Federal Court of Australia

MQHN v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FCA 701

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| Review of: | *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] AATA 119 |
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| File number: | WAD 46 of 2022 |
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| Judgment of: | **COLVIN J** |
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| Date of judgment: | 23 June 2022 |
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| Catchwords: | **MIGRATION** - appeal from decision of the Administrative Appeals Tribunal - where applicant claimed that Tribunal had failed to consider an integer of its claim regarding s 36(1C) of the *Migration Act 1958* (Cth) - where integer was said to concern certificates showing courses undertaken by applicant whilst in immigration detention which were said to support his rehabilitation - where courses concerned substance abuse and anger management - where Tribunal summarised submissions for applicant in a manner that included the applicant's submissions concerning courses taken whilst in detention - where Tribunal reasoned in a manner that gave significance to applicant's underlying mental health issues and the need for the applicant to seek and participate in therapy - where Tribunal reasoned that, future drug use notwithstanding, applicant did not intend to seek appropriate mental health treatment - in those circumstances the applicant had not demonstrated that there had been a failure to consider the integer - application dismissed |
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| Legislation: | *Migration Act 1958* (Cth) ss 5M, 36, 500, 501, 501CA |
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| Cases cited: | *Applicant* *WAEE v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCAFC 184; (2003) 236 FCR 593*GWRV v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 602*Minister for Immigration and Border Protection v SZMTA* [2019] HCA 3; (2019) 264 CLR 421*Minister for Immigration and Citizenship v Khadgi* [2010] FCAFC 145; (2010) 190 FCR 248*Plaintiff M1/2021 v Minister for Home Affairs* [2022] HCA 17*Re Michael; Ex parte Epic Energy (WA) Nominees Pty Ltd* [2002] WASCA 231; (2002) 25 WAR 511*Warkworth Mining Ltd v Bulga Milbrodale Progress Association Inc* [2014] NSWCA 105; (2014) 86 NSWLR 527 |
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| Division: | General Division |
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| Registry: | Western Australia |
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| National Practice Area: | Administrative and Constitutional Law and Human Rights |
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| Number of paragraphs: | 38 |
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| Date of hearing: | 13 June 2022 |
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| Counsel for the Applicant: | Mr G Barns SC |
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| Solicitor for the Applicant: | Estrin Saul Lawyers |
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| Counsel for the First Respondent: | Ms C Taggart |
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| Solicitor for the First Respondent: | Sparke Helmore Lawyers |
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| Counsel for the Second Respondent: | The Second Respondent filed a submitting notice save as to costs |

ORDERS

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|  | WAD 46 of 2022 |
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| BETWEEN: | MQHNApplicant |
| AND: | MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRSFirst RespondentADMINISTRATIVE APPEALS TRIBUNALSecond Respondent |

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| order made by: | COLVIN J |
| DATE OF ORDER: | 23 JUNE 2022 |

THE COURT ORDERS THAT:

1. The application is dismissed.
2. The applicant do pay the first respondent's costs of the application to be assessed on a lump sum basis by a registrar if not agreed.

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

REASONS FOR JUDGMENT

COLVIN J:

1. The applicant seeks a protection visa to enable him to remain in Australia. He has been found to be a refugee. However, an applicant for a protection visa must also satisfy the criterion in s 36(1C) of the *Migration Act 1958* (Cth) which is expressed in the following terms:

A criterion for a protection visa is that the applicant is not a person whom the Minister considers, on reasonable grounds:

(a) is a danger to Australia's security; or

(b) having been convicted by a final judgment of a particularly serious crime, is a danger to the Australian community.

1. The term 'particularly serious crime' is defined: see s 5M and definitions of 'serious Australian offence' and 'serious foreign offence'. For present purposes, it is sufficient to note that an offence that involves violence against a person or serious damage to property that is punishable by imprisonment for a fixed term of not less than three years falls within the definition. The applicant has been convicted of such crimes.
2. The delegate of the Minister was not satisfied that the criterion in s 36(1C) was met by the applicant. As a result, his application was refused. The applicant sought review in the Administrative Appeals Tribunal. The Tribunal affirmed the decision of the delegate. The applicant now seeks judicial review in this Court on the basis of alleged jurisdictional error.

