



Administrative Appeals Tribunal of Australia

Type Cases	Jurisdiction Commonwealth	Database Administrative Appeals Tribunal ...	Year 2020	Citation [2020] AATA 3115
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YHWR and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 3115 (21 August 2020)

Last Updated: 24 August 2020

YHWR and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 3115 (21 August 2020)

Division: GENERAL DIVISION

File Number(s): **2020/3408**

Re: **YHWR**

APPLICANT

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

RESPONDENT

DECISION

Tribunal: **Deputy President B W Rayment OAM QC**

Date: **21 August 2020**

Place: **Sydney**

The Tribunal decides that the decision under review is set aside and that in substitution, the cancellation of the Applicant's Class AH Subclass 101 Child visa is revoked.

.....[sgd].....

Deputy President B W Rayment OAM QC

CATCHWORDS

MIGRATION – mandatory cancellation of visa on character grounds under s 501(3A) – where offending involved assault – whether to exercise discretion under Direction No. 79 – primary considerations – protection of the Australian community – where applicant reoffended after applicant's visa was previously cancelled and revoked with warning – where applicant is no longer influenced by drugs – where applicant has showed signs of rehabilitation – where likelihood of reoffending is low to moderate – best interests of minor children – where children in the care of NSW FACS – where applicant has regular contact with children – other considerations – strength, nature and duration of ties – where applicant was adopted when young – where applicant's family



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is in Australia – extent of impediments if removed – where if applicant is deported may not receive same level of support – decision under review set aside and substituted

LEGISLATION

[Migration Act 1958](#) (Cth) s 501(3A)

CASES

FYBR v Minister for Home Affairs [2019] FCAFC 185; (2019) 374 ALR 601

SECONDARY MATERIALS

Direction No. 79 – Visa refusal and cancellation under s 501 and revocation of a mandatory cancellation of a visa under s 501CA

REASONS FOR DECISION

Deputy President B W Rayment OAM QC

21 August 2020

1. The applicant is a lady of 33 years and of Fijian-Indian extraction. In June 2002, she arrived in Australia shortly before her fifteenth birthday with her two younger brothers, who were her only siblings. They lived with relatives who had adopted them some four years previously in Fiji, when the applicant was 11. They were living with their biological parents in Fiji before they left that country.
2. Her biological parents sent the three here to live with their adoptive parents. The loss of her relationship with her biological parents, her home country, and, to a large extent, her cultural identity was a great wrench.
3. Her adoptive father sexually abused her on multiple occasions and made her pregnant. Her adoptive father also physically abused her and the elder of her two brothers. At the age of 16, she ran away from home and became homeless for a time. She later found her way to a refuge and her pregnancy was terminated. She was later joined by the elder of her two brothers, and then by her younger brother. For a number of years, the three of them subsequently lived together.
4. I have not heard from her biological father or mother. There has been some contact between the applicant and her biological mother but little contact with her father, who slapped her just before she left Fiji. Her biological mother is currently suffering from bad health. The history, including the making of an adoption order, and sending the children to Australia, does not suggest that, if the applicant were deported, she could rely on her

biological parents to support her in Fiji. Her biological mother came to Australia on a tourist visa around the time of the birth of three of the applicant's four living children and, at the request of the applicant, once took one of the applicant's children to Fiji for several months.

