Administrative Appeals Tribunal

DECISION AND REASONS FOR DECISION

Division:	GENERAL DIVISION
File Number(s):	**2024/1881**
Re:	**KSPJ**
	APPLICANT
And	**Minister for Immigration, Citizenship and Multicultural Affairs**
	RESPONDENT

DECISION

Tribunal:	**Emeritus Professor P A Fairall, Senior Member**
Date:	**14 June 2024**
Date of written reasons:	**20 June 2024**
Place:	**Sydney**

The decision of the Tribunal, pursuant to section 43 of the *Administrative Appeals Tribunal Act 1975* (Cth), is that the reviewable decision is set aside; and in substitution, the cancellation of the Applicant's visa under subsection 501(3A) of the *Migration Act 1958* (Cth) is revoked under subsection 501CA(4) of the Migration Act.

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

Emeritus Professor P A Fairall, Senior Member

CATCHWORDS

MIGRATION – Migration Act 1958 (Cth) section 501CA(4) – primary considerations – other considerations – whether there is another reason to revoke mandatory cancellation of applicant's visa – Direction No. 99 – single criminal charge – nature and seriousness of the offending – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – decision under review set aside

LEGISLATION

Administrative Appeals Tribunal Act 1975 (Cth)
Anti-Money Laundering Counter-Terrorism Financing Act 2006 (Cth)
Criminal Code Act 1995 (Cth)
Migration Act 1958 (Cth)

CASES

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

SECONDARY MATERIALS

Enshen Li, 'The Qianke System in China: Disorganisation, Discrimination and Disruption' (2023) 24(4) *Criminology & Criminal Justice* 568

REASONS FOR DECISION

Emeritus Professor P A Fairall, Senior Member

20 June 2024

1. KSPJ (the Applicant) has applied to the Tribunal for review of a decision of the Respondent dated 25 March 2024 not to revoke, under subsection 501CA(4) of the *Migration Act 1958*

(Cth) (the Migration Act), the mandatory cancellation of his Class BB Subclass 155 Five Year Resident Return visa (the reviewable decision).

2. The decision of the Tribunal, pursuant to section 43 of the *Administrative Appeals Tribunal Act 1975* (Cth) (AAT Act), is that the reviewable decision of the Respondent's delegate dated 25 March 2024 to not revoke the mandatory cancellation of the Applicant's Class BB Subclass 155 Five Year Resident Return visa is set aside; and in substitution, the cancellation of the Applicant's visa under subsection 501(3A) of the Migration Act is revoked under subsection 501CA(4) of the Migration Act.

BACKGROUND

3. KSPJ is a 41-year-old citizen of the People's Republic of China. He first arrived in Australia in October 2006 and became a permanent resident in 2013.[1] His wife is an Australian citizen,[2] as are their two children.[3]

4. The Applicant was arrested on 10 August 2020 on a single charge of money laundering contrary to subsection 400.3(2) of the *Criminal Code Act 1995* (Cth) (the Code). The offence carries a maximum penalty of 12 years imprisonment or 750 penalty units or both. He was released on conditional bail on 27 November 2020.[4]

5. The prosecution alleged that the Applicant was engaged as a cash collector in what was the provision of a remittance service by a nonregistered person. The essence of the scheme was that cash was transacted in Australia and corresponding electronic transfers were made internationally in foreign currencies. His role in the money-laundering scheme was that of courier, or 'cash-collector'. He was assigned to collect large amounts of cash from locations around Sydney.[5]

6. According to the Joint Agreed Statement of Facts (Agreed Facts), during the period of the Applicant's involvement, the total amount dealt with by him was at least $30,954,820. A

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[1] G11, 73; G8, 63; G16, 110.
[2] Passport, G28, 167.
[3] G28, 168-171.
[4] G8, 47; Respondent's Tender Bundle ('RTB'), 215-6.
[5] Sentencing remarks of the District Court of New South Wales, G8, 49.

summary of the individual amounts of cash collected by the Applicant between 17 May 2020 and 10 August 2020 is set out in the Agreed Facts.[6]

7. The Applicant entered a plea of guilty and on 30 April 2021 was committed for sentence.

8. On 17 June 2022, the Applicant was sentenced by Judge O'Rourke SC of the District Court of New South Wales (the District Court) to 3 years and 7 months imprisonment, commencing on 27 February 2022, and concluding on 26 September 2025. The court set a non-parole period of 20 months, commencing on 27 February 2022, and concluding on 26 October 2023.[7]

9. The Applicant received a 40% sentencing discount. 25% was awarded for an early plea of guilty, 5% for assistance provided to law enforcement authorities, and 10% on account of assistance to be provided in the future. As a result of his assistance to the authorities, the District Court made a confidentiality order and sentenced the applicant in a closed hearing.[8]

10. In sentencing the Applicant, her Honour stated:

> *The offender, together with co-offender AB, was involved in an unregistered money remittance scheme, whereby cash was transacted in Australia and corresponding electronic transfers were made internationally in foreign currencies.*
>
> *This offender was involved in the capacity of "cash collector", commencing about 9 March 2020 until his arrest on 10 August 2020. During the period of his involvement, the total amount dealt with by him was $30,954,820. In dealing with the cash, the offender was reckless as to the risk that the money dealt with would become an instrument of crime, namely an offence contrary to s 74(2) of the Anti-Money Laundering Counter-Terrorism Financing Act 2006 (Cth) involving the provision of a remittance service by an unregistered person.*[9] *(Emphasis added)*

11. On 26 October 2023, he was released on parole and transferred to immigration detention.

12. On 15 May 2023, his visa was cancelled pursuant to subsection 501(3A) of the Migration Act.

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[6] RTB. 8.
[7] G6, 42.
[8] G7, 43-46.
[9] G8, 49.

13. The Applicant applied for the decision to be revoked, as provided for by subsection 501CA(4) of the Migration Act.[10] A delegate of the Minister decided on 25 March 2024 not to revoke the cancellation decision.[11] The Applicant then applied as of right to this Tribunal for review of the delegate's refusal to revoke the mandatory cancellation decision.