## The alleged jurisdictional error

1. The error alleged is a failure by the Tribunal to consider 'an integer' of the applicant's claims when making its assessment of his risk of reoffending, likelihood of relapsing into crime and prospects of rehabilitation. The integer is described in the ground of review as evidence of 21 certificates dated January 2021 to June 2021 (**Certificates**) provided by the applicant to the Tribunal which were said to demonstrate that he had been engaged in rehabilitation since August 2019. They concerned courses in relation to substance abuse and anger management. On that basis, there is alleged to have been a constructive failure by the Tribunal to exercise its jurisdiction.

## The nature of the authority exercised by the Tribunal

1. In the present case, the applicant was entitled to seek review in the Tribunal by the terms of s 500(1)(c)(i) of the *Migration Act*. The Act has a bifurcated structure review which means that review in respect of a decision based upon the criterion expressed in s 36(1C) must be sought under s 500(1)(c) rather than Part 5 or Part 7 of the *Migration Act*: see my reasons in *GWRV v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 602. Although the right to seek review in the Tribunal afforded by s 500(1)(c) in the present case was confined to the criterion in s 36(1C), the Tribunal was nonetheless undertaking merits review. Therefore, just like a review under Part 7, the Tribunal was required to reconsider the merits of the decision under review 'in light of the information, evidence and arguments which are relevant to the application and which are provided to it or which it obtains for itself': *Minister for Immigration and Border Protection v SZMTA* [2019] HCA 3; (2019) 264 CLR 421 at [13] (Bell, Gageler and Keane JJ) quoting with approval the reasoning in *Applicant* *WAEE v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCAFC 184; (2003) 236 FCR 593 at [44]. As their Honours went on to state:

That obligation is fundamental to the nature of the review for which Pt 7 provides. Whilst it is for the Tribunal to assess the relevance of, and the weight to be attributed to, any item of evidence, the Federal Court has properly recognised that the Tribunal would fail to perform its duty of review if it failed to take account of cogent evidence providing substantial support to the applicant's case, including any such evidence contained in a document or report provided to it by the Secretary, in the same way that the Tribunal would fail to perform that duty if it failed to take account of a substantial and clearly articulated argument advanced by the applicant in support of that case.

(footnotes omitted)

1. The above passage was quoted with approval by Kiefel CJ, Keane, Gordon and Steward JJ in *Plaintiff M1/2021 v Minister for Home Affairs* [2022] HCA 17 at [27], fn 53 when dealing with the discretionary power conferred by s 501CA to revoke the mandatory cancellation of a visa under s 501(3A). Earlier in their reasons, their Honours had observed that it was consistent with well-established authority in different statutory contexts that 'there can be no doubt that a decision-maker must read, identify, understand and evaluate the representations' received as part of statutory process that provides for the making of representations: at [24]. Their Honours continued: 'the decision-maker must have regard to what is said in the representations, bring their mind to bear upon the facts stated in them and the arguments or opinions put forward, and appreciate who is making them'. Later, they said that: 'The requisite level of engagement - the degree of effort needed by the decision-maker - will vary, among other things, according to the length, clarity and degree of relevance of the representations. The decision‑maker is not required to consider claims that are not clearly articulated or which do not clearly arise on the materials before them': at [25]. The same applies to the Tribunal in respect of the submissions that it receives according to its procedures.