5. At the age of 18, she had her first boyfriend. He physically abused her and broke her collarbone. She has since had other violent and drug-taking partners, but she does not remain in touch with any of them.
6. Around the age of 20, she gave birth to her first child, fathered by a friend. When she was 3 months old, the baby died from sudden infant death syndrome ('SIDS') and was buried. Her agony about that event led her to attempt suicide on several occasions, take drugs, and in 2010, she began to commit crimes. She has an extensive criminal record, but it is notable that even for several more serious offences, she was not dealt with harshly by the courts.
7. She has cohabited for relatively short periods with three violent partners, who have fathered her four living children, all of whom are Australian citizens. In 2014, her eldest three living children were taken into care by the NSW Department of Family and Community Services ('FACS'). I heard from their case manager, Ms Woodley, whose evidence is discussed below. Her fourth living child was born in gaol and was immediately taken into care with his siblings. The children reside near Armidale. It is some months since she has seen her children, since the Villawood Immigration Detention Centre does not allow visitors as COVID-19 is present in the community. Previously, she saw them every two months. She communicates with them, their carers, and their case manager regularly by phone. The father of two of her children and his current partner visit the children from time to time. That person recently failed to obtain custody of them in the Family Court. The applicant and the father of two of her four children do not speak. He was one of the violent partners.
8. There are two violent offences for which the applicant was convicted. The earlier offence related to a stabbing of her youngest brother after an argument between them. She called an ambulance and the brother had several stitches at hospital. The ambulance drivers called the police. The brother told me that he had forgiven the applicant, and both brothers want her to live with them if she is released. The other, later, incident occurred when she found her best friend with her last partner, just before the birth of her youngest child, whom that partner had fathered. She violently attacked the best friend, was arrested and convicted, and as I have said, the baby was born in gaol.
9. Neither incident was premeditated. Those incidents were the subject of evidence given in cross-examination of the applicant, and by a psychologist, Ms Dombrowski.
10. The living children of the applicant are now aged 11, 8, 5 and 2. Those aged 11, 8, and 5 were removed from the care of the applicant in 2014. They were the subject of interim orders by the Children's Court in August 2014 and of permanent orders by the same court in 2015.
11. The applicant's most recent imprisonment ended on 18 December 2019, and she has been in Villawood since then. Her parole period commenced on 18 December 2019 and will end next month on 18 September 2020. Her stay in detention has interfered with her parole, in that she has not been supervised by a parole officer for some nine months.
12. In detention, she was sexually abused again, and alleges rape against another detainee. Her pregnancy was terminated. Although the respondent relied upon Serco reports, which may be to the contrary of the evidence about rape, in their Statement of Facts, Issues and Contentions ('SFIC'), she was not cross-examined to that effect and I see no reason not to

accept her evidence about the rape.

13. During her last term of imprisonment, her visa was the subject of mandatory cancellation under [s 501\(3A\)](#) of the *Migration Act 1958* ('the *Migration Act*') and she made representations seeking revocation of the cancellation. A delegate refused to revoke the cancellation and the applicant sought review of that decision in the Tribunal. Her record, referred to below, shows that she does not pass the character test. Therefore, the legal question is expressed as whether there is another reason why the cancellation of her visa should be revoked.
14. As is already clear, her life has been filled with trauma. It has brought on mental illness, which has been partly treated, including while she was in prison. She ceased to take drugs two years ago and there is hope that with further treatment she will not reoffend. The question on review is whether the cancellation of her visa should not be disturbed, in which case she will be deported to Fiji, and thus living in a separate country to all her living children, and also without her brothers, who both work and have applied for Australian citizenship, and who desire her to remain here, or whether she may remain here to undergo continued rehabilitation in this country, with a view to her negotiating with FACS for greater access to her children both now and in the future.

DIRECTION NO. 79

15. Direction No. 79 ('the Direction'), made under [s 499](#) of the *Migration Act*, requires a decision-maker, including this Tribunal, to take into account in exercising discretion a non-exhaustive list of mandatory considerations, where relevant. I will discuss those considerations below. It is also required that the representations made by the applicant to the Minister, or to the Tribunal on this review, be taken into account, together with any other relevant considerations. I must seek to arrive at what is the correct or preferable decision, consistent with the dictates of good government.
16. The Direction states certain principles in paragraph 6.3. They stress the need for Australia to be protected from the risk of harm from non-citizens, and also state that Australia may have a higher tolerance for criminal or other serious conduct of a non-citizen who has lived here for most of his or her life, or from a very young age. They also state that the consequences of visa cancellation for minor children and other immediate family members in Australia are considerations in determining whether a visa should be cancelled.
17. The Direction distinguishes between primary and other considerations, although the weight to be given to any consideration, or any other relevant consideration, is a matter for the decision-maker to decide in the particular circumstances of the case and in the interests of good government. I will discuss the primary considerations first.

