



Administrative
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Bulletin

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The *AAT Bulletin* is a fortnightly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes a sample of decisions recently published in the AAT's Migration & Refugee Division and Social Services & Child Support Division. It occasionally includes information on legislative changes that affect the AAT.

It is recommended that the Bulletin be read online. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

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AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Bankruptcy

[Jack and Inspector-General in Bankruptcy](#) [2022] AATA 2908 (8 September 2022); S Boyle, Deputy President

BANKRUPTCY – s 149N of the Bankruptcy Act 1966 (Cth) – trustee's objection to discharge – special ground of objection – whether there is sufficient evidence to support the special ground – whether Applicant failed to provide any reasonable excuse for conduct constituting special ground – Applicant's salary paid into wife's account – house owned by Applicant's wife – Applicant's income paid into wife's account used to repay mortgage over property – Applicant's lack of bank account not a reasonable excuse – prohibition under s 149N(1A) of the Bankruptcy Act applies – reviewable decision affirmed

Child Support

[Honarth and Honarth](#) (Child support) [2022] AATA 2370 (16 June 2022); J Thomson, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – decision under review affirmed

[Feacham and Belaby](#) (Child support) [2022] AATA 2367 (22 June 2022); M Baulch, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – decision under review set aside and substituted

[Monagahn and Monagahn](#) (Child support) [2022] AATA 3064 (15 June 2022); E Kidston, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – refusal to revoke the existing percentage of care determinations – date of effect provisions – whether there were special circumstances that prevented the objection being lodged in time – special circumstances exist – decisions under review affirmed

[McLennan and Calladine](#) (Child support) [2022] AATA 3063 (5 July 2022); C Breheny, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – a ground for departure established – decision to depart – decision under review set aside and substituted

Citizenship

[Haidari and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 2904 (9 September 2022); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether Applicant is a person of good character pursuant to paragraph 21(3)(f) of the Australian Citizenship Act 2007 (Cth) – Australian Citizenship [Policy Statement] – Citizenship Procedural Instruction 2 – Citizenship Procedural Instruction 15 – decision set aside and remitted

[Kassem and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 2855 (1 September 2022); B W Rayment OAM QC, Deputy President

CITIZENSHIP – where approval of citizenship has been cancelled – where applicant’s visa has also been cancelled – relevant law and material considered – decision under review affirmed

[Kuk and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 2905 (9 September 2022); A Poljak, Senior Member

CITIZENSHIP – resumption of citizenship – where the applicant ceased being an Australian citizen – whether applicant is a person of good character at the time of decision – relevant law and policy considered – relevant material considered – decision under review affirmed

[Ngechu and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 2977 (13 September 2022); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – refusal – good character requirement – social security offences – traffic offence – prescribed content alcohol (PCA) – effluxion of time – failure to disclose – decision under review set aside and remitted

Compensation

[Lovell and K & S Freighters Pty Limited](#) (Compensation) [2022] AATA 2867 (2 September 2022); A Ward, Member

COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 – Whether the Respondent is to pay compensation pursuant to sections 14, 16 and 19 of the SRC Act – Applicant’s injury being a right shoulder injury bursitis – decision under review is affirmed – Witness credit and credibility – corroborative witnesses – proofing witnesses together – evidence of a witness’s behaviour in giving evidence – necessity to cover off every allegation made in reasons

[Rohani and Comcare](#) (Compensation) [2022] AATA 2859 (1 September 2022); R Cameron, Senior Member

COMPENSATION – two applications – issues for determination – whether condition outside the boundaries of normal mental functioning and behaviour – whether condition contributed to by employment – whether condition resulted from reasonable administrative action – whether condition suffered is permanent – if permanent, to what degree – deployment to Nauru – working as a translator – deployment on 12 January 2018 – found to be reasonable action – decision affirmed

[Simeoni and Comcare](#) (Compensation) [2022] AATA 2856 (1 September 2022); B W Rayment OAM QC, Deputy President

COMPENSATION – whether the Applicant is entitled to compensation under the Safety, Rehabilitation and Compensation Act 1988 (Cth) (the Act) – preliminary jurisdictional question concerning the operation of the Act and the Compensation (Commonwealth Government Employees) Act 1971 (Cth) – relevant law and material considered – decisions under review set aside and substituted

