those concerns when seeking revocation and, instead, referred to the more generalised concerns about the situation in Lebanon. The Applicant explained to the Tribunal that his responses depend on what question was asked of him and he did not think when making the revocation request that he had to mention everything. In the Tribunal's view, in circumstances where the Applicant's visa was cancelled and he was facing the prospect of having to leave Australia, the Applicant would put forward the strongest case to avoid deportation. The fact that he did not suggests to the Tribunal that his current claims are a recent invention.

102. Ultimately, the Tribunal is of the view that it is not necessary to determine that issue. The Applicant would be entitled to seek a Protection visa. As the Directions suggests, these issues are more appropriately dealt with during that process.

103. This consideration is neutral.

Extent of impediments if removed

104. Paragraph 9.2 of the Direction directs a decision-maker to take into account the extent of any impediments that the non-citizen may face if removed from Australia to their home country, in establishing themselves and maintaining basic living standards (in the context of what is generally available to other citizens of that country), taking into account:

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

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

    c) any social, medical and/or economic support available to that non-citizen in that country.

105. The Applicant is 40 years of age. There would be no substantial language or cultural barriers if he was to return to Lebanon.

106. The Applicant claims that he has not lived in Lebanon for over 11 years and would have substantial difficulties re-establishing himself in that country and maintaining a basic life. The Applicant also refers to the non-refoulement considerations. In his earlier SFIC the

Applicant states that the health system in Lebanon is poor and he may not have access to the same degree of health services as are available in Australia.

107. In his more recent SFIC the Applicant refers to having back problems for which he takes prescription medication, as well as a number of mental health issues including anxiety, depression and schizophrenia. In oral evidence the Applicant told the Tribunal that he has been given medication and in the more recent assessment by health professionals he was told that he no longer has these conditions.

108. The Applicant states that Lebanon does not have an adequate social safety net system and he is unlikely to receive sufficient medical treatment for his mental health issues and back problems. The applicant told the Tribunal that medication and medical treatment is very expensive in Lebanon and he will not have access to adequate treatment. The Applicant refers to economic situation in Lebanon. In his statement dated 15 May 2023 the Applicant refers to his personal safety in Lebanon, lack of opportunities and the effect of separation and removal on himself and his family in Australia.

109. The Applicant states that despite having worked jobs in the past, it is 'most likely' he would have difficulties obtaining employment in Lebanon. Again, no explanation is offered in the Applicant's written evidence as to why he would have difficulties finding employment in Lebanon, given that there are no language or cultural difficulties and his past employment. The Applicant told the Tribunal that he would have difficulty finding a government job in Lebanon due to his convictions but he presents no evidence to support that claim and does not suggest that there would be no other form of employment available to him. The Applicant refers to emotional difficulties associated with return to Lebanon, without identifying what these would be.

110. In oral evidence the Applicant states that he is concerned for the safety of his wife and children if they were to live in Lebanon. The Applicant refers to lack of medical support and lack of electricity. The Applicant states that he will not be able to work in a government job due to his criminal convictions. The Applicant refers to the war in Lebanon and the unsafe situation for his partner and children. The Applicant also states that he wants to continue to see a mental health professional but could not afford to do that in Lebanon. The Applicant refers to the Smart Traveller Report which notes the deterioration in social and economic conditions in Lebanon.

111. The Tribunal does not accept the Applicant's claims that he would experience difficulties reintegrating into society and, in the absence of any probative evidence, the Tribunal does not accept that the Applicant would have difficulties with finding employment in Lebanon (even if his employment opportunities may be more limited due to his convictions). However, the Tribunal accepts other evidence that the situation in Lebanon is, at present, generally unsafe and the economic situation is difficult. The Tribunal also accepts that the applicant may not have access to adequate healthcare. For these reasons, the Tribunal accepts that the Applicant may experience some impediment if he is removed from Australia.

112. The Tribunal finds that this consideration weighs, to a limited extent, in favour of the revocation.

Impact on victims

113. Paragraph 9.3 of the Direction directs a decision-maker to take into account the impact of the section 501 or 501CA decision on members of the Australian community, including victims of the non-citizen's criminal behaviour, and the family members of the victim or victims, where information in this regard is available and the non-citizen being considered for visa refusal or cancellation, or who has sought revocation of the mandatory cancellation of their visa, has been afforded procedural fairness.