Primary Considerations

Protection of the Australian community

18. The first-mentioned primary consideration is the protection of the Australian community, described in cl 13.1 of the Direction. I will not repeat its terms as they are published.
19. Clause 13.1 again directs attention to some of the principles set out in paragraph 6.3 and states that decision-makers should also give attention 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, including the likelihood of him or her doing so.

20. The applicant's criminal record is summarised by the respondent in its SFIC as follows:

DATE	EVENT	SENTENCE
15 August 2011	<i>Applicant appeared in the Parramatta Local Court for 'never licensed person drive vehicle on road'</i>	<i>Fine: \$200, Court Costs \$81</i>
27 September 2011	<i>Applicant failed to appear in the Southport Magistrates Court for 'unlawful use or entry of vehicles (on 2 April 2011)'</i>	<i>Failed to appear - outstanding arrest warrant issued</i>
19 October 2011	<i>Applicant convicted in the Parramatta Local Court of:</i> <i>Recklessly wound any other person (DV)-T1</i>	<i>Bond 18 months, probation</i>
	<i>Fail to appear in accordance with bail undertaking</i>	<i>Fine \$100, Court Costs \$81</i>
13 May 2015	<i>Applicant convicted in the Goulburn Local Court of:</i> <i>Possess prohibited drug (x4)</i>	<i>Imprisonment 7 months, suspended upon the Applicant entering into a bond for 7 months to be under the supervision of the NSW Probation and Parole Service; to attend counselling, educational development, drug or alcohol rehabilitation</i>
	<i>Bring/introduce small quantity of drug into detention centre</i>	<i>Imprisonment 15 months, suspended upon the Applicant entering into a bond for 12 months to be under the supervision of the NSW Probation and Parole Service; to attend counselling, educational development, drug or alcohol rehabilitation</i>
24 September 2015	<i>Applicant convicted in the Sutherland Local Court of 'drive, licence suspended under s 66 [Fines Act 1996 (NSW)]</i>	<i>Fine \$1,500</i>
6 October 2015	<i>Applicant convicted in the Campbelltown Local Court of:</i> <i>Drive vehicle, illicit drug present in blood</i>	<i>Fine \$500, disqualification</i>
	<i>Drive licence suspended under s 66 Fines Act</i>	<i>Fine \$500, disqualification</i>
	<i>Possess prohibited drug</i>	<i>Fine \$400, drug to be destroyed</i>

12 January 2016	<i>Applicant convicted in the Parramatta Local Court of:</i>		
	<i>Possess or use a prohibited weapon without permit – T2</i>	<i>Imprisonment 3 months, weapon forfeited</i>	
	<i>Goods suspected stolen in/on premises (not m/v)</i>	<i>Imprisonment 3 months, drugs to be destroyed</i>	
	<i>Goods in personal custody suspected being stolen (m/v)</i>	<i>Imprisonment 3 months, property to owner</i>	
	<i>Drive motor vehicle during disqualification period</i>	<i>Imprisonment 6 months, disqualification</i>	
	<i>Possess prohibited drug (x4)</i>	<i>Imprisonment 7 months, non-parole period with conditions 6 months</i>	
	<i>Bring/introduce small quantity of drug into detention centre</i>	<i>Imprisonment 7 months, non-parole period with conditions 6 months</i>	
	<i>Fail to appear in accordance with bail acknowledgment (x5)</i>	<i>Imprisonment 1 month</i>	
	<i>Contravene prohibition/restriction in AVO (Domestic)</i>	<i>Imprisonment 3 months</i>	
	<i>Common assault (DV) – T2</i>	<i>Imprisonment 3 months</i>	
	<i>Affray</i>	<i>Imprisonment 6 months</i>	
	<i>Destroy or damage property less than \$2000 – T2</i>	<i>Imprisonment 6 months</i>	
	<i>Assault police officer in execution of duty w/o abh – T2</i>	<i>Imprisonment 6 months</i>	
25 February 2016	<i>Applicant convicted in the Parramatta Local Court of:</i>		
	<i>Class A vehicle displaying altered numberplate</i>	<i>Conviction no other penalty</i>	
	<i>Possess prohibited drug</i>	<i>Conviction no other penalty, drug destroyed</i>	
	<i>Drive motor vehicle during disqualification period</i>	<i>Imprisonment 6 months, disqualification</i>	
3 March 2016	<i>Applicant appeared in the Parramatta District Court for:</i>		
	<i>Drive motor vehicle during disqualification</i>	<i>Order varied, Imprisonment</i>	