## The nature of the applicant's claim

1. Here, the claim made does not concern the quality of the deliberation by the Tribunal. Rather, it is alleged that there has been a failure to consider the Certificates which were said to be significant evidence relied upon by the applicant to demonstrate that he had been engaged in rehabilitation. Therefore, it is not necessary to consider the extent to which a complaint about the quality or degree of deliberation may provide a basis for review for jurisdictional error: see *Plaintiff M1/2021* at [26], [31]‑[35]. However, I note that the language of 'read, identify, understand and evaluate' exposes, as might be expected, that the deliberative process undertaken by the decision-maker must have certain characteristics in order for the decision to be within the authority conferred upon the decision-maker. That is to say, the deliberation must be of the character required by the provision conferring that authority. For the legislature to entrust a decision to the Tribunal as an independent statutory tribunal with members appointed with requisite expertise in decision-making is to require deliberation of the kind that might usually be associated with a tribunal with those attributes.
2. As has been noted, it is not every failure to consider or take account of evidence or argument that will be jurisdictional. Further, the evaluative task is entrusted to the Tribunal. Therefore, whilst it is expected that the Tribunal will take account of 'cogent evidence' and 'a substantial and clearly articulated argument', it is for the Tribunal to evaluate what, in its view, is significant and persuasive and the weight to be given to that evidentiary material or argument as the case may be.
3. In the present context, the language of 'take account' does not mean that the matters raised by the applicant must be brought into account in reaching the conclusion. Arguments do not take on the character of mandatory relevant considerations simply because they are raised by the applicant. Persuasiveness of the argument and any significance it may have for the Tribunal's deliberation remain matters entrusted to the Tribunal. Therefore, the present case is to be distinguished from those instances where the statutory language requires the decision-maker to have regard to a particular matter in reaching the decision (or to make it a fundamental element or focal point of the decision-making process): see *Re Michael; Ex parte Epic Energy (WA) Nominees Pty Ltd* [2002] WASCA 231; (2002) 25 WAR 511 at [50]‑[56] (Parker J, Malcolm CJ and Anderson J agreeing); *Minister for Immigration and Citizenship v Khadgi* [2010] FCAFC 145; (2010) 190 FCR 248 at [60]‑[62]; and *Warkworth Mining Ltd v Bulga Milbrodale Progress Association Inc* [2014] NSWCA 105; (2014) 86 NSWLR 527 at [216]‑[231].
4. Further, it is not appropriate for this Court on review to form its own view that a particular matter (the Certificates) had persuasive significance for the decision to be made by the Tribunal and then reason from that position that there was a failure to take account of that matter. To reason in that manner is to enter upon the deliberative task entrusted to the Tribunal. It is only where the Tribunal fails to engage with an argument that presents to the Tribunal as being substantial and clearly articulated or evidence that presents as cogent (which requires that it be clear as well as evidently logical and convincing) that there will be jurisdictional error.

## The point at issue

1. In the present case, the applicant relied upon the way in which the applicant's case had been put to the Tribunal. It was not contended for the Minister that the point in relation to the Certificates was one which had not been clearly articulated. Therefore, the point at issue is whether the Tribunal failed to undertake its deliberative task by ignoring the applicant's argument advanced by reference to the Certificates.

## The submissions for the applicant before the Tribunal

1. The applicant was legally represented before the Tribunal. In accordance with the Tribunal's procedures, a statement of facts, issues and contentions (**Statement**) was advanced for the applicant. The Statement was some 30 pages in length and dealt with the relevant legal framework and the available material in considerable detail. It was delivered in early March 2021.
2. Under the general heading 'Rehabilitation', the Statement commenced with a section headed 'Counselling'. The section began as follows (para 155):

While in immigration detention the Applicant has regularly attended counselling and psychologist appointments. He has always been open with the counsellors and psychologists in regard to his past trauma, offending behaviour and his desire to move on from those times in his life. He has consistently shared his desire to be a better person and to treat his mental health issues.

There followed detailed submissions about various mental health consultations and proposed further treatment (paras 156‑162).

1. Next, under the heading 'Courses in detention' there was the following (paras 163‑167):

In June, July and August 2019, the Applicant attended weekly Men's Group held at Yongah Hill. The topics covered included anger management, coping with stress, mindfulness, peer support, understanding family violence, understanding mental illness, and healthy relationships.

In July and August 2019, the Applicant attended weekly Lifeskills workshops conducted at Yongah Hill. Topics covered included understanding the process of dependency, the biological effects of substance abuse, self-regulation and inter‑relationships, understanding lapse and relapse, fight or flight response, managing stress, long term effects of substance disorder, change, relapse and letting go, and managing strong emotions.

In September 2019, the Applicant attended weekly Lifeskills workshops conducted at Yongah Hill. Topics covered included managing stress, understanding the fight or flight response, long-term effects of substance use disorder, change, relapse prevention and letting go, and managing strong emotions.

On 10 September 2019, 24 September 2019 and 8 October 2019 the Applicant participated in an Anger Management Course run by Ngala Dads WA. Each session was two hours in duration.

With the Applicant making positive strides to address his PTSD, and his willingness to engage with therapy post-release, he shows positive signs of rehabilitation. In combination with the support he has in the Australian community, this lowers his risk of reoffending to very low.

(footnotes omitted)

1. The above passage included five separate footnotes to documents before the Tribunal.
2. The Statement then used the heading 'Continuation of rehabilitation' and stated (paras 168‑173):

The Applicant's commitment to abstaining from substance abuse, demonstrated over a prolonged period where he has faced many stressful situations, demonstrates his continued desire to control his emotions and behaviour.

