# HIGH COURT OF AUSTRALIA

GAGELER CJ,
GLEESON AND JAGOT JJ

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VIJAY GAJRAJ HATEWAR PLAINTIFF

AND

MINISTER FOR IMMIGRATION AND CITIZENSHIP DEFENDANT

*Hatewar v Minister for Immigration and Citizenship*
[2026] HCA 45
*Date of Judgment: 11 November 2026*
S64/2026

**ORDER**

*Application dismissed with costs.*

**Representation**

The plaintiff is represented by Peerzada & Associates

The defendant is represented by Sparke Helmore Lawyers

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

## CATCHWORDS

### Hatewar v Minister for Immigration and Citizenship

Immigration – Visas – Where delegate refused application for Return (Residence) (Class BB) visa – Where ministerial direction stated principle that safety of Australian community is highest priority of Australian Government – Whether delegate misunderstood or misapplied principle – Whether principle required delegate to consider harm caused to plaintiff's family by plaintiff's absence as an aspect of safety of Australian community – Whether delegate's decision illogical or legally unreasonable – Whether delegate failed to consider medical evidence concerning effect of plaintiff's absence on wife's capacity to care for plaintiff's daughter.

Words and phrases – "best interests of minor children in Australia", "character test", "community safety principle", "constitutional writ", "expectations of the Australian community", "family violence", "highest priority", "illogical", "legally unreasonable", "primary considerations", "protection of the Australian community", "return visa", "safety of the Australian community", "strength, nature and duration of ties to Australia", "unacceptable risk of harm".

*Migration Act 1958* (Cth), ss 347A, 338(7A), 476, 476A(1), 476B, 499(2A), 501(1).

1 GAGELER CJ AND JAGOT J. The circumstances concerning the plaintiff's application for a constitutional or other writ are set out in the judgment of Gleeson J, who referred the application for determination by a Full Court by order made on 19 August 2026 pursuant to r 25.09.3(d) of the *High Court Rules 2004* (Cth).

2 We proceed to determine the application without listing the application for hearing in accordance with r 25.09.1 of the *High Court Rules* on the assumed basis that it is more efficient and convenient to determine the application than to determine any issue about the jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) in respect of the matter as necessary to engage this Court's power of remittal under s 44(1) of the *Judiciary Act 1903* (Cth).

**Consideration of grounds**

*Grounds one and two: the delegate misunderstood the operation of Direction 110*

3 By ground one of the application the plaintiff alleges that the delegate who made the impugned decision refusing to grant to the plaintiff a Return (Residence) (Class BB) visa ("the RR visa") did not understand that, under section 6 of *Direction no 110 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* ("Direction 110" or "the Direction"), the principle in para 5.2(2) of the Direction (that the "safety of the Australian Community is the highest priority of the Australian Government") applies to all the considerations in section 8 of the Direction. By ground two of the application the plaintiff alleges that the delegate did not apply the principle in para 5.2(2) of Direction 110 to the delegate's findings of the physical and emotional harm the refusal of the plaintiff's visa has caused and will cause to his family in Australia.

4 The plaintiff's argument involved these steps. First, the only offences that the plaintiff had committed concerned a single incident of family violence. Second, no material suggested a risk of the plaintiff engaging in any other sort of offending. Third, and in consequence, in assessing the risk that the plaintiff might engage in criminal conduct for the purpose of applying the character test as required by s 501(1) of the *Migration Act 1958* (Cth) the delegate properly confined consideration of that risk to offences of the same kind. Fourth, it followed from this that the only persons whose safety was relevant under para 5.2 of the Direction were the plaintiff's family. Fifth, on the material before the delegate, the plaintiff's family clearly wanted the plaintiff to be granted the visa in order to enable him to return to Australia, his absence of four years having caused them hardship, distress and harm (including to the plaintiff's daughter, a minor), which the delegate accepted. Sixth, in giving the need to protect the safety of the Australian community the highest priority under para 5.2(2) of the Direction, the delegate did not, when considering paras 8.3 and 8.4 of the Direction (the strength, nature and

duration of the plaintiff's ties to Australia and the best interests of minor children in Australia), consider the safety of the plaintiff's family in terms of past harm to them and likely future harm to their physical and mental wellbeing if the plaintiff was not able to return to Australia. Seventh, and accordingly, the delegate misunderstood and failed to apply para 5.2(2) of the Direction in contravention of s 499(2A) of the *Migration Act*.

