FEDERAL COURT OF AUSTRALIA

Vo v Minister for Home Affairs [2018] FCA 1840

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| File number: | SAD 128 of 2018 |
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| Judge: | **CHARLESWORTH J** |
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| Date of judgment: | 26 November 2018 |
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| Catchwords: | **MIGRATION** – cancellation of visa on character grounds – non-revocation of cancellation decision mandated by s 501(3A) of the *Migration Act 1958* (Cth) – applicant convicted of serious drug offences – application for judicial review of decision of Administrative Appeals Tribunal affirming non-revocation decision – findings of Tribunal open on the material before it – no breach of the rules of procedural fairness – no jurisdictional error established |
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| Legislation: | *Administrative Appeals Tribunal Act 1975* (Cth) ss 32, 33(2A)  *Migration Act 1958* (Cth) ss 425, 474, 499, 500, 500(6C), 501, 501(3A), 501CA, 501G, Pt 5 |
| Cases cited: | *Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576  *Drake v Minister for Immigration and Ethnic Affairs* (1979) 2 ALD 60  *Kioa v West* (1985) 159 CLR 550  *Minister for Immigration and Border Protection v Eden* (2016) 240 FCR 158  *Minister for Immigration and Border Protection v Stretton* (2016) 237 FCR 1  *Plaintiff M64/2015 v Minister for Immigration and Border Protection* (2015) 258 CLR 173  *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476  *Shi v Migration Agents Registration Authority* (2008) 235 CLR 286  *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 228 CLR 152 |
| Date of hearing: | 2 November 2018 |
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| Registry: | South Australia |
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| Division: | General Division |
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| National Practice Area: | Administrative and Constitutional Law and Human Rights |
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| Category: | Catchwords |
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| Number of paragraphs: | 54 |
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| Counsel for the Applicant: | The Applicant appeared in person |
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| Counsel for the First Respondent: | Mr P d’Assumpcao |
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| Solicitor for the First Respondent: | The Australian Government Solicitor |
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| Counsel for the Second Respondent: | The Second Respondent filed a Submitting Notice |
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ORDERS

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|  | | SAD 128 of 2018 |
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| BETWEEN: | VAN THOI VO  Applicant | |
| AND: | MINISTER FOR HOME AFFAIRS  First Respondent  ADMINISTRATIVE APPEALS TRIBUNAL  Second Respondent | |

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| JUDGE: | CHARLESWORTH J |
| DATE OF ORDER: | 26 NOVEMBER 2018 |

THE COURT ORDERS THAT:

1. The application is dismissed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

CHARLESWORTH J:

1. The applicant, Mr Vo, is a citizen of Vietnam. He arrived in Australia as a 15 year old and resided here on a Transitional (Permanent) (Class BF) visa issued under the *Migration* ***Act*** *1958* (Cth).
2. On 16 February 2017, a delegate of the then titled Minister for Immigration and Border Protection cancelled Mr Vo’s visa on character grounds pursuant to s 501(3A) of the Act (cancellation decision). The Minister refused to revoke the cancellation decision under s 501CA(4) of the Act (the non-revocation decision), and that decision was affirmed by the Administrative Appeals **Tribunal** upon review pursuant to s 500 of the Act.
3. This is an application for judicial review of the Tribunal’s decision. To succeed on the application it is necessary for Mr Vo to show that the decision is affected by jurisdictional error: s 474 of the Act; *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476 at [83] (Gaudron, McHugh, Gummow, Kirby and Hayne JJ); *Plaintiff M64/2015 v Minister for Immigration and Border Protection* (2015) 258 CLR 173 at [24] (French CJ, Bell, Keane and Gordon JJ).
4. For the reasons given below, the errors alleged by Mr Vo are not established or are not in any event, properly to be characterised as jurisdictional. It follows that the application must be dismissed.