14. The Applicant appeared by video from Villawood Immigration Detention Centre on 4 June 2024.

15. The proceedings were closed to the public to accommodate the confidentiality orders made by the District Court in sentencing the Applicant.[12] The Tribunal made orders pursuant to subsection 35(4) of the AAT Act to protect the identity of the Applicant and his family.

16. The Applicant has provided supporting materials in relation to his family, his health and the health of his wife. He has provided numerous references.

17. The Tribunal received the following material:

    (a) Applicant's Statement of Facts, Issues and Contentions ('ASFIC') dated 4 May 2024;

    (b) Respondent's Statement of Facts, Issues and Contentions ('RSFIC') dated 28 May 2024;

    (c) Applicant's Reply to the RSFIC dated 29 May 2024;

    (d) Statement of the Applicant dated 4 May 2024;

    (e) Statement of HN (the applicant's wife) dated 4 May 2024;

    (f) Statement of the Applicant's children dated 5 May 2024;

    (g) Applicant's Tender Bundles, which includes:

        (i) 'Overview of Social Benefits in China';

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[10] G16, 110.
[11] G3(b), 19.
[12] G7, 43-46.

(ii) Enshen Li, 'The Qianke System in China: Disorganisation, Discrimination and Disruption' (2023) 24(4) *Criminology & Criminal Justice* 568;

(iii) Yuting Bu, 'Re-employment of Ex-offenders in China: Research on Employment Discrimination and the System of Elimination of Criminal Record' (2022) 631(1) *Advances in Social Science, Education and Humanities Research* 128;

(iv) 'Mental health after China's prolonged lockdowns – Editorial' (2022) 399 *The Lancet* 2167;

(v) 'Stigmatizing attitudes toward mental illness among caregivers of patients with mental disorders in China';

(vi) Witness Statement of XN (Applicant's friend) dated 28 April 2024;

(vii) Witness Statement of YN (Applicant's friend) dated 30 April 2024;

(viii) Evidence from Applicant's children;

(ix) Certificate of Participation in Enough is Enough Anti Violence Movement Inc Victims Impact & Risk Management Support Seminar dated 22 September 2023;

(x) Photographs of Applicant with his immediate family; and

(xi) Expert Report of Dr Emily Kwok (psychologist) dated 14 May 2024;

(h) Respondent's Tender Bundle; and

(i) G-Documents.

FINDING ON CHARACTER TEST

18. A person sentenced to a term of imprisonment of 12 months or more does not pass the character test, by reason of the combined operation of paragraphs 501(6)(a) and 501(7)(c) of the Migration Act.

19. The criminal conviction described above is not in dispute in these proceedings. The Tribunal therefore finds that the Applicant does not pass the character test.

20. The sole question for the Tribunal is whether, pursuant to subsection 501CA(4) of the Migration Act, there is 'another reason' why the decision to cancel his visa should be revoked.

EXERCISING THE DISCRETION UNDER SUBSECTION 501CA(4)

21. In deciding whether there is 'another reason' why the mandatory cancellation decision should be revoked, the Tribunal is required to consider and where relevant apply Direction No. 99 (the Direction).

22. Section 499 of the Migration Act provides that the Minister may give written directions to a person or body exercising powers and functions under the Act, where the directions relate to the performance of those functions or the exercise of those powers. The Direction, enacted under section 499 and commencing on 3 March 2023, provides a range of considerations to which the Tribunal should have regard in exercising its discretion under subsection 501CA(4).

23. Part 1 of the Direction provides a set of principles to which the Tribunal should have regard when applying these considerations. I note the principles referred to in paragraph 5.2 and especially the following:

> *1 Australia has a sovereign right to determine whether non-citizens who are of character concern are allowed to enter and/or remain in Australia. Being able to come to or remain in Australia is a privilege Australia confers on noncitizens in the expectation that they are, and have been, law-abiding, will respect important institutions, such as Australia's law enforcement framework, and will not cause or threaten harm to individuals or the Australian community.*
>
> *2 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.*
>
> *…*
>
> *5 With respect to decisions to refuse, cancel, and revoke cancellation of a visa, Australia will generally afford a higher level of tolerance of criminal or other serious conduct by non-citizens who have lived in the Australian community for most of their life, or from a very young age. The level of tolerance will rise with the length of time a non-citizen has spent in the Australian community, particularly in their formative years.*

24. Part 2 provides that the Tribunal must have regard to five primary considerations in section 8 and four other considerations in section 9. The considerations identified in the Direction are not exhaustive. There may be some reason not explicitly stated in the Direction which constitutes 'another reason' within the purview of subparagraph 501CA(4)(b)(ii).

25. The section 8 'primary' considerations are as follows:

- Protection of the Australian Community (PC1)
- Family violence committed by the non-citizen (PC2)
- The strength, nature, and duration of ties to Australia (PC3)
- Best interests of minor children in Australia affected by the decision (PC4)
- Expectations of the Australian community (PC5)

26. The section 9 'other' considerations are as follows:

- Legal consequences of decision under section 501 or 501CA (OC1)
- Extent of impediments if removed (OC2)
- Impact on victims (OC3)
- Impact on Australian business interests (OC4)

PC1: PROTECTION OF THE AUSTRALIAN COMMUNITY

27. The Direction states:

> *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. In this respect, decision-makers should have particular regard to the principle that entering or remaining in Australia is a privilege that Australia confers on non-citizens in the expectation that they are, and have been, law abiding, will respect important institutions, and will not cause or threaten harm to individuals or the Australian community.*
>
> *(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.*

28. Under the Direction, the Tribunal should give consideration to the nature and seriousness of the non-citizen's conduct to date; and 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 non-citizen's conduct to date

29. The offence charged was as follows:

> *Between 9 March 2020 and 10 August 2020 at Sydney, New South Wales and elsewhere, KSPJ dealt with money reckless to the risk that the money would become an instrument of crime in relation to a Commonwealth indictable offence, and the value of the money was $1,000,000 or more, contrary to s.400.3(2) of the Criminal Code (Cth).*[13]

30. Subsection 74(1) of the *Anti-Money Laundering Counter-Terrorism Financing Act 2006* (the 'Money Laundering Act') prohibits the provision of a 'registerable remittance network service' by a person who is not registered with the Australian Transaction Reports and Analysis Centre ('AUSTRAC').[14] Subsection 74(2) provides that a contravention of this requirement is an offence punishable by 2 years' imprisonment, or 500 penalty units, or both. The prosecution case against the Applicant was that the predicate offence under subsection 400.3(2) was subsection 74(1) of the Money Laundering Act.