<i>period</i>	<i>(aggregate) 13 months, non-parole period with conditions 6 months</i>
<i>Goods in personal custody suspected being stolen (m/v)</i>	<i>Order varied, Imprisonment (aggregate) 13 months, non-parole period with conditions 6 months</i>
<i>Goods suspected stolen in/on premises (not m/v)</i>	<i>Order varied, Imprisonment (aggregate) 13 months, non-parole period with conditions 6 months</i>
<i>Possess or use a prohibited weapon without a permit – T2</i>	<i>Order varied, Imprisonment (aggregate) 13 months, non-parole period with conditions 6 months</i>
<i>Drive motor vehicle during disqualification period</i>	<i>Order varied, Imprisonment (aggregate) 13 months, non-parole period with conditions 6 months</i>
<i>Possess prohibited drug (x4)</i>	<i>Order varied, Imprisonment (aggregate) 13 months, non-parole period with conditions 6 months</i>
<i>Bring/introduce small quantity of drug</i>	<i>Order varied, Imprisonment (aggregate) 13 months, non-parole period with conditions 6 months</i>
<i>Fail to appear in accordance with bail acknowledgement (x5)</i>	<i>Order varied, Imprisonment (aggregate) 13 months, non-parole period with conditions 6 months</i>
<i>Common assault (DV) – T2</i>	<i>Order varied, Imprisonment (aggregate) 13 months, non-parole period with conditions 6 months</i>
<i>Contravene prohibition/restriction in AVO (Domestic)</i>	<i>Order varied, Imprisonment (aggregate) 13 months, non-parole period with conditions 6 months</i>
<i>Assault police officer in execution of duty w/o abh – T2</i>	<i>Order varied, Imprisonment (aggregate) 13 months, non-parole period with conditions 6 months</i>
<i>Destroy or damage property less than \$2000 – T2</i>	<i>Order varied, Imprisonment (aggregate) 13 months, non-parole period with conditions 6 months</i>

		<i>months</i>
	<i>Affray</i>	<i>Order varied, Imprisonment (aggregate) 13 months, non-parole period with conditions 6 months</i>
26 August 2016	<i>Applicant convicted in the Downing Centre Local Court of take and drive conveyance w/o consent of owner – T2</i>	<i>Imprisonment 7 months, non-parole period with conditions 2 months</i>
9 September 2016	<i>Applicant appeared in the Downing Centre District Court for take and drive conveyance w/o consent of owner – T2</i>	<i>Appeal withdrawn – Confirmed – Imprisonment 7 months</i>
17 November 2017	<i>Applicant convicted in the Penrith Local Court of:</i> <i>Use unregistered registrable class A motor vehicle on road</i>	<i>Fine \$400</i>
	<i>Use class A vehicle number plate obscured, defaced</i>	<i>Fine \$400</i>
	<i>Use class A vehicle number plate obscured, defaced</i>	<i>Fine \$400</i>
	<i>Use unregistered registrable class A motor vehicle on road</i>	<i>Fine \$400</i>
28 February 2018	<i>Applicant convicted in the Parramatta Drug Court of:</i> <i>Dishonestly obtain property by deception – T1 (x2)</i>	<i>Imprisonment 1 year and 9 months (aggregate)</i>
	<i>Take drive w/o consent of owner – T2 (x2)</i>	<i>Imprisonment 1 year and 9 months (aggregate)</i>
	<i>Steal property in dwelling-house less than \$2000</i>	<i>Imprisonment 1 year and 9 months (aggregate)</i>
	<i>Drive motor vehicle during disqualification period</i>	<i>Imprisonment 1 year and 9 months (aggregate)</i>
	<i>Possess prohibited drug (x2)</i>	<i>Imprisonment 1 year and 9 months (aggregate)</i>
	<i>Drive or rider state false name or home address</i>	<i>Conviction with no other penalty</i>
	<i>Give a false name</i>	<i>Conviction with no other penalty</i>
	<i>Fail to appear in accordance with bail acknowledgment (x2)</i>	<i>Imprisonment 1 year and 9 months (aggregate)</i>