# the tribunal’s decision

1. The cancellation of Mr Vo’s visa was mandated by s 501(3A) of the Act. It relevantly provides:

(3A) The Minister must cancel a visa that has been granted to a person if:

(a) the Minister is satisfied that the person does not pass the character test because of the operation of:

(i) paragraph (6)(a) (substantial criminal record), on the basis of paragraph (7)(a), (b) or (c); or

…

(b) the person is serving a sentence of imprisonment, on a full time basis in a custodial institution, for an offence against a law of the Commonwealth, a State or a Territory.

1. At the time of the cancellation decision, Mr Vo was serving a full time custodial sentence in prison, having been sentenced to a term of imprisonment of more than 12 months. It was by reason of (at least) those circumstances that Mr Vo could not (and cannot) pass the character test: s 501(7)(c).
2. A decision to cancel a visa under s 501(3A) of the Act may be revoked by the Minister in the exercise of the power conferred by s 501CA(4). The Minister may revoke the original decision if satisfied either that the person satisfies the character test or that there is “another reason” why the original decision should be revoked: s 501CA(4)(b)(i) and (ii) respectively. The Minister was not satisfied that Mr Vo passed the character test, nor was the Minister satisfied that there was “another reason” to revoke the cancellation decision.
3. The review undertaken by the Tribunal was in the nature of a *de novo* review on the merits. For the purposes of its review, the Tribunal stood in the shoes of the original decision-maker and so was obliged to apply the criteria governing the exercise of the power in s 501CA of the Act at the time of making its own decision: *Drake v Minister for Immigration and Ethnic Affairs* (1979) 2 ALD 60; *Shi v Migration Agents Registration Authority* (2008) 235 CLR 286. The Tribunal was also obliged to comply with any direction issued by the Minister pursuant to s 499 of the Act, particularly Ministerial Direction 65 titled “Visa refusal and cancellation under s50l and revocation of a mandatory cancellation of a visa under s501CA”. A copy of Ministerial Direction 65 was annexed to the reasons for decision under review by the Tribunal.
4. The Tribunal also had before it a statement from Mr Vo and his written submissions (marked Exhibit 2), together with a statement of issues, facts and contentions filed on behalf of the Minister. Mr Vo gave evidence and made oral submissions at the Tribunal hearing. He did not call any witnesses.
5. In accordance with the requirements of Ministerial Direction 65, the Tribunal took into account (among other things):
6. the protection of the Australian community from criminal conduct;
7. the best interests of minor children in Australia;
8. the expectations of the Australian community;
9. the strength, nature and duration of Mr Vo’s social and familial ties in Australia;
10. any non-refoulement obligations owed to Mr Vo under international law; and
11. the strength of impediments Mr Vo might face if removed from Australia.
12. Without being exhaustive, the Tribunal made the following findings:
13. It was likely that Mr Vo had a traumatic adolescence and early adulthood.
14. Mr Vo became a heroin addict at a young age and began a cycle of criminal conduct involving its use, possession and supply.
15. In June 2000, Mr Vo was convicted of three counts of possessing heroin for sale and other offences. For those offences, he was sentenced to eight years imprisonment.
16. In 2010, Mr Vo was convicted of offences relating to trafficking in heroin and sentenced to imprisonment for six years and seven months.
17. Mr Vo had committed traffic and bail offences. The bail offences arose out of Mr Vo failing a drug test in breach of his bail conditions.
18. Mr Vo had twice breached the conditions of his parole, again by failing drug tests.
19. Mr Vo’s criminal conduct was to be viewed as “very grave indeed”.
20. Although Mr Vo had undertaken rehabilitation courses while in prison he had not undertaken sustained rehabilitation outside of the corrections or immigration detention systems.
21. Although Mr Vo “appeared” not to have used heroin for about two years, “this is in the context of his incarceration or detention”.
22. The connection between Mr Vo’s drug use and his offending was obvious and the “fundamental driver” of Mr Vo’s serious offending remained in place.
23. Although a parole report expressed the view that Mr Vo had poor prospects of rehabilitation despite there being a number of positive attributes, such as his work ethic, the Tribunal placed little weight on that opinion.
24. The Tribunal was not satisfied that Mr Vo would receive any significant family support, noting that no family member had given evidence and there were no written statements of support. The lack of family support contributed to the Tribunal’s assessment of the risk that Mr Vo might reoffend.
25. Mr Vo presented a high risk of reoffending for drug-related offences, including trafficking.
26. The risk posed by the offending and the likelihood of the conduct being repeated cumulatively posed an unacceptable risk to the Australian community.
27. Although Mr Vo had identified having nieces and nephews in Australia, he did not have any contact with them and their interests were not affected by the decision. The nature and duration of the relationship with the children identified by Mr Vo was “minimal to non-existent”. It was highly unlikely that Mr Vo would play a positive parental role in relation to the children in the future.
28. Mr Vo spoke Vietnamese and spent his formative years in Vietnam. However, he could not be assured of support from his brother who lives there, or the support of other extended family. Mr Vo would face significant difficulties in the absence of clear family support, particularly in light of his personal characteristics and drug problems. He would have great difficulty maintaining basic living standards, particularly if he “again turns to drug use” in Vietnam.
29. There was no evidence that Australia owed non-refoulement obligations to Mr Vo.
30. No evidence was given in relation to the impact of the Tribunal’s decision on Australian business interests.
31. The Tribunal concluded, with a “high degree of certainty”, that there was no other reason why the cancellation decision should be revoked and so affirmed the delegate’s decision.