5 The plaintiff's submissions do not reflect the operation of Direction 110. Paragraph 5.2(2) specifies a principle forming part of "the framework within which decision-makers should approach their task of deciding whether to refuse or cancel a non-citizen's visa under section 501", being that the "safety of the Australian Community is the highest priority of the Australian Government". Construed in context, it is apparent that the concept of "safety" with which para 5.2(2) is concerned is safety from a non-citizen causing physical or other harm to any person in Australia by reason of the non-citizen's criminal or other serious conduct. It is that concept of safety which is the Australian Government's "highest priority".

6 To explain further, having identified in para 5.2(2) that the "safety of the Australian Community is the highest priority of the Australian Government", Direction 110 specifies in section 8 a series of separate (albeit potentially overlapping) primary considerations which a decision-maker must consider in accordance with the terms in which each is specified. Paragraphs 8.1 (protection of the Australian community from criminal or other serious conduct) and 8.2 (whether the conduct engaged in constituted family violence) are considerations directly relevant to the "safety of the Australian Community" as referred to in para 5.2(2). Paragraphs 8.3-8.5 are different considerations relating to, respectively, the strength, nature and duration of ties to Australia, the best interests of minor children in Australia, and the expectations of the Australian community. Paragraph 5.2(2) operates to guide the decision-maker in assigning weight to the potentially competing primary considerations in paras 8.1-8.5. Paragraph 5.2(2) does not require the decision-maker to consider each of the potentially competing primary considerations in paras 8.1-8.5 other than in accordance with its own terms.

7 Contrary to the fundamental premise of the plaintiff's argument, para 5.2(2) of Direction 110 did not require the delegate to frame the delegate's evaluation of the primary considerations in paras 8.3 and 8.4 of the Direction by reference to the "safety of [that part of] the Australian Community" constituted by the plaintiff's family. Rather, para 5.2(2) required the delegate to recognise that *in weighing* all the relevant considerations, including those in paras 8.1-8.5 of Direction 110, the Australian Government's highest priority is the "safety of the Australian Community" from the risk of a non-citizen causing physical or other harm to any person in Australia by reason of the non-citizen's criminal or other serious conduct.

8 Accordingly, the delegate did not misunderstand or misapply para 5.2(2) of the Direction. The delegate considered each of the matters in paras 8.1-8.5 of the Direction as required and then assigned the greatest weight to those considerations which reflected the terms of para 5.2(2) properly construed.

9 Grounds one and two must be rejected.

*Ground three: the delegate's decision was legally unreasonable*

10 The plaintiff's argument in respect of ground three of the application is a variant of the argument put in support of grounds one and two. The argument is that it was illogical and legally unreasonable for the delegate to refuse to grant the RR visa enabling the plaintiff to return to Australia on the basis of giving effect to para 5.2(2) of Direction 110 (that the safety of the Australian community is the Australian Government's highest priority) in circumstances where the delegate had found, first, that the part of the Australian community at risk from the plaintiff being granted the visa and returning to Australia was confined to the plaintiff's family and, second, that the plaintiff's family had suffered and would be likely to suffer harm if the plaintiff was not granted the visa and permitted to return to Australia.

11 The argument is based on the same misconstruction of the requirements of Direction 110 which underlies grounds one and two. Once it is understood that para 5.2(2) is concerned with the safety of the Australian community from the risk of physical or other harm from a non-citizen's criminal or other serious conduct, it is not illogical or unreasonable for the delegate to have found that the plaintiff's family had been and would likely continue to be harmed by the plaintiff's absence but that the plaintiff represented an unacceptable risk of harm to the Australian community, being a risk that the plaintiff would harm his own family by similar criminal conduct involving family violence should he be granted a visa and permitted to return to Australia. Far from being illogical or unreasonable, in the sense of a decision that no logical or reasonable decision-maker could have made,[1] the delegate's reasoning reflects the requirements of Direction 110.