	<i>Drive motor vehicle during disqualification period (x3)</i>	<i>Imprisonment 1 year and 9 months (aggregate)</i>
	<i>Custody of knife in public place</i>	<i>Imprisonment 1 year and 9 months (aggregate)</i>
<i>16 October 2018</i>	<i>Applicant convicted in the Burwood Local Court of:</i>	
	<i>Reckless wounding – T1</i>	<i>Imprisonment 2 years, non-parole period with conditions 14 months under the supervision of the NSW Probation and Parole Service</i>
	<i>Assault occasioning actual bodily harm – T2</i>	<i>Imprisonment 20 months, non-parole period with conditions 12 months under the supervision of the NSW Probation and Parole Service</i>
<i>26 October 2018</i>	<i>Applicant convicted in the Parramatta Drug Court of:</i>	
	<i>Dishonestly obtain property by deception – T1 (x2)</i>	<i>Imprisonment (aggregate) 21 months, non-parole period 12 months</i>
	<i>Take and drive conveyance w/o consent of owner – T2 (x2)</i>	<i>Imprisonment (aggregate) 21 months, non-parole period 12 months</i>
	<i>Steal property in dwelling house less than \$2000</i>	<i>Imprisonment (aggregate) 21 months, non-parole period 12 months</i>
	<i>Drive motor vehicle during disqualification period (x4)</i>	<i>Imprisonment (aggregate) 21 months, non-parole period 12 months</i>
	<i>Possess prohibited drug (x2)</i>	<i>Imprisonment (aggregate) 21 months, non-parole period 12 months</i>
	<i>Fail to appear in accordance with bail acknowledgment</i>	<i>Imprisonment (aggregate) 21 months, non-parole period 12 months</i>
	<i>Custody of knife in public place</i>	<i>Imprisonment (aggregate) 21 months, non-parole period 12 months</i>
<i>14 November 2018</i>	<i>Applicant appeared in the Parramatta District Court for:</i>	
	<i>Reckless wounding – T1</i>	<i>Order confirmed, imprisonment 2 years</i>

	<i>Assault occasioning actual bodily harm – T2</i>	<i>Order confirmed, imprisonment 20 months</i>
1 March 2019	<i>Applicant convicted in the Liverpool Local Court of dishonestly obtain financial advantage etc by deception – T1</i>	<i>Imprisonment 12 months, non-parole period 9 months</i>