# GROUNDS OF REVIEW

1. Mr Vo appeared self-represented on this application, as he did in the proceedings before the Tribunal. His originating application (as amended) contains six grounds of review. They are expressed at such a high level of generality it is not useful to extract them here. The essence of Mr Vo’s complaints are set out in particulars (a) to (p). Particular (p) is summative of the other particulars and so may be put aside. Each of the remaining particulars will be treated as Mr Vo’s grounds of review.
2. Some preliminary observations should be made about the manner in which the grounds are cast.
3. Some of the errors complained of, even if demonstrated, could not be characterised as jurisdictional errors and must be rejected on that basis alone. Other grounds employ words alleging a recognised category of jurisdictional error. For example, grounds (a), (b), (c), (d), (e), (f) and (g) are cast in terms that express a complaint about a finding of the Tribunal (or an omission by the Tribunal to make a finding) then conclude with a sentence to the effect that the Tribunal took into account an irrelevant consideration. In some instances, the preceding sentences could not on any reasonable view describe a jurisdictional error of that kind, but might, if interpreted generously toward Mr Vo, be understood to assert a jurisdictional error of another kind. Other grounds contain a complaint about a finding or conclusion of the Tribunal, coupled with an assertion that the Tribunal failed to take a relevant consideration into account. It is not immediately apparent how the asserted error in each instance might properly be characterised in that way.

## Procedural fairness

### Grounds (b), (d) and (f)

1. A number of grounds allege a breach of the rules of procedural fairness. They may be dealt with collectively. Ground (f) complains of the Tribunal’s observation that Mr Vo had not called family members as witnesses or provided written expressions of their support for him. To similar effect, ground (b) asserts that had Mr Vo been aware that the existence of significant family support would be a factor in the Tribunal’s decision he would “undoubtedly have produced” family members to give evidence on the topic.
2. Similarly, ground (d) complains of the Tribunal’s observation that Mr Vo did not address the topic of the expectations of the Australian community in his submissions to the Tribunal. Mr Vo asserts that had he been made aware that the Tribunal would take into account those expectations he would have made submissions in respect of the topic.
3. The content and nature of the obligation to afford procedural fairness in any given case is to be identified by reference to the “nature of the power exercised and the statutory provisions governing its exercise”: *Kioa v West* (1985) 159 CLR 550 at 563 (Gibbs CJ), 584 - 585 (Mason J). Ordinarily, the rules of procedural fairness “require the party affected to be given the opportunity of ascertaining the relevant issues and to be informed of the nature and content of adverse material”: *Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576 at 590 – 591 (Northrop, Miles and French JJ).
4. The review in the present case was undertaken pursuant to s 500(1)(ba) of the Act. The procedures affecting the conduct of the review are those prescribed or authorised by the Act and the *Administrative Appeals Tribunal Act 1975* (Cth) (the AAT Act). Subject to an exception that does not presently apply, the Tribunal was obliged to conduct a hearing in relation to the issues to be determined on the review. By s 32 of the AAT Act, Mr Vo was a party to the proceedings before the Tribunal and so entitled to attend at the hearing. That entitlement necessarily included an entitlement to give evidence and present arguments in respect of the issues to be determined.
5. In *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 228 CLR 152, the High Court considered the obligation of the Tribunal to afford procedural fairness in the context of a review undertaken in accordance with Pt 5 of the Act. Part 5 contains s 425, which obliges the Tribunal to invite a review applicant to appear before the Tribunal to give evidence and present arguments “relating to the issues arising in relation to the decision under review”. The Court said (at [35]):