*Ground four: the delegate failed to consider a relevant matter in assessing the best interests of the plaintiff's child*

12 By ground four of the application the plaintiff contends that "[i]n assessing the best interests of the plaintiff's child [his daughter], the delegate failed to take into account the medical evidence concerning the effect of the plaintiff's wife's

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**1** See, eg, *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 611 at 644-645 [122]-[123], 647-648 [130].

medical conditions on her capacity to provide care and support as a sole parent" in the event that the visa was refused and the plaintiff unable to return to Australia.

13 It cannot be inferred that, in considering the best interests of the plaintiff's daughter, the delegate failed to consider that the plaintiff's continued absence from Australia was adversely affecting his wife's capacity to care for their family. Paragraph 8.3 of Direction 110 (the strength, nature and duration of the plaintiff's ties to Australia) and para 8.4 (the best interests of minor children in Australia) overlap with one another, but the Direction requires each to be considered in its terms. In considering para 8.3 the delegate said that "the evidence demonstrates deep emotional, financial and caregiving interdependence, particularly given his wife's ongoing medical conditions and his daughter's developmental vulnerability during adolescence" and that his wife's medical condition "materially affects her functional capacity, particularly in the context of caring for two children, managing household responsibilities, and maintaining employment, and those burdens are significantly exacerbated in the absence of spousal support".

14 Given these express findings it cannot be inferred that, when the delegate considered the best interests of the plaintiff's daughter, the delegate overlooked these findings. To the contrary, the delegate found that the best interests of the plaintiff's daughter "strongly favour family reunification". While the delegate did not expressly identify that this would be in part because the plaintiff's presence in Australia would enable the plaintiff's wife to better manage family responsibilities given her medical condition, it is obvious that this matter in part underlies the finding that the daughter's best interests "strongly favour family reunification". The delegate did not need to repeat the findings already made about the position of the plaintiff's wife to make that point.

## Order

15 For the reasons set out above, the plaintiff fails on each of his four grounds.

16 The application is dismissed with costs.

GLEESON J.

## Introduction

17 On 2 July 2026 the plaintiff, Mr Hatewar, filed an application for a constitutional or other writ, invoking the original jurisdiction of this Court conferred by s 75(v) of the *Constitution*. The principal relief sought is the issue of writs of certiorari and mandamus directed to the defendant, the Minister for Immigration and Citizenship, quashing a decision of a delegate of the defendant made on 26 May 2026 ("the impugned decision") to refuse the plaintiff's application for the grant of a Return (Residence) (Class BB) visa ("the return visa") and requiring that the visa application be determined according to law.

18 The application is supported by an affidavit of the plaintiff's lawyer, Irfan Peerzada, made on 1 July 2026. On 3 August 2026, the defendant filed a response to the application, and on 10 August 2026 the plaintiff filed a reply.

19 For the following reasons, the application must be dismissed.

## Background

*Facts leading up to the impugned decision*

20 The plaintiff is a citizen of India. In February 2017, the plaintiff travelled to Australia from India on a permanent visa[2] together with his wife and two children (one son and one daughter, currently aged 19 and 12 years old respectively). He has been married to his wife for over 20 years. His wife and children have been Australian citizens since October 2022 and remain resident in Australia.

21 On the night of 24 June 2020, the plaintiff was charged with two counts of common assault in respect of conduct that occurred earlier that night. According to the New South Wales Police Facts Sheet, the plaintiff started a verbal argument with his then-13-year-old son, while the son and the plaintiff's wife were sitting in a bedroom. The plaintiff attempted to strike his son with a clenched fist and then, after his wife attempted to intervene, the plaintiff punched her in the head multiple times with a clenched fist. The plaintiff then climbed on top of his wife, pinned her down to his son's bed, and punched her in the back of the head several more times while also twisting her arm. The plaintiff yelled at his wife "I pay the rent, I will take your laptop and phone and kick you all out of the house onto the road". The son left the room and called the police. When he returned and informed the plaintiff that he had called the police, the plaintiff became verbally aggressive, walked out and went back downstairs. The plaintiff pleaded guilty in the Local Court of

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**2** *Migration Act 1958* (Cth), s 30(1).

New South Wales to both counts and on 1 July 2020 he was convicted and sentenced to a two-year Community Correction Order and issued a two-year Apprehended Domestic Violence Order. He appealed his convictions to the District Court unsuccessfully, on an application to traverse the earlier guilty pleas.