**He has completed anger management and substance abuse courses while in detention and has incorporated these techniques.** He has developed strategies through online courses, discussions with his sister and extensive reading and research on the subject. The Applicant is committed to continuing to implement these strategies when he faces conflicts and when things become difficult. He is willing to undergo psychological treatments such as EMDR suggested by Dr Watts.

Dr Watts concludes that the Applicant will need to continue rehabilitation in the community, but that in his professional opinion, the Applicant shows that he wants to do this. Dr Watts further states that of 'critical importance would be the support and ability to engage in meaningful activities.'

This desire from the Applicant to continue therapy and treatment once released into the Australia community signifies that his motivation is to ensure that he does not reoffend and never endangers another member of the Australian community.

He understands that this is his last chance at a better life, one not spent in immigration detention or in limbo. His experiences in Iran caused him to suffer deeply imbedded trauma which for much of his life he chose to push down and not address. Since he has ceased using crystal methamphetamine and through his courses and counselling, he understands that crystal methamphetamine was an unhealthy and dangerous coping method for him.

The Applicant is committed to continuing to treat his past trauma through regular counselling and surrounding himself with positive role models like his brother, friends and his former employer, all of whom have stated they are willing to provide financial, emotional and practical support to the Applicant upon his release. This support to continue his rehabilitation post release into the community lowers his risk of reoffending to very low.

(footnotes omitted) (emphasis added)

1. In the above passage, it is the first sentence of the second paragraph that is said to relate to the Certificates. At that time (March 2021) only some of the courses had been undertaken. Further, copies of those Certificates did not form part of the documents before the Tribunal. Probably for that reason, there is no footnote reference to any of the Certificates (noting that some of them relate to the period before March 2021). After the Statement was delivered, supplementary documents were filed by the applicant in the Tribunal that included the Certificates (amongst other things).

## The reasoning by the Deputy President

1. In his reasons, the learned Deputy President described, in terms that are not the subject of any complaint, the relevant background and the nature of his statutory task. He then set out a summary of the applicant's case by reference to the Statement. Under the heading 'Rehabilitation', the reasons summarise in the following terms the relevant part of the case advanced by the applicant as to rehabilitation:

**While in immigration detention the Applicant has regularly attended counselling and psychologist appointments. He has always been open with the counsellors and psychologists in regard to his past trauma, offending behaviour and his desire to move on from those times in his life.**

Notes made by IHMS following mental health consultations showed that the Applicant engaged well in the counselling sessions.

He was receiving help from his sister who 'has psychological training in Iran'.

Dr Watts has suggested that the Applicant should continue rehabilitation, especially using a trauma therapy, such as EMDR (Eye Movement Desensitisation and Reprocessing).

In June, July and August 2019, the Applicant attended weekly Men's Group meetings held at Yongah Hill Immigration Detention Centre. In July, August and September 2019, the Applicant attended weekly Lifeskills workshops. On 10 September 2019, 24 September 2019 and 8 October 2019 the Applicant participated in an anger management course run by Ngala Dads WA.

The Applicant's commitment to abstaining from substance abuse, demonstrated over a prolonged period where he has faced many stressful situations, demonstrates his continued desire to control his emotions and behaviour. **He has completed anger management and substance abuse courses while in detention and has incorporated these techniques. He has developed strategies through online courses, discussions with his sister and extensive reading and research on the subject**.

(emphasis added)

1. No complaint is made concerning the accuracy or sufficiency of the summary.
2. Thereafter, the case advanced for the Minister was summarised in the reasons.
3. Next, the consideration of the applicant's case began by identifying the matters that were required to be considered (paras 27‑42). No issue is taken as to the Tribunal's approach in that regard. One matter identified was the risk of reoffending and recidivism. It was identified as a matter that must be 'looked at as a whole and prospects of rehabilitation assessed'.
4. Thereafter, the issue of rehabilitation was addressed under the heading 'Risk of re‑offending/Likelihood of relapsing into crime and prospects of rehabilitation'. The reasons under that heading began with a restatement of the issue (paras 55‑56). They then referred back to the Tribunal's summary of the applicant's submissions on the topic (as quoted above) (para 57). The reasons then dealt with the expert evidence of Dr Watts (paras 57‑62).
5. The evidence of Dr Watts as quoted by the Tribunal was to the effect that there were three broad factors that relate to his offending, namely substance abuse, Post-Traumatic Stress Disorder (**PTSD**) and Borderline Personality Disorder (**BPD**) traits (para 57). The latter two factors were described at certain points in the evidence as quoted by the Tribunal as 'static factors'. The quoted passages from the evidence of Dr Watts distinguished between mind changes (which were said to be very positive) and resolution of his underlying trauma (which was said to require therapy). A type of therapy was described, being EMDR and DBT.
6. The Tribunal also quoted the following views of Dr Watts (para 62):