Customs

[One Stop Pallet Racking Pty Ltd and Comptroller-General of Customs](#) [2022] AATA 2881 (7 September 2022); A Poljak, Senior Member

CUSTOMS – decision to reject the applicant's application for refund of duties paid in respect of steel pallet racking (subject goods) – whether the subject goods meet certain definitional criteria for the purposes of administering customs and anti-dumping measures – interpretation of terms – subject goods found to fall within the relevant scope – decision under review affirmed

Education and Research

[Helping Hugs Family Day Care Pty. Ltd. and Secretary, Department of Education](#) [2022] AATA 2895 (6 September 2022); Ms A E Burke AO, Member

CHILD CARE – family assistance law – child-care benefit – cancellation of approval as an approved child care service – breach of conditions of provider approval – child swapping – claiming sessions of care for children 14 years older or at secondary school – overseas educators – overseas children – late reporting and enrolments – overlapping sessions – absences before and after care – exceeding educator to child ratios – appropriate sanction – decision set aside

Industrial Law

[Dooley and Secretary, Attorney-General's Department](#) [2022] AATA 3027 (15 September 2022); Emeritus Professor P A Fairall, Senior Member

Redundancy payment – employee termination by insolvency – governing instrument – enterprise agreement – separate agreements governing rates of redundancy pay – so-called Grand Chapel Agreement - whether consistent with existing enterprise agreement – governing instrument found to be enterprise agreement, subject to Grand Chapel Agreement – decision under review set aside and remitted

Migration

[Byron and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 2906 (9 September 2022); P Britten-Jones, Deputy President

MIGRATION – cancellation of applicant’s visa on character grounds under s 501(2) of the Migration Act 1958 (Cth) – applicant came to Australia with his family when 8 years old - applicant committed murder in 1986 and was sentenced to life imprisonment – applicant has been in the community for 10 years having been released from prison on parole – applicant does not pass the character test - whether discretion to cancel the visa should be exercised – primary considerations – no measurable risk of reoffending – other considerations – links to the Australian community are very strong – decision under review set aside

[CGDZ and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 2888 (4 August 2022); A G Melick AO SC, Deputy President

MIGRATION – Non-revocation of mandatory cancellation of a Class BB Subclass 155 (Five Year Resident Return) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – family violence – decision under review affirmed

[Fuamatu and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2886 (7 September 2022); M Griffin QC, Senior Member

MIGRATION – mandatory cancellation of visa – TY Subclass 444 Special Category visa – where visa was cancelled under s 501CA(4) because applicant did not pass character test – criminal record – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – family violence – best interests of minor children in Australia – expectations of the Australian community – other considerations – extent of impediments if removed – impact on victims – links to the Australian community – the strength, nature and duration of ties to Australia – special consideration – mandatory cancellation of visa is revoked

[HHKR and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3032 (14 September 2022); D J Morris, Senior Member

MIGRATION – applicant is entitled to citizenship of South Sudan – applicant held refugee and humanitarian (woman at risk) visa – visa cancelled – delegate decided not to revoke cancellation – application to Tribunal – whether applicant fails character test – applicant fails character test because of substantial criminal record – ministerial direction – primary considerations – serious offending but committed at young age – other considerations – significant impediments face applicant if deported to South Sudan – decision under review set aside and decision substituted that the mandatory cancellation of the visa be revoked

[Jiang and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 3023 (15 September 2022); Dr L Kirk, Senior Member

MIGRATION – refusal to grant visa under s 501(1) of Migration Act 1958 (Cth) – Applicant doesn't pass the character test – whether Tribunal should exercise discretion to refuse to grant the visa – Direction 90 – nature and seriousness of offending – risk of reoffending – best interests of minor children – expectations of Australian community – links to the Australian community – where visa applicant is off-shore – decision set aside and remitted

[JZQQ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2998 (29 August 2022); C J Furnell, Senior Member

MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa – Migration Act 1958 (Cth) ss 501(3A) and 501CA – New Zealand – Applicant does not pass character test – substantial criminal record – whether there is another reason why mandatory cancellation should be revoked – Direction 90 – primary and other considerations – decision under review affirmed

[King and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2907 (2 August 2022); The Hon. D Cowdroy AO QC, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 90 – protection of the Australian community – nature and seriousness of offending conduct – risk of reoffending – family violence – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – impediments to removal – impact on victims – decision under review affirmed

[McQuade and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)v (Migration) [2022] AATA 2857 (29 August 2022); M Griffin QC, Senior Member

MIGRATION – mandatory cancellation of visa – Class BC Subclass 100 Partner (Migrant) visa – where visa was cancelled pursuant to s 501(2) because applicant failed to pass character test – substantial criminal record - Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – family violence – best interests of minor children in Australia – expectations of the Australian community – other considerations – extent of impediments if removed – emotional effects – impact on victims – links to the Australian community – the strength, nature and duration of ties to Australia – decision set aside and substituted

[Moananu and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2869 (9 August 2022); Mr S Evans, Member

MIGRATION – visa cancellation under subsection 501(3A) of the Migration Act 1958 (Cth) – cancellation not revoked under subsection 501CA(4) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – issue: is there another reason why the visa cancellation should be revoked – best interests of minor children – family violence – Direction no. 90 considered – decision under review affirmed

Musumeci and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2022] AATA 2885 (2 September 2022); J Sosso, Deputy President

MIGRATION – cancellation of visa – where Applicant does not pass the character test – carnal knowledge of a child – family violence – whether the discretion in section 501(1) should be exercised – consideration of Ministerial Direction No. 90 – decision under review set aside and substituted

Nguyen and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022] AATA 2887 (7 September 2022); A Nikolic AM CSC, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of Vietnam – Class BS Subclass 801 Partner (Residence) Visa – failure to pass good character test – minor role in single offence – cultivate cannabis – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 90 applied – decision set aside

NRWQ and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022] AATA 2879 (24 August 2022); P Britten-Jones, Deputy President

MIGRATION – refusal to grant visa on character grounds – whether discretion to refuse to grant a visa should be exercised – applicant committed serious family violence offences - primary considerations of family violence conduct, protection and expectations of the Australian community weigh in favour of refusal – best interests of minor children and links to Australian community weigh in favour of granting visa – decision under review affirmed

Phan and Minister for Immigration, Citizenship, and Multicultural Affairs (Migration) [2022] AATA 2894 (22 July 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – applicant, now 62, convicted in 2016 of very serious offence of heroin sale dating from 2007 – not an isolated transaction – primary considerations – strong anti-social offending – applicant not a mere courier but had operated at the upper end of supply chain – other considerations – lengthy ties to Australian community – old offending followed by crime-free life – offending very serious and decision under review affirmed

RSCD and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022] AATA 2873 (4 August 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – applicant guilty of uncharacteristic outburst of extreme violence towards wife – serious assault punished by lengthy term of imprisonment – genuine remorse – all primary considerations pointing to affirming decision under review – other considerations – unusual psychological background to offending – not normal case of family violence – commitment to obtaining appropriate treatment – decision set aside in highly unusual circumstances

[Saruhyan and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3070 (16 September 2022); A Nikolic AM CSC, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of Uzbekistan – Class BC Subclass 100 Spouse visa – failure to pass good character test – substantial criminal record – lengthy offending – drug addictions – non-refoulement obligations – whether another reason to revoke the mandatory cancellation – Ministerial Direction No. 90 applied – decision affirmed

[SGQV and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3071 (16 September 2022); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – whether there is ‘another reason’ to revoke mandatory cancellation decision – applicant has schizophrenia and a mental disability and would face significant impediments and serious risk of harm if removed to Somalia – the likely consequence of cancellation is further or indefinite detention which will cause his mental condition to deteriorate – the primary considerations of the protection and expectations of the Australian community are outweighed by the countervailing considerations – the decision under review is set aside and substituted with a decision revoking the cancellation of the applicant’s visa

[Taylor and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2889 (31 August 2022); S Boyle, Deputy President