31. The offence created by subsection 400.3(2) of the Code forms part of a set of money laundering offences provided for in Division 400.[15] The Code creates a series of cascading offences defined by the amount of money laundered (defined in terms of intervals)[16] and the fault element defined in the Code. There are three tiers (1, 2 and 3), corresponding with intention, recklessness, and negligence, which reflect the fault elements defined in Chapter 2. The combination of the cash amount laundered, and the fault element, determines the offence and the applicable penalty.[17]

32. Under the heading 'Tier 2 offences', section 400.3(2) provides:

> *(2) A person commits an offence if:*

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[13] RTB, 90.

[14] Agreed Facts: RTB, 7.

[15] See Outline of Crown Submissions on Sentence: RTB, 374.

[16] If p is the amount laundered, then the relevant intervals are as follows: p>10m>1m>100k>50k>10k>1k.

[17] Corresponding with ss 400.2B, 400.3, 400.4, 400.5, 400.6, 400.7.

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of indictable crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is reckless as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $1,000,000 or more.

Penalty: Imprisonment for 12 years, or 720 penalty units, or both.

33. Recklessness is the relevant fault element. Section 5.4 of the Code provides:

5.4 Recklessness

(1) A person is reckless with respect to a circumstance if:

(a) he or she is aware of a substantial risk that the circumstance exists or will exist; and

(b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

(2) A person is reckless with respect to a result if:

(a) he or she is aware of a substantial risk that the result will occur; and

(b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

(3) The question whether taking a risk is unjustifiable is one of fact.

(4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element.

34. Under Chapter 2 recklessness is defined with respect of a circumstance and a result. The prosecution sentencing submissions focus on recklessness as to a circumstance,[18] however, the present facts appear to posit recklessness as to a result, that is, the breach of subsection 74(2) is posited as a future event, as signified by the words 'would become'.

35. The Agreed Facts state:

In dealing with the cash, KSPJ was reckless as to the risk that the money dealt with would become an instrument of crime, namely an offence contrary to s. 74(2) of the

[18] RTB, 380, [27].

Anti-Money Laundering Counter-Terrorism Financing Act 2006 (Cth) involving the provision of a remittance service by an unregistered person.[19]

36. The Applicant pleaded guilty to being reckless that the money dealt with 'would become an instrument of crime' in a specific way. The Agreed Facts link the fault element to a specific offence, namely, the offence under subsection 74(2) of the Money Laundering Act.[20]

37. The important point is that the Applicant was sentenced on the basis that he was aware that in carrying out his activities as a cash collector he was aware that there was a substantial risk that an offence contrary to subsection 74(2) would occur, and that it was unjustifiable to take that risk.

38. His recklessness involved his awareness that the money he dealt was being used or would be used in the course of operating an unregistered remittance service, not merely a vague belief or residual awareness that the enterprise was unlawful in some broad sense (or to use a colloquialism "dodgy").

39. The Applicant accepts that this primary consideration weighs against revoking the mandatory cancellation decision. As summarised by the ASFIC:

> *12. The applicant was centrally involved in a sophisticated money laundering operation dealing with over $30 million, which the Australian government and community regard as a serious offense. His role as a 'cash collector' was critical to the scheme's operation, indicating a high degree of involvement and responsibility.*
>
> *13. The offence carries a significant maximum penalty of 12 years, highlighting its severity. The statutory framework under the Anti-Money Laundering Counter-Terrorism Financing Act underscores the serious legal implications of such unregistered financial activities.*
>
> *14. Although not violent or directly targeting vulnerable community members, the applicant's crime is considered severe due to its scale ($30 million) and the potential to facilitate further crimes, impacting community safety and integrity.*
>
> *15. The frequent and organised nature of the offenses (24 separate transactions over five months) demonstrates a sustained and deliberate engagement in criminal activities, which is treated with considerable seriousness under Australian law.*
>
> *16. The applicant's consistent involvement in numerous transactions over several months indicates a pattern of increasing seriousness and a cumulative effect of offending, which poses a sustained risk to the community.*

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[19] RTB, 90.

[20] They may have been to avoid any element of any duplicity in the indictment.

17. Given the scale of the offence and the involvement in significant financial crimes, there is a substantial public interest in considering the implications of the applicant's actions on the community and the integrity of the financial system. Such offences can undermine trust in financial institutions and regulatory frameworks, warranting a strict approach to sentencing and decisions regarding non-citizen status.

…

23. The harm caused by a person convicted of dealing with money as an instrument of crime, particularly with sums as large as $1,000,000, and doing so recklessly, is multifaceted and impacts both individuals and the broader community in several significant ways:

- *Economic Stability and Integrity. Such crimes undermine the integrity of the financial systems by facilitating the flow of illicit funds. This can destabilise financial institutions and markets, erode public trust in these systems, and ultimately harm the economy's stability.*
- *Supporting Further Criminal Activities. Money laundering is often a critical support mechanism for other criminal activities, such as drug trafficking, terrorism, and organised crime. By converting the proceeds of crime into usable funds, these activities can continue and expand, spreading their harmful effects further across the community.*
- *Legal and Regulatory Burden. The presence of money laundering operations compels the government and regulatory bodies to increase surveillance and enforcement activities. This not only strains resources but also imposes additional regulatory burdens on legitimate financial and business operations, potentially stifling economic activity and innovation.*
- *Social and Moral Impact. Such activities also have a moral and social impact, as they promote the notion one can profit from criminal behaviour without consequence. This can erode societal norms and values, leading to increased cynicism and a decrease in communal trust.*
- *In the case of reckless involvement, where the individual may not have directly intended to facilitate other crimes but ignored the high risk that their actions would do so, the harm remains significant. The reckless disregard for the lawful use of large sums of money facilitates a culture where criminal activities can thrive at the expense of the safety and stability of the community. This not only poses direct risks but also challenges the efforts to maintain a fair and just society.*

40. I agree with this submission.

Risk of recidivism

41. I turn to consider the risk that may be posed by the non-citizen to the Australian community, should the Applicant re-offend. I note the various factors to which reference should be made under paragraph 8.1.2(2) of the Direction.