Well, using a sort of like a structured risk assessment, you look at certain factors and the mental health history is a risk factor. The lack of, you know, antisocial desire is a positive factor but the mental health personality stuff are negative factors. So if you would put it on a sort of spectrum of low, moderate, high or very high, without treatment, without support you would say you would probably put it at a moderate risk of reoffending.

…

That is because of the static factors, the personality type aspects, the fact that there has been quite a history of reactivity over a long period of time and the type of mental health condition he has got because of that, you know, early childhood developmental abuse type things, makes him prone to reactivity … But if you put drugs in then you would be looking at the severe risk.

…

… I would put him as lower rather than higher risk of going back into the drugs but I wouldn't put him as no risk of going back into it. His attitude - he recognises that they have been problematic but until he is in the community and faced with difficult times and not use drugs, there really isn't the evidence to go that he is past it …

1. Other quoted passages from the evidence of Dr Watts emphasised the need for the applicant to undertake therapy. The evidence identified two separate aspects. First, the need for the applicant to deal with his drug use. Second, the need for him to undertake therapy to deal with his underlying mental health issues.
2. After dealing with expert evidence as to the risk of reoffending, this part of the reasons dealt with matters raised by the applicant as to his risk of reoffending. Then the reasons stated (paras 63‑64):

As set out in [25] above, the Applicant identifies a number of factors that he says militate against him offending as he has in the past. The Applicant points to changes in circumstances from when he was offending. He says that he has abstained from drug use since his incarceration. That may be the case, however, as the Minister points out, the Applicant's drug use is long-standing and, contrary to his claim that his problematic drug use started when he befriended *'the wrong type of people'* in Australia, he had been a regular drug user long before he came to Australia. The Applicant's evidence was that he had undertaken:

*…a lot of different courses. I have got evidence to show you, but most if was for anger management, drug and alcohol I use, I did on-line also practicing sleep practise and family kind of courses, related to family.*

The Applicant's statement dated 26 February 2021 merely says that he *'… did courses to help with* [his] *anger management and substance abuse.* [he] *read on the internet and* [his] *sister in Iran has helped* [him] *with techniques and strategies to deal with [his] mental health issues.'* A number of certificates of participation in various programs were included in the T documents: Lifeskills and Men's Group; Ngala Anger Management and Lifeskills. There was also a letter from Substance Treatment and Recovery (ST&R) dated 21 July 2016 offering admission into Windana Residential Withdrawal Service included in the Applicant's bundle. The Applicant's evidence was that he did not take up that residential treatment. The Applicant's counsel summarised the position in closing:

*The* [A]*pplicant has engaged with counselling and courses in immigration detention over the past four-and-a-half years and he has acknowledged that he needs to confront his past trauma rather than ignoring it, self-medicating with illicit substances or alcohol which he gave evidence of that that was his mindset prior to being detained. He's willing to try any sort of therapy and counselling to assist and even* [those] *suggested by Dr Watts.*

(footnotes omitted)

1. The above paragraphs engaged with the evidence concerning the courses undertaken by the applicant. It is said that the footnotes provided to the above paragraphs do not refer to the Certificates. However, they do quote the submission made on behalf of the applicant concerning the counselling and courses that he had undertaken in immigration detention. The reference to courses is a reference to the courses the subject of the Certificates. There was no need to footnote a reference to the Certificates. The oral submission based upon them was quoted and reference was given to the relevant transcript page (fn 53).
2. It was suggested that the paragraphs simply listed references to the evidence without engaging with the argument advanced by reference to the Certificates. I do not accept that the statements in the reasons were simply reciting what was before the Tribunal. They are collecting together the evidence that bears upon the assessment to be made, hence the reference to 'as the Minister points out'. It concludes by quoting the submission for the applicant to the effect that he is willing to try the sort of therapy and counselling to assist.
3. Then the reasons consider the evidence as to whether employment would be available to the applicant were he to be allowed to stay in Australia (paras 65‑69). After that the claims that the applicant would have more general support from friends and family were addressed (para 70), as well as his claim that the prospect of his removal from Australia if he was to offend again operating as a substantial motivating factor against his reoffending (para 71).
4. After dealing with all these aspects (and making a number of findings along the way), the Deputy President then said (para 72):