21. The convictions for the two violent offences to which I referred to in [8] above, were those of 19 October 2011 and 16 October 2018, confirmed on appeal on 14 November 2018.
22. The earlier of those two offences resulted in her being given a bond. The applicant said that she did not intend to wound her brother, and that the wound was accidental.
23. The second violent offence resulted in her most recent imprisonment. Just before the birth of her youngest child, the applicant found the father of that child in an intimate relationship with her best friend, hit her and bit her. Three hours later she injured her with scissors on her right calf. She said she was hysterical and lost control. Her non-parole period of 18 months expired on 18 December 2019. She was then released on parole but was taken into immigration detention.
24. The applicant was smoking methamphetamines at progressively shorter intervals, at the end smoking half a gram per day. She gave up the drug finally in April 2018 in prison. The drug use was apparently not involved in either of the two violent offences, but it was a background to them. Many of her other offences did involve drug use, and she was dealt with by the Drug Court.
25. She described her descent into drugs, alcohol and non-prescribed opioid medication, had precipitated due to her grief from the death of her first child, following two attempts at suicide. The trauma that she had then suffered and would later suffer led to a decline in her mental health, must also have been a contributing factor to her offending.
26. On 5 April 2017, her visa, which had previously been the subject of mandatory cancellation (leading to her detention in 2016), was restored by the respondent. The cancellation was revoked with a warning that further offending may result in a fresh cancellation. Some of her offending, including the second violent offence to which I have referred, occurred after that warning.
27. In 2008, after her second suicide attempt following the death of her first child, the applicant was diagnosed with bipolar disorder. After her children were removed from her in 2014, the applicant engaged in deliberate self-harm and a Royal Prince Alfred Hospital psychiatrist diagnosed her with borderline personality disorder.
28. Ms Dombrowski, who has a master's degree in Clinical Forensic Psychology, interviewed her recently and provided a report dated 3 August 2020. She reviewed her history and her offending and was told that she 'experiences difficulties trusting others, an acute fear of betrayal, rejection and abandonment; low self-esteem, chronic feelings of emptiness; emotional lability ... and poor appetite during times of distress', leading Ms Dombrowski to prefer the diagnosis of borderline personality disorder.
29. While in custody in 2019, she completed the Enough is Enough, Real Understanding of Self-Help ('RUSH'), Positive Lifestyle, Criminal Conduct, and Substance Abuse Treatments Pathways programs. Most significantly, she completed the Intensive Drug and Alcohol Treatment Program ('IDAPT') in 2019, which she told Ms Dombrowski was life altering,

making her fully realise ‘the impact her substance abuse had on her mental health and functioning more generally.’ She said she would stay away from old friends and have the help of her brothers.

30. She expressed remorse for her offending to Ms Dombrowski, as she did before the Tribunal in evidence. She expressed a future orientation and confidence in her ability now to achieve meaningful behavioural change. She said to her: ‘[b]eing in gaol for 18 months is the most help I have ever received...I am no longer ashamed to ask for help...I now have tools (to prevent reoffending).’
31. Ms Dombrowski was told, as was the Tribunal, that she wants to be actively involved in her children’s lives and wants to work towards progressive long-term restoration of their care.
32. I should mention that her evidence of her desire for further treatment, if she should be released, was particularly firmly expressed. She appreciates that it is critical for her to do well in her further rehabilitation to enable her to impress FACS and have more contact with her children. Her desire to have greater contact with her children is very strong.
33. She also does not want her children to experience traumatic separation from her, as she did with her own mother.
34. Asked to express opinions about the likelihood of recidivism of the applicant, Ms Dombrowski orally administered (since her interview was conducted audio-visually) a psychometric test called the Self-Appraisal Questionnaire (‘SAQ’), a risk assessment tool relating to the risk of re-offending and committing both violent and non-violent offences. She said in her report that it was part of a ‘significant body of international literature developed in the last thirty years that defines the well-established correlates of reoffending and the features which protect against offending.’ The applicant scored 17, about the middle of the low-moderate range. As to violent offences, persons in that range have a 5.26% likelihood of committing a violent offence within 5 years, and a 29.47% chance of committing a non-violent offence.
35. The applicant told both Ms Dombrowski and the Tribunal that she wishes to undertake a three month course of treatment at Guthrie House, followed by nine further months of outpatient attendance at that institution, and then to engage in the Dialectical Behaviour Therapy (‘DBT’) program at Royal Prince Alfred Hospital as an aftercare program. Ms Dombrowski knew both programs and approved of them.
36. If she is released, she would still be on parole for a further month and that would be of assistance in her obtaining admission to the Guthrie House program. Her desire to do so, and to do the aftercare DBT program is, as I have said, very strong, especially because of her desire to convince FACS to allow her greater access to her children. I gathered that her plans will assist her rehabilitation significantly.
37. She has also requested support from the Community Restorative Centre NSW and requested mentoring from the Women’s Justice Network to assist her with community-based support if she is released from detention. She will have the support of her brothers, who told the Tribunal that they will assist her recovery in any way and will provide her with accommodation and sustenance with them.
38. On the question of the likelihood of the applicant reoffending, I adopt the findings of Ms Dombrowski. They suggest that it is more likely than not that she will not reoffend, and that

the likelihood of her reoffending violently is very low.