… the applicant is entitled to assume that the issues the delegate considered dispositive are ‘the issues arising in relation to the decision under review’. That is why the point at which to begin the identification of issues arising in relation to the decision under review will usually be the reasons given for that decision. And unless some other additional issues are identified by the Tribunal (as they may be), it would ordinarily follow that, on review by the Tribunal, the issues arising in relation to the decision under review would be those which the original decision-maker identified as determinative against the applicant.

1. Although concerned with the construction of a different provision, this statement is apposite to a review undertaken by the Tribunal pursuant to s 500 of the Act.
2. Mr Vo was provided with the reasons for the non-revocation decision, including Ministerial Direction 65 and other annexures, in accordance with s 501G of the Act. Those documents defined the issues the delegate considered to be dispositive. Section 500(6C) of the Act required that Mr Vo’s application to the Tribunal be accompanied by, or by a copy of, those documents. It was Mr Vo who lodged those documents with the Tribunal and so invoked its jurisdiction to review the delegate’s decision.
3. The relevant issues were able to be discerned by Mr Vo from the reasons for decision under review and from the copy of Ministerial Direction 65, with which the delegate was obliged to comply (and did in fact comply). The Tribunal determined the application for review by reference to the same issues. No additional issue was introduced by the Tribunal in the course of the hearing, nor is any new issue raised in the Tribunal’s reasons.
4. In addition, Mr Vo was provided with a statement of matters and contentions upon which the Minister intended to rely, prepared in accordance with the Tribunal’s procedures: s 33(2A)(c) AAT Act. The submissions dealt with relevant issues and so alerted Mr Vo to the matters he should address in his evidence and arguments.
5. In the circumstances, there was no obligation on the Tribunal to expressly alert Mr Vo to the issues that arose for its consideration.
6. In all of the circumstances, Mr Vo could be under no misapprehension as to the issues that may arise for consideration in the course of the Tribunal’s review. Before this Court, Mr Vo adduced no evidence to show that he was foreclosed from addressing any of those issues, whether by the manner in which the Tribunal conducted the hearing or otherwise.

## Rehabilitation and risk of reoffending

### Grounds (a), (b), (h), (j), (k)

1. A number of grounds assert error affecting the Tribunal’s conclusion that there was an unacceptable risk of reoffending. The focus of that part of the Tribunal’s reasoning was on Mr Vo’s drug addiction, being the “fundamental driver” of Mr Vo’s offending conduct.
2. Ground (a) is as follows:

The appellant was asked if it was true that his involvement in rehabilitation courses had not changed his behaviour. The appellant responded that the courses had help him in a number of ways but the urge to use drugs always remains. This is a known fact reiterated by any victim of a serious addiction and points to the appellant answering the question in an honest and forthcoming manner. Not as it appears to have been taken, as agreeing with the original statement. I believe that the respondent took this irrelevant consideration into account.