22 On 1 February 2022, the plaintiff returned to India to visit his sick father. While in India, on 3 March 2022, the plaintiff applied for a Return (Residence) (Class BB) visa, a permanent visa permitting the holder to travel to and enter Australia for a period of three months from the date of grant.[3] That application was refused ("the first refusal") by a delegate of the Minister for Immigration and Multicultural Affairs on 21 February 2025, under s 501(1) of the *Migration Act 1958* (Cth).

23 On 24 March 2025, the plaintiff commenced proceedings in this Court, and on 12 May 2025 Gordon J, by consent, ordered a writ of certiorari quashing the first refusal and remitting the application to the defendant for determination according to law.

*The impugned decision*

24 On 26 May 2026, a different delegate of the defendant refused to grant the plaintiff a Return (Residence) (Class BB) visa.

25 The delegate exercised the power in s 501(1) of the *Migration Act*. The delegate was not satisfied that the plaintiff passed the character test, finding that, in the event the plaintiff were allowed to enter or to remain in Australia, there would be a risk that the plaintiff might engage in criminal conduct in Australia.[4] Having regard to the considerations set out in *Direction no 110 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* ("the Direction"),[5] the delegate decided, on balance, to refuse to grant the plaintiff a visa.

26 Paragraph 5.2 of the Direction sets out principles that "provide the framework within which decision-makers should approach their task" of, relevantly, deciding whether to refuse a non-citizen's visa under s 501. The plaintiff relies on para 5.2(2) ("the community safety principle"), which provides:

> "The safety of the Australian Community is the highest priority of the Australian Government."

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**3** *Migration Regulations 1994* (Cth), Sch 2, cl 157.511.

**4** See *Migration Act*, s 501(6)(d)(i).

**5** See *Migration Act*, s 499(1) and (2A).

27 Section 6 of the Direction provides that "[i]nformed by the principles in paragraph 5.2, a decision-maker must take into account the considerations identified in sections 8 and 9, where relevant to the decision". Section 8 of the Direction sets out five "primary considerations" for a decision-maker required to follow the Direction. These are: (1) protection of the Australian community from criminal or other serious conduct; (2) whether the conduct engaged in constituted family violence; (3) the strength, nature and duration of ties to Australia; (4) the best interests of minor children in Australia; and (5) expectations of the Australian community.

28 The delegate found: (1) the need to protect the Australian community from criminal or other serious conduct weighed significantly in favour of refusing to grant the plaintiff a visa; (2) the plaintiff had engaged in family violence and this consideration weighed significantly in favour of refusing the plaintiff a visa; (3) the strength, nature and duration of ties to Australia weighed significantly against refusing to grant the plaintiff a visa; (4) the best interests of minor children in Australia weighed significantly against refusing to grant the plaintiff a visa; and (5) the expectations of the Australian community weighed significantly in favour of refusing the plaintiff a visa.

29 In support of his application, the plaintiff draws attention to the following portions of the delegate's reasons (references omitted):

> "85. In assessing the impact of [the plaintiff's] absence, I have considered the practical and financial challenges faced by [the plaintiff's wife], who has been raising their children, managing the household, and maintaining her employment on her own. It is submitted that [the plaintiff's wife] suffers from a chronic ENT condition (including chronic sinus related issues) requiring ongoing treatment and monitoring, including specialist review and follow up care following her major bilateral sinus surgery in October 2025. Her condition materially affects her functional capacity, particularly in the context of caring for two children, managing household responsibilities, and maintaining employment, and those burdens are significantly exacerbated in the absence of spousal support.
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> 86. I have considered the medical information indicating that [the plaintiff's wife] has experienced some health issues, and note that whilst these conditions present additional pressures, her ability to travel suggests they are not currently severely limiting.
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> 87. Furthermore, I have considered the psychological report provided by Dr Gus Norris dated 26 December 2024. Dr Norris has diagnosed [the plaintiff's wife] with Adjustment Disorder with Mixed Anxiety and Depressed Mood, attributed to the ongoing visa issues and the prolonged separation from her husband. He concludes that she is

likely to experience significant continuing mental health impacts should [the plaintiff's] visa be refused.

...