MIGRATION – Migration Act s 501CA(4) – decision of delegate of Minister not to revoke cancellation of applicant’s visa – whether there is “another reason” to revoke cancellation of applicant’s visa – index offence is aggravated burglary and commit offence – substantial and serious criminal history – applicant shows symptoms of post-traumatic stress disorder and attention deficit hyperactivity disorder – high likelihood of the applicant re-offending – impact on victims of a decision under s 501CA where victim of family violence supports revocation of cancellation – family violence – definition of family member – there is not another reason to revoke cancellation of applicant’s visa – affirmed

[Trinh and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2876 (30 August 2022); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – repeated offending of shoplifting and other less serious crimes over a 25 year period – criminal offending linked to applicant’s drug addiction which is now overcome - whether discretion to revoke mandatory cancellation should be exercised – the applicant and her family came to Australia in 1975 – the decision under review is set aside and substituted by a decision revoking the cancellation of her visa

[Uysal and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2871 (2 September 2022); K Raif, Senior Member

MIGRATION – refusal to grant a Class BB Subclass 155 Resident Return – where visa was refused under s 501(1) because applicant did not pass character test – substantial criminal record – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – expectations of the Australian community – other considerations – international non-refoulement obligations – extent of impediments if removed – links to the Australian community – the strength, nature and duration of ties to Australia – refusal of visa is revoked – decision under review set aside

[VPWH and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 3024 (14 September 2022); The Hon. D Cowdroy AO KC, Deputy President

MIGRATION – refusal to grant visa on character grounds – whether the applicant passes the character test – where applicant has a sentence of imprisonment of twelve months or greater – Direction No. 90 considered – where risk of reoffending is low – where offending is very serious – domestic violence – best interests of minor children – where applicant is owed protection obligations – indefinite detention considered – where applicant has links to Australian community through family – where applicant faces indefinite detention – decision set aside and remitted

[WKJD and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 2997 (19 August 2022); A George, Senior Member

MIGRATION – Refusal of a Safe Haven Enterprise (Class XE) visa – where Applicant does not pass the character test – consideration of Ministerial Direction No. 90 – offending very serious – decision under review affirmed

[WWXF and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2868 (6 September 2022); K Raif, Senior Member

MIGRATION – refusal to grant a Temporary (Partner) Class UK visa – where visa was refused under s 501(1) because applicant did not pass character test – substantial criminal record – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – expectations of the Australian community – other considerations – international non-refoulement obligations - extent of impediments if removed – links to the Australian community – the strength, nature and duration of ties to Australia – refusal of visa is affirmed – decision under review affirmed

[YFLK and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2891 (25 August 2022); The Hon. D Cowdroy AO QC, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 90 – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – expectations of the Australian community – strength, nature and duration of ties to Australia – impediments to removal – decision affirmed

[You and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3022 (15 September 2022); J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class BB Subclass 155 Resident Return visa) under section 501(3A)- where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 90 – consideration of best interests of minor children – consideration of ties to the Australian community- decision under review is set aside and substituted with a decision that the cancellation of the Applicant’s visa is revoked

[YXLM and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3002 (13 September 2022); S Webb, Member

MIGRATION – protection visa – character test – contested ground – risk visa applicant would engage in criminal conduct – past criminal conduct – mental illness – effect of prolonged detention – more than a remote risk – visa applicant fails character test – jurisdiction and power to consider other character test grounds – procedural fairness – requirement for notice – jurisdiction and power to consider grounds that were before the primary decision-maker – offence committed in immigration detention – discretion to refuse protection visa enlivened – Ministerial Direction No. 90 – primary and other relevant considerations – protection of Australian community from criminal or other serious conduct – expectations of the Australian community – non-refoulement obligations – legal consequence of decision a relevant consideration – adverse effect of indefinite detention on mental health condition – impediments to removal – strength of links to Australian community – balance of considerations weigh against exercise of discretion to refuse to grant a visa – decision set aside and remitted

[ZXXZ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2910 (7 September 2022); J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class XB Subclass 204 Woman at risk visa under section 501CA(4) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 90 – consideration of “family” violence – consideration of possibility of indefinite detention – decision under review is affirmed