114. There is no evidence before the Tribunal concerning the impact on victim. This consideration is neutral.

Impact on Australian business interests

115. Paragraph 9.4 of the Direction directs a decision-maker to take into account the following:

> (1) '*Decision-makers must consider any impact on Australian business interests if the non-citizen is not allowed to enter or remain in Australia, noting that an employment link would generally only be given weight where the decision under section 501 or 501CA would significantly compromise the delivery of a major project, or delivery of an important service in Australia.*'

116. The Applicant claims that he has been in the formwork business and was involved with many Australian businesses. The Tribunal accepts that this is so, however, the mere fact that the Applicant had in the past engaged in business in Australia does not necessarily mean that Australia's business interests would be impacted if the Applicant is not allowed to remain in Australia. The Applicant provided to the Tribunal evidence of his recent employment in the form of payslips and the Tribunal accepts that the Applicant is currently employed. The Applicant told the Tribunal that he and his partner operate a business which his partner cannot operate without him. There is nothing to suggest the decision concerning the Applicant's visa would significantly (or indeed in any other way) compromise the delivery of a major protect, or delivery of an important service in Australia.

117. Nevertheless, the Tribunal accepts that if the applicant was to leave Australia, it is likely that his business might not continue to operate. The Tribunal finds this consideration to be lightly in favour of the revocation.

Other matters

118. The Applicant's spouse gave evidence about the support the Applicant provided to his children. She states that her children will not have the same opportunities in Lebanon as

they do in Australia. The Applicant's spouse refers to the war in Lebanon, stating that her children's safety would be at risk, and other concerns about living in Lebanon and she states that she has not considered whether she would travel to Lebanon if the Applicant's visa is cancelled. These matters have been addressed above.

CONCLUSION

119. The Tribunal has found that the Applicant has a substantial criminal record and that he does not pass the character test. The Tribunal has considered if there is another reason why the decision to cancel his visa should be revoked.

120. The Tribunal has formed the view that the Applicant has committed serious offences, involving violent offending with respect to members of the community and in the context of a domestic relationship. There are numerous driving offences which are not insignificant and have the potential of posing significant threat to others. The nature of the past offending is such that the Applicant's conduct is against the expectations of the Australian community.

121. The Tribunal accepts that the Applicant has taken some steps towards rehabilitation and places significant weight on the fact that he has regularly engaged in counselling and has expressed his willingness to continue with these sessions. He has completed other programs. Despite that, the Tribunal has formed the view that the Applicant continues to lack insight into his conduct and blames others or the circumstances for his offending. The Tribunal has formed the view that there remains the risk of reoffending and the risk is not insignificant.

122. The Tribunal has formed the view that the protection of the Australian community, and the expectations of the Australian community weigh heavily against the revocation. The fact that the Applicant has engaged in family violence also weighs strongly against revocation. (If the Tribunal is wrong in its assessment that the offending constituted family violence, this factor would be neutral.)

123. There are other factors that weigh in favour of the revocation. Most significantly, the Applicant has five minor children in Australia who rely on him emotionally, financially and physically. The youngest child is only three weeks old. The evidence suggests that if the Applicant was to leave Australia, the family may not necessarily travel with him and the Tribunal accepts that the situation in Lebanon may be unsafe for the family, at least at present. That is, there is a real risk of the Applicant being separated from his children. The Tribunal accepts that it is in the best interests of the children to revoke the cancellation and enable the Applicant to remain in Australia to support the family.

124. The Tribunal places weight on the nature and extent of the Applicant's links to Australia, which include strong family, business, and social links. This factor also weighs in favour of the revocation. The impediment if removed weighs in favour of revocation but only slightly, in the Tribunal's view.

125. Having carefully considered all the circumstances, the Tribunal has decided to give greatest weight to the primary consideration of the best interests of the Applicant's children and the strength, nature and duration of his ties in Australia.

126. The Tribunal has decided that the cancellation of the Partner visa should be revoked.

DECISION

127. The Tribunal sets aside the decision not to revoke the cancellation of the Applicant's Class BC Subclass 100 partner visa and in substitution, decides that the cancellation of the visa is revoked.

I certify that the preceding 127 (one hundred and twenty - seven) paragraphs are a true copy of the reasons for the decision herein of Senior Member Raif

.....

Associate

Dated: 03 July 2024

Date(s) of hearing:	**18 and 19 June 2024**
Counsel for the Applicant:	**Dr Donnelly**
Solicitor for the Respondent:	**Mr Goodwin**