89. I have exercised some caution in assessing [the plaintiff's relationship with his son], noting that [the plaintiff's son] was a victim of [the plaintiff's] offending. I have also considered evidence relating to [the plaintiff's son's] mental health, including hospital and medical records, which indicate that his psychological distress was primarily associated with the breakdown of a personal relationship and academic difficulties, rather than [the plaintiff's] absence, although I acknowledge that the separation may have contributed to some extent.

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91. I have considered the effect of visa refusal upon [the plaintiff's] immediate family in Australia and accept that those persons may experience practical, emotional and financial hardship if [the plaintiff's] visa is refused.

...

102. I note [the plaintiff's] most recent submission on 6 January 2026, which demonstrates that [the plaintiff's daughter's] prolonged separation from her father has occurred during a critical developmental period and has extended beyond transient or speculative harm. The psychological material indicates that her anxiety, stress, and depressive symptoms are not only clinically significant but causally linked to the uncertainty and enforced absence of her father. I note that this separation has affected her ability to engage consistently with education, social relationships, and age appropriate developmental milestones, with resulting emotional vulnerability. In these circumstances, I accept the professional opinion that [the plaintiff's] physical presence in Australia would materially and positively assist [the plaintiff's daughter's] emotional regulation, sense of safety, and psychological stability. I note that continued separation would pose a real risk of entrenched developmental and emotional harm, and that her best interests strongly favour family reunification.

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117. In considering the use of my discretion, I have given the highest priority to the safety of the Australian community and the need to protect its safety."

**This Court's jurisdiction**

30 Section 44 of the *Judiciary Act 1903* (Cth) relevantly empowers this Court to remit a matter to any federal court that has jurisdiction with respect to the subject-matter and the parties. However, s 476B(1) of the *Migration Act* provides that, subject to s 476B(3), this Court must not remit a matter or part of a matter that relates to a migration decision to any court other than the Federal Circuit and Family Court of Australia (Division 2) ("the Div 2 Court").

31 By s 476B(3), this Court may remit a matter that relates to a migration decision to the Federal Court of Australia ("the Federal Court"), provided that the Federal Court has jurisdiction under either s 476A(1)(b) or (c). However, the Federal Court does not relevantly possess jurisdiction in relation to the impugned decision because neither of those two paragraphs of s 476A(1) is satisfied in this case.

32 By s 476B(2), remittal to the Div 2 Court is contingent upon that Court having jurisdiction in relation to the matter or part of the matter under s 476. Section 476(2)(a) provides that the Div 2 Court has no jurisdiction in relation to a "primary decision". By s 476(4)(a), a primary decision in s 476 is, relevantly, a privative clause decision[6] or purported privative clause decision that is "reviewable by application under Part 5". The plaintiff contends that the impugned decision is a primary decision and the defendant did not take issue with that contention.

33 I am satisfied that the impugned decision is a primary decision. Part 5 of the *Migration Act* provides, relevantly, for the review of reviewable migration decisions by the Administrative Review Tribunal ("the Tribunal"). The impugned decision is a reviewable migration decision within the meaning of s 338(7A) of the *Migration Act*, because: (1) it is a decision to refuse to grant a non-citizen a permanent visa; (2) the non-citizen (the plaintiff) made the application for the visa at a time when he was outside the migration zone; and (3) the visa is a visa that could be granted while the non-citizen is either in or outside the migration zone.[7]

34 However, by s 347A(1)(a) of the *Migration Act*, an application for review of a reviewable migration decision may only be made by the non-citizen who is the subject of the decision. Furthermore, by s 347A(3), if the reviewable migration decision is covered by s 338(7A), as in the present case, an application for review may only be made by the non-citizen if they (a) were physically present in the migration zone at the time when the decision was made, and (b) are physically present in the migration zone when the application for review is made. As the plaintiff was outside the migration zone at both these times, he may not make an

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**6** As defined in *Migration Act*, ss 5(1) and 474(2).

**7** See *Migration Regulations*, Sch 2, cl 157.411.

application for review of the impugned decision. Accordingly, s 347A(3) arguably produces the result that the impugned decision is not "reviewable by application under Part 5".