[PHAM](#) (Migration) [2022] AATA 2903 (5 July 2022); M Edgoose, Member

MIGRATION – Partner (Resident) (Class BS) visa – Subclass 801 (Spouse) – relationship ceased – family violence claims – non-judicially determined claim – invalid statutory declaration – applicant departed Australia before claimed statutory declaration – family violence claim not established – decision under review affirmed

[Soerensen](#) (Migration) [2022] AATA 2694 (1 August 2022); W Shum, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Australian study requirement satisfied within 6 months before visa application made – academic requirements completed before application made but certificate of completion issued after – administrative delay in processing results and issuing certificate – previous visa close to expiring – decision under review remitted

[Singh](#) (Migration) [2022] AATA 2745 (4 August 2022); M Biviano, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – incorrect information provided in visa application and entry interview – previous visa refusal for third country not declared – discretion to cancel visa – non-compliance and responsibility conceded – application prepared and lodged by agent in home country – applicant informed agent of refusal and agent omitted it by mistake – misunderstanding of question in entry interview – otherwise assessed as genuine student and visa may have been granted in any case – continuing high-level study and some work – payment of significant tuition fees – decision under review set aside

[Mohiuddin](#) (Migration) [2022] AATA 2746 (10 August 2022); D McCulloch, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – incorrect information and bogus document given with visa application – course studied and certificate of completion – course provider’s registration suspended – prohibited from enrolling students and issuing certificates – updated authenticated transcript shows course completed and certificate issued after registration reinstated – conflicting probative evidence from different government authorities – favouring of information which supports applicant’s claims and no satisfaction that information was incorrect or document was bogus – decision made without hearing necessary – decision under review set aside

[Yu](#) (Migration) [2022] AATA 2730 (22 August 2022); M Ison, Senior Member

MIGRATION – Student (Temporary) (Class TU) (Subclass 500) visa – refusal of visa application on basis that the visa applicant did not meet the criteria in cl 500.217(1) – whether applicant satisfies PIC 4003(b) – PhD research student – PIC 4003(b) determination made – request to DFAT to review and revoke PIC 4003(b) determination – DFAT determination upheld and was not revoked – appeal to the Federal Circuit and Family Court of Australia – PIC 4003(b) determination quashed – remitted for reconsideration with direction

National Disability Insurance Scheme

[Farman and National Disability Insurance Agency](#) [2022] AATA 2880 (2 September 2022); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – review of decision to approve statement of participant supports – Applicant with hearing impairment requested additional funding for hardwired visual and vibrating alerting system (Visualert System) and motion-activated security camera system – conflict of issue – lead occupational therapist (OT) married to sole shareholder of the sole Australian distributor of the recommended specific visual and vibrating alerting product – evidence of treating OT found not to be impartial – evidence of independent OT engaged by NDIA preferred – Tribunal not satisfied hardwired Visualert System met “value for money” criterion and should not be included in participant’s statement of participant supports – Tribunal satisfied additional funding to allow Applicant to enhance and update her current visual and vibrating alerting system meets “reasonable and necessary supports” criteria – Tribunal satisfied motion-activated security camera system meets “reasonable and necessary supports” criteria and should be included in participant’s statement of supports – decision under review set aside and remitted with directions

[Green and National Disability Insurance Agency](#) [2022] AATA 2872 (2 September 2022); I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – review of statement of participant supports – reasonable and necessary supports – request for assistance – with household tasks – house and yard maintenance – decision varied

[SZWV and National Disability Insurance Agency](#) [2022] AATA 2973 (12 September 2022); I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – review of statement of participant supports – reasonable and necessary supports – applicant sought review of statement of participant supports – request for funding for a Mollii Suit – decision set aside

Practice and Procedure

[Bradley and National Disability Insurance Agency](#) [2022] AATA 2884 (7 September 2022); K Buxton, Senior Member

PRACTICE AND PROCEDURE – implied undertaking – where release from the implied undertaking is to assess the Applicant’s entitlements under the NDIS Act – where documents are produced under compulsion – where Applicant opposed release from the implied undertaking – release from the implied undertaking denied