1. It is difficult to comprehend the nature of the error asserted by this ground.
2. The Tribunal concluded that little weight should be placed on Mr Vo’s assertions that he did not intend to use drugs or to offend in the future. That conclusion was clearly open to the Tribunal to make. The Tribunal was entitled (indeed required) to have regard to Mr Vo’s responses to questioning on that topic, including Mr Vo’s frank acknowledgement that the urge to use drugs would always remain with him. The Tribunal was not concerned with the honesty of that response. Its focus was upon the risk of Mr Vo reoffending. Mr Vo’s acknowledgement was clearly relevant on that enquiry.
3. Ground (b) complains of the Tribunal’s finding that the appellant did not receive significant family support. It is expressed as follows:

The respondent noted that the appellant did not receive any significant family support. The appellant does indeed have the full support of his family and had he been aware that this would be a contributing factor in the decision would undoubtedly have produced them. At the time of the tribunal hearing, his brother was required to work and his mother is elderly and unable to transport herself. In the appellant’s culture it would also be a source of great shame to have to ask his family to attend such a proceeding as his crimes are discussed at length. I believe that this is an irrelevant consideration that the respondent has taken into account.

1. The Tribunal dealt with this topic in the context of Mr Vo’s prospects of rehabilitation as follows:

75. I have also considered evidence regarding support available to Mr Vo in the event that he were to be released into the community. In my view, the consideration of such matters is important to assessing the risk of recidivism and therefore the risk to the community.

76. Mr Vo has not produced any witnesses to the Tribunal. He told the Tribunal that he has two brothers and an elderly mother in Australia. He had asked a brother to attend the Tribunal to support him but his brother had declined because he was too busy. Mr Vo says his mother is too old to attend the Tribunal. Mr Vo told me that he does not wish to have contact with his other brother (the brother who has criminal convictions), but this brother does presently live with his mother.

77. In the absence of supporting evidence from Mr Vo’s family members, I am not satisfied that Mr Vo will receive any significant family support that may affect my assessment of his risk of recidivism. It is also the case that Mr Vo’s family have previously proved to be unable to prevent his reoffending.

1. Mr Vo cannot demonstrate jurisdictional error on the part of the Tribunal by providing this Court with an explanation as to why he did not adduce evidence of family support before the Tribunal. The explanations he gave to the Tribunal were taken into account, and it has not been shown that the Tribunal misunderstood them.
2. Grounds (h), (j) and (k) complain of the Tribunal’s conclusion that Mr Vo presented a “high risk of reoffending for drug related offences, including trafficking”. Ground (h) asserts that the Tribunal failed to take into account evidence that Mr Vo had abstained from using heroin for more than two years. The Tribunal did not fail to have regard to that consideration. The Tribunal expressly adverted to the circumstance that “Mr Vo appears not to have used heroin since 2016” the Tribunal said that the abstinence had occurred in the context of his incarceration or immigration detention and that Mr Vo’s last positive drug test had occurred only two years ago. The Tribunal said that Mr Vo “had never undertaken education, training or sustained rehabilitation outside of the prison system”. It is clear that the two year period of asserted abstinence was a consideration that the Tribunal afforded very little weight. It was open to the Tribunal to reason in that fashion.
3. Mr Vo also complains of the Tribunal’s observation that Mr Vo had provided little detail as to the nature of his offences or his steps toward rehabilitation. Before this Court, Mr Vo gave explanations as to why his evidence on those topics was not elaborate. It has not been shown that the Tribunal committed jurisdictional error by observing that Mr Vo’s evidence and submissions on these topics was lacking in detail.
4. Although ground (k) refers to the circumstance that Mr Vo had seen a counsellor, that stopped because he was “too busy”. That assertion does not, of itself, give rise to jurisdictional error on the Tribunal’s part. The remainder of this ground is dealt with elsewhere in these reasons.

## Interests of minor children

### Ground (c)

1. When the Tribunal asked Mr Vo about his relationship with his nephews and nieces, Mr Vo responded that he did not have contact with them. On the basis of that response, the Tribunal concluded that Mr Vo’s relationship with the children was “minimal to non-existent”. The Tribunal continued:

85. I consider that the nature and duration of the relationship between the children identified by Mr Vo in the form (but not elaborated upon in his evidence) is minimal to non-existent. I consider it highly unlikely that Mr Vo will play a positive parental role in relation to these children in the future in circumstances where he does not have contact with these children, let alone a parental role, and in circumstances where I have formed the view that Mr Vo has not addressed his drug addiction and presents a high risk of reoffending in drug-related crime. Similarly in this regard, I consider that Mr Vo’s prior conduct and future conduct if it were to be repeated could have only negative consequences for any children with whom he has contact.