42. I have noted the sentence and the fact that the offending occurred over a limited period but involved some 24 instances of delivering bundles of cash.

43. As noted above, during the period of the Applicant's involvement, the Applicant couriered at least $30,954,820 between 17 May 2020 and 10 August 2020. A summary of the individual amounts of cash collected by the Applicant is set out in the Agreed Facts.[21]

44. I also note the nature of the harm to individuals and to the Australian community should be relapse into such activity. The Respondent has provided extensive materials to the Tribunal concerning the extent of damage caused by money laundering and the sophisticated nature of such operations.

45. I also consider his degree of remorse. In a letter to the sentencing judge, the Applicant stated:

> *I am writing you this letter today because I am pleading guilty to the charge of reckless to the risk that the money would become an instrument of crime. I accept full responsibility for the offence and there is no excuse for my stupid behaviour. I regret my behavior and understand that it is a serious offence that caused significant harm to this society.*
>
> *I am extremely remorseful because of the significant consequences of this incident and my stupidity.*[22]

46. In his statement to the Tribunal, the Applicant stated:

> *7. The police recognised my role as merely the driver in these operations, and I received the lowest sentencing among those involved. My legal counsel entered a guilty plea on my behalf. However, I accept my offending was seriousness regardless.*
>
> *8.Since my arrest, I have ceased all contact with the individuals involved in these activities. I deeply regret my involvement and have learned valuable lessons during my time in prison and subsequent detention.*[23]

47. I also note that the Applicant received a 40% sentencing discount. 25% was awarded for an early plea of guilty, 5% for assistance provided to law enforcement authorities, and 10% on account of assistance to be provided in the future. His willingness to assist law

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[21] RTB, 8.

[22] RTB, 338.

[23] Statement of the Applicant dated 4 May 2024, [7]-[8].

enforcement authorities is an important factor, to which I have due regard to assessing the gravity of his offending.

48. I also note that he was a model prisoner and detainee and was recommended for early release on parole. His pre-release report states:

> *KSPJ has displayed satisfactory behaviour and participation in his employment whilst in custody. It appears his level of motivation to effect change is high and he verbalised a willingness to comply with conditions of his parole and undertake interventions to provide a better image to his children. Furthermore, when KSPJ is released into the community it will be an expectation, he will accept a referral for financial counselling for as along as deemed appropriate by his supervising officer.*[24]

49. When released on bail he was productively employed. He has distanced himself from former associates.[25]

50. In evidence the Applicant was asked how he felt about his conviction. He said:

> *I regret what I've done. I've tried to help a friend out. I didn't realise it was illegal. He said he wanted to avoid GST. I really regret what I've done.*
>
> *Q. What did you think about avoiding GST? Did you know that was unlawful?*
>
> *I didn't know it at the time…*
>
> *Q. Well, can you explain that – you said 'avoid GST'.*
>
> *I thought it was an economic offence but not a criminal offence.*

51. Under cross-examination he responded as follows:

> *Q. Did you think that it was legal, or did you just not know whether it was legal or not?*
>
> *AB told me it is not a criminal offence, but he said if were caught he would pay the tax.*
>
> *Q. You told Dr Kwok that you knew that tax evasion was illegal, and you didn't question AB because the less I know the better.*
>
> *OK for me I generally wouldn't ask to much about things have not to do with me – me said the less you knew the better*
>
> *Q. But nevertheless, you thought it was all legal. Is that your evidence?*
>
> *You probably can say that.*
>
> *Q. I'm going to say that you are not being truthful and I going to say that you are not telling the truth to the tribunal.*

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[24] Pre-release Report, *Corrective Service NSW, Community Corrections*: RTB, 76 at 80,
[25] RTB, 357.

I am telling the truth and did not know that these were legal activities.

Q. You say that despite the things you were doing – concerned about being observed by cameras and not asking AB about not asking questions of AB?

Q. You were not just the driver, you were counting money and taking instructions from AB and others as to what to do with it.

Counting money – I was told that it was part of the job of a driver. For example, he ask me to go somewhere to fetch some money. There's amount. So if you say, 'I need to fetch $100,000', as a driver I need to go and count the amount of money… It's part of the job of a driver.

Q. The judge also describes how you tried to avoid detection in various ways and were worried about being detected by cameras and has phones in false names and so on. You were trying to avoid detection, weren't you?

AB told me not to be on camera because we would be caught and have to pay tax…

Q. You plainly knew that what you were doing was unlawful.

I think it probably illegal in terms of financial terms but not criminal terms…

52. Although the Applicant expressed regret for his involvement, his claim that he did not know that his behaviour was criminal is difficult to accept. However, as noted above, he was sentenced in the District Court by reference to the Agreed Facts, which posit an awareness that his dealings with the money would lead to a specific breach of the criminal law involving subsection 74(2) of the Money Laundering Act.

53. During the present hearings, he was not asked about his awareness of the provisions of the Money Laundering Act, or whether he was aware that it was illegal to provide an unregistered remittance service.[26] His level of awareness of these provisions was not tested before the Tribunal. Although the Tribunal must accept the basis upon which he was sentenced, a finding that he is lacking in remorse or acceptance of his guilt is not justified simply because he was unable to clarify the precise way in which his conduct was unlawful. Indeed, there is an abundance of material before the Tribunal pointing to his remorse, including oral evidence given to the Tribunal, and his letters to the sentencing judge and to the Tribunal in these proceedings.

54. I also note the following point made in the ASFIC.

33. The interplay between the sentence served and the potential for visa cancellation creates a robust deterrent framework. Together, they underscore the serious

[26] G8, 49.

repercussions of engaging in criminal activities, not just from a legal perspective. This dual deterrent approach is likely to be particularly effective for individuals like the applicant, who have demonstrated family commitments and responsibilities, and for whom the stability and well-being of their family are paramount.