[Bhupendra and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2874 (5 September 2022); T Tavoularis, Senior Member

MIGRATION – Practice and Procedure – application for review of non-revocation decision under section 501CA(4) of the Migration Act 1958 (Cth) – interlocutory hearing – where application filed out of time – whether there is power to extend the time for the making of an application for review – where time period is absolute pursuant to s 500(6B) of the Migration Act 1958 (Cth) – application dismissed

[GDHF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 2896 (24 August 2022); Ms A E Burke AO, Member

PRACTICE AND PROCEDURE – extension of time – delay of almost two year in lodging application – whether reasonable excuse for delay – reasonable excuse for extensive delay – whether prejudice would be incurred by respondent and public by allowing extension of time – where prospects of success were not fanciful – reasonable in all the circumstances to allow extension of time

[Inas Karem Holdings Pty Ltd and Secretary, Department of Health and Aged Care](#) [2022] AATA 2883 (7 September 2022); A Poljak, Senior Member

PRACTICE AND PROCEDURE – extension of time application – where the applicant contends that their application was not made out of time – statutory interpretation – service of documents – service by post – application found to be out of time – extension of time granted

Professions and Trades

[Kenjad Pty Ltd as Trustee for the Kenjad Trust and Secretary, Department of Social Services](#) [2022] AATA 2999 (14 September 2022); J C Kelly, Senior Member

National Rental Affordability Scheme – breach of NRAS Regulations – decision affirmed

Refugee

[1936108](#) (Refugee) [2022] AATA 2770 (27 June 2022); N Lamont, Member

REFUGEE – protection visa – Pakistan – particular social group – female social workers – work with minority groups – targeted by Jamat-Ud-Dawa members – similar claims to brother’s application – credibility issues – inconsistencies and discrepancies down to nerves and fear – decision under review remitted

[1714768](#) (Refugee) [2022] AATA 2611 (18 May 2022); J Henderson, Member

REFUGEE – protection visa – Zimbabwe – membership of particular social group – young single white woman with particular vulnerabilities – chronic medical condition – relatively minor incidents to applicant and assault of mother in home – no support network, limited opportunities for work and likely economic hardship – consistent and credible claims and evidence – country information – inadequate medical services, gender-based violence and police inaction – decision under review remitted

[1715205](#) (Refugee) [2022] AATA 2773 (15 June 2022); A Paxton, Member

REFUGEE – protection visa – Sri Lanka – imputed political opinion – imputed with an LTTE political profile – race – male of Tamil ethnicity – a Tamil male from the north of Sri Lanka – membership of the particular social groups – failed asylum seeker/returnee from the West – people who have fled Sri Lanka illegally – applicant does not have an LTTE profile or any profile such as to attract attention of the authorities – decision under review affirmed

[1809941](#) (Refugee) [2022] AATA 2769 (15 June 2022); N Burns, Member

REFUGEE – protection visa – Sri Lanka – Federal Court remittal – ethnicity and imputed political decision – Tamil imputed with involvement with LTTE – relative with links to another Tamil political party killed – applicant last to see him alive and accused of killing him or knowing who did – detained, interrogated and tortured – continued harassment of applicant until departure and family since – participation in protests and commemorations in Australia not for sole reason of strengthening claims – detailed, consistent and credible evidence – country information – economic and political conditions – decision under review remitted

[2014131](#) (Refugee) [2022] AATA 2622 (15 June 2022); M Sripathy, Member

REFUGEE – cancellation – protection visa – Iran – Federal Court remittal – incorrect information provided in protection visa application – citizenship and fear of harm – not stateless but Iranian citizen – passports and voluntary returns after protection visa granted – late concession of non-compliance – mental health – cancellation of husband’s protection visa set aside on review – members of family unit – consequential cancellation of older child’s protection visa – younger child an Australian citizen – best interests of children as primary consideration – language, education and activities – non-refoulement obligations at time of potential removal – protection finding not quashed or set aside – possibility of prolonged detention – decision made without hearing necessary – decision under review set aside