35 In support of his contention that the impugned decision is a primary decision notwithstanding the effect of s 347A(3), the plaintiff relied on two single-Justice judgments of this Court concerning the meaning of s 476(4)(a) prior to the addition of the words "by application" in that paragraph.[8] The Explanatory Memorandum to the Bill by which those words were included states that the operation of the provision is not affected by the update.[9] Applying the approach in *Gajjar v Minister for Immigration and Citizenship*, a decision is "reviewable by application under Part 5" by reason of the quality of the decision as a kind for which review is provided in Pt 5.[10] It follows that the Div 2 Court has no jurisdiction in relation to the impugned decision and, by operation of s 476B, this Court may not remit the plaintiff's application to any other court.

36 On 19 August 2026 I therefore referred this application for determination by a Full Court, pursuant to r 25.09.3(d) of the *High Court Rules 2004* (Cth). In accordance with r 25.09.1, the application may be determined without a hearing.

## Consideration

37 For the following reasons, each ground of review must be rejected.

*Ground 1: delegate misunderstood the operation of the Direction*

38 The particulars of the first ground of review are that the delegate did not understand that the community safety principle[11] applies to all the primary considerations in section 8 of the Direction. The crux of the ground of review is that the weight accorded to the third and fourth primary considerations, namely, the strength, nature and duration of ties to Australia and the best interests of minor children in Australia, was not informed by the community safety principle. The delegate is therefore said to have misunderstood the proper operation of the

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**8** *Gajjar v Minister for Immigration and Citizenship* (unreported, High Court of Australia, 1 November 2012); *Nguyen v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (unreported, High Court of Australia, 22 July 2022).

**9** Australia, Senate, *Administrative Review Tribunal (Consequential and Transitional Provisions No 1) Bill 2024*, Revised Explanatory Memorandum at 109 [756]-[757].

**10** *Gajjar* (unreported, High Court of Australia, 1 November 2012) at 4-6. See also *Nguyen* (unreported, High Court of Australia, 22 July 2022) at [20]-[23].

**11** See [26] above.

Direction and to have, in turn, breached s 499(2A) of the *Migration Act*. In support of this ground, the plaintiff submitted that the delegate failed to refer to the community safety principle in addressing those two considerations and failed to apply the community safety principle to the delegate's findings concerning the past harm and likely future harm to the physical and mental wellbeing of the plaintiff's family.

39 The plaintiff's argument is premised on the claim that, having regard to the limited nature of his offending, the persons whose safety was of potential concern were confined to the members of the plaintiff's immediate family. The plaintiff notes that his family wishes for him to return to live with them in Australia, refers to the evidence about the detrimental impact of his absence over a four-year period and notes the delegate's findings, set out above, about the harm to the plaintiff's daughter (a child) caused by her continued separation from him and about how her sense of safety would be materially and positively assisted by the plaintiff's presence in Australia. The plaintiff also refers to the delegate's findings concerning the negative impacts of the plaintiff's absence on his wife and son. Given these findings, the plaintiff argues, it would be expected that the delegate's reasoning would have addressed how the community safety principle applies to the past and likely future harm to the family by reason of his absence from Australia, which, on the plaintiff's case, is greater than the risk of harm caused by his presence.

40 The plaintiff's argument fails to engage with the delegate's identification of the risk posed by the plaintiff to the Australian community as a risk of family violence. There is nothing in the delegate's reasons to suggest that the delegate misunderstood the community safety principle, whether by identifying a risk posed by the plaintiff that was not supported by evidence or failing to identify a risk (including a risk posed by his absence from Australia) that was supported by evidence. To the contrary, the delegate's reasons state that the delegate gave the highest priority to the safety of the Australian community in accordance with the community safety principle. Failure to refer to the community safety principle in addressing particular primary considerations, without more, does not support an inference that the delegate misunderstood the principle.

*Ground 2: delegate failed to apply the community safety principle to findings about physical and emotional harm resulting from visa refusal*

41 This ground overlaps substantially with the first ground of review. The delegate made detailed findings about the effect of the plaintiff's absence on the psychological wellbeing of his wife, daughter and son. There is nothing in the delegate's reasons to indicate that those findings, and the delegate's subsequent reliance upon them to make findings favourable to the plaintiff, involved an impermissible failure to apply the community safety principle.

*Ground 3: impugned decision was legally unreasonable*

42 The third ground alleges illogicality and legal unreasonableness, on the basis that, even though the delegate acknowledged the safety of the Australian community as the highest priority and accepted that refusal of the return visa would cause harm to the plaintiff's wife and children (who are members of the Australian community), the delegate nevertheless refused to grant the return visa.