I am not satisfied that the Applicant has done enough to address the underlying causes of his offending behaviour. I refer to the evidence of Dr Watts quoted in [62] above. Dr Watts' assessment was that the Applicant was a moderate risk of reoffending if he did not engage in the sort of treatment that Dr Watts suggested would be appropriate. The Applicant has not had any such treatment to date, in particular for what Dr Watts identified as borderline personality disorder traits. As far as the evidence indicates, other than general statements by the Applicant that he intends to have treatment, no steps have been taken by the Applicant to secure that treatment if he were released back into the community. In real terms, we have nothing more than the Applicant's general statements that he would seek treatment.

1. In the above passage, the Deputy President is accepting the evidence of Dr Watts and reaching a conclusion, contrary to the submission for the applicant, that he is not persuaded that the applicant will seek the treatment that is needed. It is a passage that must be understood in the context of the evidence of Dr Watts quoted by the Tribunal and the distinction between dealing with drug taking and the need for therapy for underlying mental health issues. Significantly, the Certificates relate to the former and not the latter. The Tribunal's reasons rest on a conclusion that the applicant has not demonstrated that he will undertake the mental health treatment that he needs if he is to address what would otherwise be a moderate risk of reoffending.
2. In those circumstances, given the reasoning pathway, it is not surprising that the Tribunal makes no reference to the Certificates in reaching its conclusion at this point. The Tribunal has plainly considered the submission about the courses that were undertaken. It has addressed the submission on behalf of the applicant that relies on those courses including the Certificates. However, ultimately it is its conclusion that the applicant has not demonstrated that he will undertake the required therapy by way of treatment of his mental health issues that forms the basis for its conclusion on the issue.
3. The Tribunal then went on to also accept the evidence of Dr Watts concerning drug use (para 73). Then (para 74) the Tribunal concluded: 'Based on all of the evidence, I am satisfied that there is a real or significant risk or possibility of harm to one or more members of the Australian community if the Applicant were to be released into the community'.

## Alleged error not established

1. For the reasons that have been given in the course of considering the reasons of the Tribunal, it has not been demonstrated that the Tribunal failed to consider the Certificates. It did not ignore them. On the contrary, it made express reference to the submissions advanced by reference to the actions of the applicant in participating in courses during his period in detention. The reasons of the Deputy President disclose that the differentiation between earlier conduct and the 'continuation of rehabilitation' whilst in detention was well understood. It has not been suggested that the Certificates demonstrate some form of rehabilitation beyond that captured by the submissions on behalf of the applicant that were addressed by the Tribunal in its reasons.
2. The consideration of the submissions advanced based upon the evidence in the Statements is a sufficient basis upon which to address the 'integer' of the claim that depended upon the claim that there had been rehabilitation by participating in the courses. It was not necessary for the Tribunal to expressly refer to the Certificates in order for it to deal with the argument advanced based upon the fact of the applicant's participation in the courses.
3. Finally, the reasoning pathway exposes that the Deputy President gave particular significance to the view of Dr Watts that treatment by appropriate therapy was necessary even assuming that the applicant had demonstrated a willingness to rehabilitate is respect of his past drug use. This explains why there was not detailed engagement with the Certificates. In effect, the reasoning proceeded on the basis of the applicant's participation in the courses the subject of the Certificates whilst in detention.
4. In all those circumstances, the alleged error has not been established. It follows that is not necessary to consider the submission advanced by the Minister concerning materiality.

## Orders and costs

1. Both parties accepted that costs should follow the event. Therefore, there should be an order that the application is dismissed and a further order that the applicant pay the Minister's costs to be assessed on a lump sum basis if not agreed.

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| I certify that the preceding thirty-eight (38) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Colvin. |

Associate:

Dated: 23 June 2022