86. I do not consider, on the limited evidence available to me, that any separation from Mr Vo would have an adverse effect on these children in circumstances where, on Mr Vo’s evidence, he does not have contact with the children. I understand from Mr Vo’s evidence that the children’s parents, (including Mr Vo’s brother) already fulfil a parental role for the children.

1. Ground (c) is expressed as follows:

The appellant was asked regarding his relationship with his nephews and nieces. He answered honestly that he does not have contact with them. Obviously he could not have as he has been incarcerated and then detained for a significant period of time. The respondent has surmised that the relationship between the appellant and the children is minimal to non-existent. This is, however, not the case. The children are well aware of their uncle’s existence and excited to resume their relationship. It was a matter of pride and principle with the appellant that the children not visit him in these environments. Contrary to the remarks of the respondent, the appellant intends to play a significant part in the children’s development as a positive role model. I believe that this is an irrelevant consideration that the respondent has taken into account.

1. This ground does nothing more than to express emphatic disagreement with the Tribunal’s conclusion on a question of fact. The Tribunal did not make any finding to the effect that the children did not know that Mr Vo existed. The critical finding was that Mr Vo did not have meaningful contact with them, as he has acknowledged.
2. It was clearly open to the Tribunal to consider it highly unlikely that Mr Vo would play a positive parental role in relation to the children in the future, notwithstanding any statement of intention by Mr Vo to the contrary. No jurisdictional error is shown.

## Community contribution and expectations

### Grounds (d), (e), (k), (l), (m) and (n)

1. Mr Vo submits that the Tribunal failed to take the following relevant considerations into account:
2. the troublesome circumstances of Mr Vo’s early adulthood and its connection with his drug use and criminal offending (grounds (e) and (l)); and
3. Mr Vo’s positive characteristics including his work ethic and ability to gain meaningful employment (grounds (d), (k), (m) and (n)).
4. These grounds should be rejected. The Tribunal did have regard to Mr Vo’s actual work history. It referred to his work ethic as a positive characteristic identified in a parole report. The Tribunal also had express regard to the circumstance that Mr Vo had resided in Australia since the age of 15 and the likelihood that he had a traumatic adolescence and early adulthood. The Tribunal said that the Australian community would have a greater tolerance for a person who had lived in Australia since the age of 15, however, as a significant proportion of Mr Vo’s time in Australia has been spent in prison, and having regard to Mr Vo’s “history of offending, recidivism and squandered chances for rehabilitation”, the Australian community would not take a sympathetic view of Mr Vo’s particular circumstances.
5. The Tribunal concluded (at [100]):

However, I do not see in Mr Vo’s history any period of time where he has contributed positively to the Australian community. To the contrary, activities of recidivist drug dealers harm the community immensely. I do not consider any other aspect of Mr Vo’s background known to me takes away that stain.

1. There is no jurisdictional error affecting these conclusions. The Tribunal has not failed to take into account relevant considerations, as asserted by Mr Vo. In my view, these grounds of review impermissibly seek to have the Tribunal’s conclusions as to the expectations of the Australian community reviewed on the merits. The weight to be afforded the considerations was a matter for the Tribunal, subject to the detection of legal unreasonableness as explained by the Full Court in *Minister for Immigration and Border Protection v Stretton* (2016) 237 FCR 1 and *Minister for Immigration and Border Protection v Eden* (2016) 240 FCR 158. No error of that kind is detected.

## Conclusions about likely effect of Mr Vo’s return to Vietnam

### Grounds (g) and (n)

1. Ground (g) is expressed as follows:

It was noted that when the appellant was asked if he had fears to return to Vietnam, or was facing persecution, he responded that he had never thought about it. This was not a statement that he did not face such challenges. It was a statement that he had never considered that he would be returned to Vietnam. I believe that this is an irrelevant consideration that the respondent has taken into account.