34. KSPJ's offence, while serious, occurred under specific and exceptional circumstances. His subsequent behaviour demonstrates a clear commitment to rehabilitation and a low risk of reoffending. He has shown a robust ability to adapt positively when provided with support and opportunities.

55. I agree that this is a case where the deterrent effect of a criminal sentence together with immigration detention provide a potent disincentive for any further offending. The Applicant claims to have been physically assaulted in prison.[27] I agree that deterrence is likely to be particularly effective for the Applicant, who has clear family commitments and responsibilities, and for whom the stability and well-being of his family is paramount.

56. I find that the Applicant is remorseful and take this into account in assessing the likelihood of recidivism.

57. Despite his remorse, and the fact that the offending occurred against the backdrop of Covid restrictions which placed significant financial burdens upon the Applicant and his family, including the closure of his business, I find that PC1 weighs against revoking the mandatory cancellation decision. This conclusion is reached primarily by reference to the amount of money dealt with and the serious harm to society that may result from the commission of such offences. Money laundering is a pernicious crime, as the materials before the Tribunal provided by the Respondent amply demonstrate.

Primary Consideration 3 – The strength, nature and duration of ties to Australia

58. Paragraph 8.3 provides that the Tribunal 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.

[27] NSW Department of Corrective Services Incident Report, RTB, 67.

59. The Applicant's wife and children are Australian citizens. I note that under the Direction more weight should be given 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.

60. The impact on his family will be severe. His wife is especially vulnerable, for the reasons outlined in a clinical assessment report dated 16 May 2022 undertaken by a forensic psychologist Mr A. Wong, at the request of the Applicant's solicitor.[28]

> *CLINICAL OPINION*
>
> *26. HN is a 39-year-old Chinese female who was referred for a mental health assessment regarding her husband's potential gaol sentence. She described having a poor and distant relationship with her parents throughout her childhood due to their divorce since her young age. Since the divorce, she was raised by her grandparents who appeared to provide limited guidance and supervision for her, although she identified being a very obedient child.*
>
> *27. Since the age of 15, she identified that she lived with her husband's family due to her distant relationship with her parents until they moved to Australia. Since then, she described being highly reliant on her husband regarding basic tasks, such as driving, paying the bills, financial matters, and general administrative tasks. It appeared that her husband had become a major attachment figure for her due to her inability to have such need met throughout her childhood. The relationship dynamic appeared to be evident in her unwillingness and lack of confidence in developing any independence from her husband or assume any major responsibilities other than childrearing. Her fear of her husband's potential gaol sentence had triggered exaggerated fears and hopelessness of being unable to care for herself and being alone without her husband. Prior to his arrest, she identified being well adjusted, which suggested that her dependency was not challenged. Since her husband's initial incarceration and the commencement of his criminal matter, she identified ongoing depressive and anxiety symptoms, which did not appear to be properly managed by common psychological intervention.*
>
> *28. On the DASS-42, she identified experiencing extremely severe depressive, anxiety, and stress-related symptoms, which indicated significant functional impairment and poor mental health.*
>
> *29. At the time of the assessment, HN presented with symptoms consistent with the following mental health disorder(s) according to the Diagnostic and Statistical Manual for Mental Disorders' Fifth Edition (DSM-5; American Psychological Association, 2013): Other Specified Trauma- and Stressor-Related Disorder (Adjustment-like disorders with ongoing stressor) 309.89 (F43.8)*
>
> *30. There appeared to be Cluster C personality vulnerabilities (anxious and fearful), specifically Dependent Personality traits, which appeared to exacerbate and perpetuate her anxiety and depressive symptoms. Although not necessarily meeting*

[28] G25, 162.

diagnostic threshold she presented with some traits which could be addressed with ongoing specialised psychological intervention.

31. Given her current mental state and vulnerabilities, she would likely struggle significantly should her husband receive a custodial sentence for his index offence. Her ongoing anxiety and depressive mood are likely to worsen should she separate from him at this moment. She had identified being highly reliant on him for major aspects of her life to the degree that she would not engage in anything without his presence, other than childrearing. She would require intensive psychological intervention prior to and a period of at least 2 months after his custodial sentence to support this transition.

61. The impact on the two children is considered more fully in the next section.

62. I also note that his wife provided sizeable security for bail ($460,000 bail security agreement with a $50,000 bail security deposit).[29]

63. The Tribunal must also consider the strength, nature and duration of any other ties the Applicant has to the Australian community, having regard to the length of time the non-citizen has resided in the Australian community.

64. The Applicant has a solid background in entrepreneurship (operating two cafes) and employment. He was able to find gainful employment for at least part of the time he was on bail, when he worked for a supermarket.[30]

65. I note that both the Applicant and the Respondent concede that this consideration weighs in favour of revoking the mandatory consideration.

66. I find that PC3 weighs in favour of revoking the mandatory cancellation decision.

Best interests of minor children in Australia affected by the decision (PC4)

67. The parties both agree that the best interests of the Applicant Australian born minor children, 10-year-old twins, favours revocation.

68. The Respondent contends:

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[29] RTB, 226-230.

[30] Payslips, G27, 166.

64. The applicant has two biological minor children of 10 years of age who are Australian citizens and who will be affected by a non-revocation decision. The applicant claims that he has maintained a close and loving relationship with his twin children, since their birth despite his period of incarceration (ASOFIC, [47]), and the Minister notes that the applicant can continue to do this through telephone and video calls if he was removed.

65. Critically, although the applicant claims that he has demonstrated his commitment to playing a positive parental role in his children's lives (ASOFIC, [49]), he has not been a positive role model noting his disregard for the law and his subsequent incarceration.

66. The respondent submits that the best interests of minor children in Australia who may be affected by the decision weigh in favour of revocation, but the nature of the relationship, as described in the evidence, is such that the weight should be moderated.

69. The ASFIC states:

46. Best Interests of Minor Children in Australia. The non-revocation of the applicant's visa cancellation under s 501CA is not in the best interests of his minor children, JK and OP. This assessment is guided by the principles outlined in cl 8.4 of the Direction regarding the best interests of children affected by such decisions.