Best interests of minor children in Australia

39. The second primary consideration is the best interests of minor children. The applicant has strong maternal feelings for them. They are all, in her opinion, well-cared for at the moment. After initially being against the care arrangements, even attempting to take the elder children away, she has come to believe that the children are in the best place for the moment.
40. Ms Woodley, the children's case manager from Life Without Barriers, gave evidence that the applicant has kept all contact visits in gaol, and that the three elder children look forward to seeing her. In gaol and in detention, she phones Ms Woodley at least fortnightly to check on the children and, when it was possible, to discuss contact dates and times. She is aware that the applicant phones the children and is very keen to continue her contact with them. At present, six visits per year would resume if she were released from detention. In oral evidence, Ms Woodley said that she has known the applicant since 2016. She said that the carers advocate for the children to have contact with their mother and understand that the children like to see their mother and need to see her. The carers expressed concern about the possibility that the applicant might be deported, due to the bond she has with her children. She said that the applicant has written to the carers stating how thankful she is for their taking care of the children. When she was in gaol, she also wrote to them regularly, sending cards, letters, interesting things from the newspapers, cartoons and anything she can handmake herself.
41. I understood from Ms Woodley that FACS reviews arrangements with birth parents six-monthly.
42. I find that it is in the best interests of the children that the visa cancellation be revoked and that the applicant not be deported.

Expectations of the Australian community

43. The third primary consideration is the expectations of the Australian community. Despite its heading, this consideration does not require a decision-maker to form his or her own estimation of the likely attitude of the community to the question of revocation of the applicant's visa. Rather, the decision-maker is to act on the statement of those expectations by the government in the text of the Direction. This was the effect of the judgment of the Full Court of the Federal Court in *FYBR v Minister for Home Affairs* [2019] FCAFC 185. However, as with each consideration, its weight in the particular case is a matter for the decision-maker. This consideration weighs against revocation of the cancellation.

Other Considerations

44. The express list of "other" considerations in the Direction includes the following relevant matters, given that some of those considerations do not arise.
45. The matter of the strength, nature and duration of ties arises first. The terms of the Direction direct attention to the position of the applicant, her brothers and her children. The position of the children has been discussed above. The brothers gave evidence before me and gave statements indicating their support of the applicant and their desire that she live with them.

The brothers have both been here since a very young age and have no attachment to other family members in Australia and would suffer emotionally if she were removed from Australia. So would the applicant's children, and by reason of her own attachment to them, so would the applicant herself.

46. The extent of impediments if removed is the last-mentioned "other" consideration. The applicant is well placed to attempt to complete her rehabilitation in Australia. The same may not be true in Fiji, although that is not clear. I have significant concern about the future of the applicant if she were removed to Fiji, because of her mental health and her history of attempts at suicide and self-harm, and I do not doubt that her reaction to removal would lead to significant distress.
47. The applicant submits that the sad history of the applicant is such that humanitarian considerations arise in her favour. That is another consideration which I consider is relevant. Removal would add to the multiple traumas which she has already experienced.

EXERCISING THE DISCRETION

48. Balancing the various considerations which are relevant, including those I have mentioned both favourable and unfavourable to her, I think that the correct or preferable exercise of discretion is to revoke the cancellation of her visa.

I certify that the preceding 48 (forty -eight) paragraphs are a true copy of the reasons for the decision herein of Deputy President B W Rayment OAM QC

.....[sgd].....

Associate

Dated: 21 August 2020

Date(s) of hearing: **10 & 13 August 2020**

Solicitors for the Applicant: **Ms K Wrigley, Legal Aid NSW**

Solicitors for the Respondent: **Ms K Crawford, Clayton Utz**

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