[1703449](#) (Refugee) [2022] AATA 2617 (23 June 2022); G Cullen, Member

REFUGEE – protection visa – Bangladesh – political opinion – member and local official of opposition political party – attack and threats to applicant and family members, and business ransacked – living in hiding – arrest warrants issued – ongoing party membership and activities in Australia – credibility – inconsistent claims and evidence – delay in departing after visitor visa granted – authenticity of supporting documentation – country information – members of family unit – decision under review remitted

[2007632](#) (Refugee) [2022] AATA 2619 (24 June 2022); S Clarey, Member

REFUGEE – Protection Visa – Cambodia – ethnically Teochao-Chinese – religion – Buddhist faith – political opinion – active supporter of the SRP – ongoing support of the Cambodian National Rescue Party and Sam Rainsy – young Australian citizen children with special needs – married to a foreign female divorcee – applicant has a well-founded fear of persecution – decision under review remitted

[2017621](#) (Refugee) [2022] AATA 2665 (28 June 2022); N Burns, Member

REFUGEE – Protection Visa – Afghanistan – gender – member of a particular social group – failed asylum seeker – women at risk of honour attacks in Afghanistan – women in Afghanistan without any male protector – family dispute – applicant has a well-founded fear of persecution – decision under review remitted

Social Services

[Aydin; Secretary, Department of Social Services and](#) (Social services second review) [2022] AATA (29 August 2022); S Evans, Member

SOCIAL SECURITY – Jobseeker Payment – refusal of benefits – imposition of compensation preclusion period – where the applicant received compensation via settlement judgment – whether the applicant is subject to a compensation preclusion period – whether special circumstances exist such that the compensation preclusion period can be disregarded in whole or in part – decision under review set aside and remitted

[Butterworth and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 2858 (30 August 2022); Ms A E Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – whether insufficient medical evidence provided – whether impairment attracts rating of 20 points or more under Impairment Tables – where program of support had not been undertaken – decision under review affirmed

[McDonald and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 2892 (7 September 2022); D Mitchell, Member

SOCIAL SECURITY – disability support pension – DSP – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Sullivan and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 2890 (8 September 2022); A Poljak, Senior Member

SOCIAL SECURITY – age pension – calculation of rate of age pension – attribution of income and assets – decision under review set aside and remitted

Taxation

[JHKW and Commissioner of Taxation](#) (Taxation) [2022] AATA 2875 (5 September 2022); D Mitchell, Member

TAXATION – goods and services tax – input tax credits – four year rule to claim input tax credit – eligibility to claim input tax credits – taxpayer's burden to prove assessment excessive or otherwise incorrect – decision under review affirmed

Trade and Commerce

[Ausnathealth.com Pty Ltd and Australian Trade and Investment Commission](#) (Austrade) [2022] AATA 2860 (1 September 2022); B W Rayment OAM QC, Deputy President

AUSTRADE – export market development grants – eligibility for grants under the Export Market Development Grants Act 1997 (Cth) – relevant law and material considered – decisions under review set aside and substituted

Veterans' Affairs

[Cooper and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements) [2022]

AATA 2893 (31 August 2022); D Mitchell, Member

VETERANS' AFFAIRS – claim for acceptance of liability – non-Hodgkin lymphoma – warlike and non-warlike service – whether service disease – claiming due to exposure to numerous hazards while serving, especially in Afghanistan – claiming exposure to benzene and ionising radiation – claiming due to chronic inflammation as a result of previous hernia repair surgery – claim for acceptance of liability for chronic rhinosinusitis and bilateral blepharitis resulting from treatment of non-Hodgkin lymphoma – decision under review affirmed

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Buntin and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 204
Hanna and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2753
LVMF and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2471
Phan and Minister for Immigration, Citizenship, and Multicultural Affairs	[2022] AATA 2894
TCXM and Minister for Immigration, Citizenship, and Multicultural Affairs	[2022] AATA 2820

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Dayananda v Minister for Immigration, Citizenship and Multicultural Affairs	[2021] AATA 1370	[2022] FCA 1050
EFZ21 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3887	[2022] FCA 1033
Nguyen v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 448	[2022] FCA 1034
Okoh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1662	[2022] FCA 1011
Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 264	[2022] FCA 1046

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