47.The applicant has maintained a close and loving relationship with his twin children, JK and OP, since their birth…. Despite his period of incarceration, the applicant has sustained emotional and supportive contact through regular telephone and video calls.

48.The children's frequent inquiries about their father's return underline the depth of their bond and the emotional reliance they have on their father's presence.

49.The applicant has consistently demonstrated his commitment to playing a positive parental role in his children's lives. Despite the constraints imposed by his incarceration, he has actively engaged in their upbringing and emotional support.

50.Given that his children are only ten years old, the applicant's presence and guidance will be crucial for many more formative years, making his role irreplaceable in nurturing their development.

51.There is no evidence to suggest that the applicant's conduct has had a negative impact on his children. Instead, the existing evidence points to a positive influence, with his engagement and support providing a stable and loving environment for the twins.

52. The potential permanent separation from the applicant would have a detrimental effect on the twins, significantly impacting their emotional and psychological well-being. The children's emotional dependency on their father, coupled with their distress during his absence, highlights the likely severe impact of separation.

53. While HN plays a vital parental role, the twins' dependency on both parents is evident. The applicant's contributions to parenting are distinctive and cannot be entirely substituted, particularly considering HN's mental health challenges, which impair her capacity to shoulder parenting responsibilities alone.

54. Although there is no direct testimony from the children due to their age, their frequent expressions of missing their father and queries about his return indicate their desire for his presence and the distress caused by his absence.

55. There is no evidence to suggest that the children have been exposed to harm or abuse by the applicant. Conversely, the emotional support and stability he provides are vital for their well-being.

56. The best interests of JK and OP clearly favour revocation of the visa cancellation. The significant emotional and developmental risks posed by the applicant's potential permanent removal from Australia, combined with his established role as a supportive father and the lack of any detrimental impact from his past conduct, make a compelling case for revocation.

57. The adverse effects of separation on the children's well-being, their expressed need for their father, and the importance of his role in their lives must be primary considerations, leading to the conclusion that maintaining the applicant's presence in Australia aligns with the best interests of the children.

58. This primary consideration weighs in the applicant's favour.

70. In responding to paragraph [66] of the RSFIC, the Applicant notes:

> *17. The primary consideration of the best interests of minor children in Australia is forward-looking. Given there are many years before the applicant's children reach the age of majority, the applicant will be able to provide his children with strong emotional, financial, and practical assistance.*

71. There is abundant evidence before the Tribunal that the Applicant is a loving and supportive father and husband to his wife and twin children. The Applicant's wife stated in her letter of 22 May 2022:[31]

> *I am a housewife since we have the twins. My husband is the best husband and father in the world. He is a kind and warm-hearted man. He is respectful to everyone around him. He shows a strong sense of responsibility and reliability to our family. Although he was busy with running his business, he always prioritises his family and spends time with them as much as he can. He is a very hardworking man, trying his best to support the family by providing the best life for children and me.*

72. It is true that communication with his children may be possible if they remain in Australia while he is living in China. They may be able to visit occasionally. The lack of physical presence on a permanent basis would be a considerable hardship for the children. It is not in their best interests.

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[31] G21, 152.

73. I refer to the Applicant's representation to the Minister seeking revocation of the cancellation decision.

> *93. The reality of the Applicant's visa not revoked is that for the rest of his life or his children' lives, he cannot return to Australia regardless of the circumstances. The reality is that he will be forced to continue the relationship he has with his children by phone or videocalls unless they visit him in China. This knowledge has had an enormous impact on the Applicant and also his wife, as it would on any parents, and it's bought the realisation that this is not a request for a second chance for him but a request for the last opportunity his children will have to ensure that he is physically present in their lives.*
>
> *94. No ordinary person can accept that a telephone call or videocall can, in any meaningful way, substitute for nine-year-olds the physical presence and support of their father. Any relationship the Applicant will have with his children in their formative years by telephonic or electronic means will be of vastly different nature than the relationship they will have if the Applicant were to remain in Australia. The quality of that father/child relationship cannot be replicated by telephonic or electronic means.*
>
> *95. We submit that the Applicant's long-term separation from his children may also adversely affect the well-being of the children. The children are at a formative age, where the effect of long-term separation on their relationship would be profound on them and have a corrosive impact on their wellbeing and development. Hence, the potential impact on the children, who will essentially be separated from their father for many years, is considerable.*

74. It is hard to disagree with the assertion that the effect of long-term separation would be profound and have a corrosive impact on the children's wellbeing and development. Of course, this problem would not arise if the parents decided to move back to China as a family. It is hard to see how compelling such a choice, let alone acting on it, could be in the best interests of his Australian children.

75. As to his virtues as a role model, his wife gave evidence that the children were unaware of his criminal convictions. He said that he told them he was away working. Their perception of him as a father is not, at least at the present time, tainted by his conviction for money laundering.

76. I find that this consideration weighs strongly in favour of revoking the mandatory cancellation decision.

Expectations of the Australian community (PC5)

77. The Australian community expects non-citizens to obey Australian laws while in Australia. The Direction states:

> *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.*

78. The Applicant has engaged in serious conduct in breach of this expectation. Therefore, the Australian community, *as a norm*, expects the Government to not allow him to remain in Australia.

79. Importantly, the Direction states that 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.

80. The Tribunal need not concern itself with whether the Australian community as a whole might view the Applicant with sympathy or compassion, because of some special features of the offending, or the subjective characteristics of the Applicant. This might for example arise in the context of, say, the killing of an abuser, or an act of unsanctioned euthanasia, or the infliction of lethal force in defence of a dwelling, or a breach of the law by a person suffering a mental or psychological disability. In other words, the Tribunal does not attempt to ascertain community reaction in a specific case.

81. If there is simply nothing in the materials before the Tribunal that favours revocation, then no doubt PC5 may be decisive. But in most cases before the Tribunal, including the present case, it is necessary to weigh and balance the various considerations, considering them as a totality before reaching a conclusion.[32] PC5 does not crowd out or exclude other relevant considerations.