1. This ground does not disclose jurisdictional error on the Tribunal’s part. The Tribunal positively raised with Mr Vo an issue that might, depending on Mr Vo’s response, require the Tribunal to enquire further as to whether Australia owed non-refoulement obligations to him. On the basis of Mr Vo’s response, the Tribunal concluded that “no evidence or argument was advanced” in relation to the topic.
2. The Tribunal was entitled to understand Mr Vo’s response as one that rendered any further enquiry on the issue unnecessary. In any event, Mr Vo has not demonstrated that, had the Tribunal enquired further of him, he could or would have asserted any facts capable of supporting a conclusion that he might fulfil the criteria for a protection visa. To the extent that this ground is intended to allege a breach of procedural fairness, no such breach is established on the facts.
3. Ground (n) complains of the Tribunal’s finding that it was unlikely that Mr Vo would be able to sustain a living if returned to Vietnam. Mr Vo submits to the contrary. He points to his positive work ethic and his ability to secure meaningful employment. This is a further attempt to have this Court interfere with the Tribunal’s conclusions of fact in the absence of jurisdictional error. In any event, the finding that Mr Vo would be unlikely to sustain a living in Vietnam was a consideration that weighed in favour of the revocation of the cancellation decision. If the Tribunal made an erroneously pessimistic assessment of Mr Vo’s prospects in this regard, the error is not jurisdictional in nature as it could have no material effect on the outcome of the review.

## Consequences of offending for visa status

### Ground (i)

1. This ground alleges that Mr Vo was never warned about the consequences that his criminal offending may have on his immigration status. Mr Vo submits that a warning about the consequences for his immigration status “may just have been the impetus required” for him to turn his life around.
2. The decision to cancel Mr Vo’s visa was, as I have said, mandated by s 501(3A) of the Act. The circumstance that Mr Vo had not been warned of the effect of s 501(3A) of the Act was, in my view an irrelevant consideration in the exercise of the revocation power conferred by s 501CA of the Act. The Tribunal was correct to place “no favourable weight on the absence of a warning to Mr Vo”.

## Apprehended bias

### Ground (o)

1. This ground is to the effect that the Tribunal’s decision is affected by apprehended bias. It is expressed as follows:

During evidence provided regarding the appellant’s conduct whilst in detention, the respondent noted that he already took an adverse view of the appellant’s conduct regardless of what information was brought forth. Does this indicate that no matter what the appellant attempted to do in regards to rehabilitating himself would have no bearing on this proceeding?

1. To the extent that Mr Vo complains that the Tribunal made a remark during the course of the hearing that may sustain an allegation of apprehended bias, Mr Vo did not adduce before this Court evidence of the remark the Tribunal was alleged to have made. In my view, this complaint is founded not on a remark made in the course of the Tribunal hearing, but on a passage of the Tribunal’s reasons in which the Tribunal refers to misconduct alleged against Mr Vo by the Minister during his time in immigration detention (at [60]):

Although the Minister has provided evidence to the Tribunal of adverse incidents during Mr Vo’s time in immigration detention, he has not been convicted of a crime in relation to his detention. These matters relate to altercations over computer use and cooking oil. They demonstrate a poor capacity on the part of Mr Vo to deal with challenges, but do not influence the already adverse view I take of the nature of Mr Vo’s conduct.

1. Understood in context, the adverse view referred to in this passage was not a view based upon the allegations of misconduct in immigration detention, but an adverse view of the conduct comprised of Mr Vo’s serious criminal offending. The Tribunal should, in this passage, be understood as referring back to findings expressed earlier in its reasoning as to the seriousness of Mr Vo’s offending, his breach of home detention bail, his other bail offences and the cancellation of his parole. The Tribunal’s reasons do not disclose an apprehension of bias. There is otherwise no evidence to substantiate this ground.
2. The application for judicial review should be dismissed. I will hear the parties as to costs.

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| I certify that the preceding fifty-four (54) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Charlesworth. |

Associate:

Dated: 26 November 2018