43 This ground must be assessed considering the very high bar that must be cleared for a finding of illogicality or legal unreasonableness to be made, that is, the impugned decision must be one that no logical or reasonable decision-maker would have made.[12]

44 The delegate found that the plaintiff represented a risk of harm to the Australian community that was unacceptable. Although the delegate found that considerations relating to the wellbeing of the plaintiff's family (the third and fourth primary considerations) weighed significantly against refusing to grant the plaintiff a visa, the delegate concluded that those considerations were outweighed by the considerations supporting refusal. In particular, the delegate concluded that the very serious nature of the crimes committed (being family violence against two members of the plaintiff's family, including a child) was a matter to be given significant weight. The delegate also found that non-citizens who have engaged in acts of family violence "raise serious character concerns" and that the expectation of the Australian community is that such non-citizens "should not be granted a visa or enter/remain in Australia". The delegate gave that expectation significant weight.

45 Having given the "highest priority" to the safety of the Australian community and the need to protect its safety, the impugned decision reflects an assessment that considerations of the nature of the plaintiff's offending, the need to protect the safety of the plaintiff's family from the risk of further violent offending by the plaintiff and Australian community expectations concerning the refusal of visas to non-citizens who have engaged in acts of family violence outweighed the risks of negative impacts resulting from refusing the return visa. These aspects of the impugned decision involved evaluations that cannot be characterised as illogical or unreasonable.

*Ground 4: delegate failed to take into account relevant consideration in assessing the best interests of the plaintiff's child*

46 The fourth ground of review is that "[i]n assessing the best interests of the plaintiff's child [his daughter], the delegate failed to take into account the medical

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**12** See, eg, *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 611 at 644-645 [122]-[123], 647-648 [130].

evidence concerning the effect of the plaintiff's wife's medical conditions on her capacity to provide care and support as a sole parent" in the event of a refusal of the return visa.

47 The plaintiff contends that the delegate failed to refer to the wife's "medical incapacities and [their] detrimental effects on the mother as a single parent breadwinner and caregiver in the assessment of the best interests of the daughter" and thereby "misapplied" the best interests of minor children in Australia, being the fourth primary consideration.

48 The delegate addressed the third primary consideration (the strength, nature and duration of the plaintiff's ties to Australia) before addressing the daughter's best interests. The delegate assessed the impact of the plaintiff's absence on his immediate family. In that context, the delegate found that the plaintiff's wife suffered from a medical condition that "materially affects her functional capacity, particularly in the context of caring for two children, managing household responsibilities, and maintaining employment, and those burdens are significantly exacerbated in the absence of spousal support". After further consideration, including reference to materials recording other medical complaints suffered by the plaintiff's wife, the delegate found that the plaintiff's immediate family "may experience practical, emotional and financial hardship if [the plaintiff's] visa is refused". That finding directly concerns the interests of the plaintiff's daughter, albeit the finding was not made as part of the delegate's assessment of the daughter's best interests.

49 Turning to the separate consideration of the daughter's best interests, the delegate's approach was consistent with the submissions made by the plaintiff about his daughter's best interests.

50 The delegate was required to take into account only those considerations that were mandatory.[13] Neither the *Migration Act* nor the Direction imposed an obligation upon the delegate to consider the medical evidence concerning the plaintiff's wife in the course of evaluating the daughter's best interests for the purposes of deciding whether to grant the plaintiff a visa. In any event, the delegate had identified that the wife's medical issues affected the immediate family, which included the daughter. The delegate addressed the plaintiff's claims about why the plaintiff should be granted the return visa, including: (1) the detrimental impact of the plaintiff's absence from Australia upon his family; and (2) that a grant was in the best interests of the plaintiff's daughter, as a minor child in Australia. The delegate was not required to consider whether the wife's health issues added weight to the conclusion that the best interests of the plaintiff's daughter favoured the grant of the plaintiff's visa.

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**13** *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 39.

## Order

51 For the reasons set out above, the plaintiff fails on each of his four grounds. The plaintiff accepts that there is no reason why costs should not follow the event.

52 The application is dismissed with costs.