82. The weight ascribed to the norm described in 8.5(1) in the overall circumstances of the case is a matter for the Tribunal. Because PC5 expresses a norm and not an inflexible rule, the principle relating to a 'higher level of tolerance' contained in para 5.2(5) continues to apply. However, in this context, the Applicant gains little from this principle. He neither lived in this country for most of his life, nor from a very young age.

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[32] *CRNL v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCAFC 138 [28] (Colvin, Stewart and Jackson JJ).

83. The expectations of the Australian community, as defined by the Australian government, favour not revoking the mandatory cancellation decision.

OTHER CONSIDERATIONS

84. The ASFIC states:

> *68. Legal consequences of the decision. In this case, the legal consequences of an adverse decision are as follows:*
>
> - *Permanent exclusion from Australia, generally forever.*
> - *Continuing immigration detention until such time that the applicant is removed from Australia.*
> - *The inability to apply for almost all visas in Australia (not including a protection visa).*
>
> *69. These are serious legal consequences. This other consideration weighs in the applicant's favour. See Miller and Minister for Immigration, Citizenship and Multicultural Affairs [2024] AATA 175 [132].*

85. The RSFIC states:

> *72. The applicant submits that a legal consequence of the decision under review being affirmed is that the applicant will continue to be detained in immigration detention until he is removed from Australia. The Minister accepts that the applicant will continue to be detained until he is removed or is granted another visa, however, any period of detention will not be indefinite: NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs [2023] HCA 37. The applicant has not indicated that he intends to apply for a protection visa, and the Minister accepts that the applicant is unlikely to be granted another visa.*
>
> *73. The legal consequence neither weighs for nor against revocation particularly in circumstances where no non-refoulement claims have been raised.*

86. The Applicant contends:

> *20. The Minister says that the legal consequence neither weighs for nor against revocation particularly in circumstances where no non-refoulement claims have been raised (MS[73]). The applicant disagrees with the Minister's submission for several reasons.*
>
> *21. The fundamental issue is straightforward: if the decision to not revoke the visa cancellation stands, the applicant will be subjected to prolonged immigration detention. A non-revocation decision will result in the applicant remaining in immigration detention indefinitely, as there is no specified timeline for removal from Australia. This prolonged detention infringes on the applicant's fundamental right to personal liberty.*
>
> *22. Extended periods of detention can have severe adverse effects on an individual's mental and physical health. The stress and uncertainty associated with indefinite detention can lead to anxiety, depression, and other mental health issues.*

Additionally, the lack of freedom and the restrictive conditions of detention facilities can deteriorate the applicant's overall well-being.

87. I cannot agree with the premise of the Applicant's reasoning. It is by no means clear that the Applicant will remain in immigration detention indefinitely. He may simply request to be removed, thus bringing his detention to an end. Even if he chooses to apply for a protection visa, there is no basis for the Tribunal to find that his detention will be indefinite. It may be prolonged, tardy and burdensome, but there is no material before the Tribunal to justify a finding that the timeline for his removal in the event of an unsuccessful application for a protection visa will have no fixed dates.

88. I accept that he will suffer the consequences outlined in paragraph 68 of the ASFIC, and that his prospects of returning to Australia are vanishingly small.

Extent of impediments if removed (OC2)

89. The Direction states that the Tribunal must consider the extent of any impediments that the noncitizen 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, the non-citizen's age and health; whether there are substantial language or cultural barriers; and any social, medical and/or economic support available to them in that country.

90. The RSFIC states:

75. The word "health" in paragraph 9.2(1) of the Direction is understood to mean any aspect of a person's physical wellbeing and includes "the overall state of a person's fitness and condition, including underlying health issues and ongoing effects of any past injury".

76. The applicant is relatively young (41 years of age) and, having spent his formative years in China, is unlikely to face any substantial language or cultural barriers if returned. Further, if the applicant returned to China he would have the support of his parents (ASOFIC, [76]).

77. The Minister notes that it was the opinion of Dr Emily Kwok (Clinical and Forensic Psychologist) that the applicant's symptoms meet the criteria for Adjustment Disorder with depressed mood and that he also has an underlying anxiety about being deported to China, which contributes to his suicidal thoughts. However, Dr Kwok has assessed that the symptoms of Adjustment Disorder will cease within six months of the stressors being removed (A1.3, Psychologists report, [50]-[52]). There is no evidence the applicant would not have access to health services, treatment and welfare services in China commensurate with those available to other Chinese citizens in his situation.

78. This Other Consideration weighs only slightly in favour of revocation of the visa cancellation decision.

91. The ASFIC states:

23. The Minister contends as follows (MS[75]):

The word "health" in paragraph 9.2(1) of the Direction is understood to mean any aspect of a person's physical wellbeing and includes "the overall state of a person's fitness and condition, including underlying health issues and ongoing effects of any past injury"

24. The Minister contends that 'Dr Kwok has assessed that the symptoms of Adjustment Disorder will cease within six months of the stressors being removed' (MS[77]). The Minister's submission failed to mention the next sentence of Dr Kwok's report: 'That is, KSPJ's psychological symptoms will decrease over time if he is released from detention and reunites with his family' (ATB Pt3, 10[52]). If the applicant is deported, plainly, he will not be reunited with his wife and two children.

25. The Minister next submits (MS[77]):

There is no evidence the applicant would not have access to health services, treatment and welfare services in China commensurate with those available to other Chinese citizens in his situation.

26. That is just wrong. See the ATB Pt1.

92. The Applicant has a mother and father in China.

93. The Applicant said that they were both over 70 and getting old. He thought they could help him financially but that his criminal history would affect him getting work. He said that because of the time spent abroad he had no friends or social connections in China.

94. In terms of his family accompanying him to China, he did not think that was possible. He said that because they were Australian citizens, they would not be entitled to the same services in China. His children would not be able to go to school there.[33] They would have to stay in Australia and "so I probably wouldn't see them again".

95. I also note that there is a lack of closeness between the Applicant's wife and her mother and father, resulting from her parent's separation when she was just a child, and the difficulties she experienced with her stepmother in her father's household. She did not want to go back to China.

[33] There is no corroborative evidence of this claim before the Tribunal.

96. He said that if he had to go back to China the second half of his life would be "totally destroyed". He said, "If I went to China, I would not have courage to live anymore".

