



**IN THE FEDERAL CIRCUIT and
FAMILY COURT OF AUSTRALIA (DIVISION 2)
AT SYDNEY**

File No: [REDACTED]

CNT19
Applicant

**MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND
MULTICULTURAL AFFAIRS**

First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL

Second Respondent

ORDER

BEFORE: REGISTRAR CARNEY
DATE: 07 November 2022
MADE AT: MELBOURNE (In Chambers)

BY CONSENT, THE COURT ORDERS THAT:

1. The name of the first respondent be amended to *'Minister for Immigration, Citizenship and Multicultural Affairs'*.
2. A writ in the nature of certiorari issue directed to the second respondent quashing its decision dated [REDACTED].
3. A writ of mandamus issue directed to the second respondent requiring it to determine according to law the application for review made on [REDACTED].
4. The first respondent pay the applicant's costs fixed in the sum of \$3,930.

BY CONSENT, THE COURT NOTES THAT:

The first respondent (**the Minister**) accepts that the application must be allowed on the basis that the decision of the second respondent (**the Tribunal**) is affected by jurisdictional error of the kind identified in *Minister for Immigration and Citizenship v*



SZRKT (2013) 212 FCR 99; [2013] FCA 317 at [111]–[112] per Robertson J. In particular, the Tribunal overlooked a statutory declaration of the applicant's wife, dated 21 May 2019 (**CB 60; CB 396: [129]**). This error was material because the statutory declaration was cogent and significant evidence and it bore upon the Tribunal's consideration of the prescribed circumstances under regulation 2.41 of the *Migration Regulations 1994* (Cth) which are relevant to the exercise of the discretion to cancel the applicant's visa under section 109 of the *Migration Act 1958* (Cth).

By the Court

DATE ENTERED: 7 November 2022

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Registrar