97. He also referred to the difficulty he would have in obtaining employment in China. The Respondent's representative asked whether that would apply equally in Australia. He did not agree, saying that he had the possibility of employment as soon as he was released.

98. The Tribunal has received credible evidence as to the pressing difficulties that those with criminal convictions face, arising from the all-pervasive system for monitoring antisocial or criminal behaviour.[34] The criminal records system, known as the Qianke system, forms part of this administrative oversight of Chinese residents. Any deliberate concealment, especially when applying for employment, may constitute a serious misdemeanour. In my view, any intimation that the Applicant could or should knowingly conceal his conviction from the Chinese authorities undermines the integrity of this Tribunal and is not to be seriously entertained.

99. Overall, I am satisfied that the extent of impediments that he may face in establishing himself and maintaining basic living standards is likely to be extreme. The Applicant has a key role as financial provider and father in his Australian family. Performing that role from China will be challenging. It may well lead to a psychological breakdown. This consideration weighs heavily in favour of revoking the mandatory cancellation decision.

CONCLUSION

100. The relevant primary considerations in this case involve the protection of the Australian Community (PC1); the strength, nature, and duration of ties to Australia (PC3); the best interests of minor children in Australia affected by the decision (PC4); and the expectations of the Australian community (PC5).

101. The 'other' relevant considerations relate to the legal consequences of decision under section 501 or 501CA (OC1), and the extent of impediments if removed (OC2).

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[34] See Professor Enshen Li. 'The Qianke System in China: Disorganisation, Discrimination and Disruption' Criminology & Criminal Justice, 2023, Vol. 23(4) 568–587.

102. I note that there is some evidence of family discord which led to the grant of an apprehended violence order, but the Respondent conceded that there was insufficient evidence to justify any adverse findings in respect of family violence (PC2). The delegate found no evidence that the Applicant has engaged in conduct that constitutes family violence as defined in the Direction. I agree with this finding.

103. There is no relevant information before the Tribunal relating to the impact on victims (OC3) and business interests (OC4).

104. The delegate found:

> *CONCLUSION*
>
> *94. I have considered whether there is another reason why the decision to cancel Mr KSPJ's visa should be revoked, as I am not satisfied that he passes the character test. My findings are as follows.*
>
> *95. I have found that the best interests of KSPJ's minor children, as a primary consideration, weigh heavily in favour of revocation of the cancellation of KSPJ's visa.*
>
> *96. I have also found that KSPJ's ties to Australia, as a primary consideration, weigh moderately in favour of revocation, noting in particular that his spouse and children are Australian citizens who may choose to remain in Australia, even if he is removed.*
>
> *97. In addition, I have found that a number of other factors also weigh in favour of a decision to revoke. These include his remorse, insight into the offending and the assistance Mr KSPJ provided to law enforcement, as stated above.*
>
> *98. However I have also given significant weight to the serious nature of money laundering crimes because of the broader financial implications for society and criminality.*
>
> *99. Furthermore, I have considered that the Australian community, as a norm, expects the Government not to allow non-citizens who have engaged in money laundering schemes in any capacity, to enter or remain in Australia. I give this primary consideration significant weight as well against revocation of the visa cancellation.*
>
> *100. Noting that Mr KSPJ engaged as a cash collector in a money laundering scheme, I am also mindful of the principle stated in the Direction that the inherent nature of this kind of conduct is so serious that even strong countervailing considerations may be insufficient in some circumstances, even if the non-citizen does not pose a measureable risk of causing physical harm to the Australian community.*
>
> *101. On balance, I find that the factors that weigh against revocation of the cancellation decision outweigh the factors in favour of revocation. Therefore, I am not satisfied that there is another reason why the decision to cancel KSPJ's Class*

BB Subclass 155 Five Year Resident Return visa should be revoked. It follows that the condition under s501CA(4)(b)(ii) of the Act is not met.[35]

105. I do not agree with this conclusion. In my view it is an understatement that the Applicant's ties to the Australian community weigh only 'moderately' in his favour. The Applicant and his wife arrived in Australia in October 2006 after living for four years in Malta. They have made this country their home and his wife and two children are Australian citizens. They have lived here for almost 18 years, own two residential properties,[36] and have a record of employment in this country. His criminal offending during 2020 is a solitary blemish on his character.

106. I find that the protection of the Australian Community (PC1) and the expectations of the Australian community (PC5) weigh against revoking the mandatory cancellation decision. However, all other relevant considerations weigh in favour of revoking that decision. The weight to be accorded to the Applicant's ties to the Australian community, and the best interests of minor children, is substantial. The extent of impediments that the Applicant may face if removed to China are grave.

107. A distinctive feature of this case is the degree of inter-dependence between the Applicant and his wife. This is especially true of his wife. She has been with the Applicant since she was 15 years old and is very dependent on him. As a single mother in Australia with two children to raise she will face numerous challenges, not least being her poor grasp of English. The interests of the two Australian children are a powerful consideration in this case.

108. Despite the serious nature of the Applicant's offending, and the expectations of the Australian community, as determined by the Australian government, that non-citizens who break the law should not hold a visa, the overwhelming weight of relevant considerations point inexorably to the revocation of the cancellation decision.

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[35] G5, 39.

[36] Bank details: RTB, 368.

DECISION

109. The decision of the Tribunal, pursuant to section 43 of the *Administrative Appeals Tribunal Act 1975* (Cth), is that the reviewable decision is set aside; and in substitution, the cancellation of the Applicant's visa under subsection 501(3A) of the Migration Act is revoked under subsection 501CA(4) of the Migration Act.

I certify that the preceding 109 (one hundred and nine) paragraphs are a true copy of the reasons for the decision herein of Emeritus Professor P A Fairall, Senior Member

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

Associate

Dated: 20 June 2024

Date(s) of hearing:	**4 June 2024**
Counsel for the Applicant:	**Dr J. Donnelly**
Solicitors for the Applicant:	**Mr J. Li, Floraison Legal**
Counsel for the Respondent:	**Mr T. Reilly**
Solicitors for the Respondent:	**Ms J. Schultz, Mills Oakley**