

**RŌPŪ TAKE MANENE, TAKE WHAKAMARU  
AOTEAROA**

<b>Appellant:</b>	<b>SINGH, Harinder</b>
<b>Respondent:</b>	<b>THE MINISTER OF IMMIGRATION</b>
<b>Before:</b>	C M Treadwell (Member)
<b>Representative for the Appellant:</b>	T Delamere
<b>Counsel for the Respondent:</b>	R Denmead
<b>Date of Hearing:</b>	1 October 2020
<b>Date of Decision:</b>	27 January 2021

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**DEPORTATION (RESIDENT) DECISION**

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[1] This is an appeal on humanitarian grounds by the appellant, a 29-year-old citizen of India who became a New Zealand resident in 2014, against his liability for deportation.

**THE ISSUE**

[2] This matter came before the Tribunal on 19 March 2020, for a hearing in which it took the appellant's oral evidence, together with the evidence of his brother and his partner's mother. It did not hear the oral evidence of the appellant's partner herself because she was in prison and could not be located. The appellant himself was also in prison in relation to the conviction from which his deportation liability arises.

[3] At the conclusion of the hearing, the Tribunal indicated to Mr Delamere that, in the circumstances, it would allow him time to consider whether to lodge a psychologist's report on the effect on the appellant's partner of his deportation.

A teleconference in two weeks' time was planned, so that Mr Delamere could take instructions and advise the Tribunal and the respondent. Further timetabling orders could be made at that time, if necessary.

[4] In the event, the first COVID-19 lockdown then began on 25 March 2020, before the case manager was able to arrange a teleconference. The Tribunal's processing systems shut down overnight and, apart from such work as Tribunal members were able to do from home, ordinary business ceased. The Tribunal did not then hear further from Mr Delamere and, two months later, it issued its decision (see *Singh v Minister of Immigration* [2020] NZIPT 600646). It was the fault of the Tribunal that it did not ascertain first whether Mr Delamere in fact wished to obtain a psychologist's report and it extends its apologies to the appellant and his family.

[5] Applications to the High Court for leave to judicially review and appeal were consented to by the Tribunal and, on 15 July 2020, Palmer J made consent orders as follows:

- “(a) I grant Mr Singh's application for leave to appeal and judicially review;
- (b) I set aside the Tribunal's decisions;
- (c) I remit Mr Singh's humanitarian appeal against liability for deportation to the same Tribunal member for rehearing and determination, on the basis of the evidence already given and any updating evidence, expert psychological evidence and submissions;
- (d) I make no order as to costs.”

[6] The second COVID-19 lockdown in Auckland then delayed the further hearing of the appellant's appeal until 1 October 2020.

## **BACKGROUND**

[7] Given the direction of the High Court that the Tribunal assess the appeal on the basis of the evidence already given, it is convenient to repeat here the background, as presented at the hearing in March 2020.

[8] The appellant was born in a small village in the Punjab. His father holds a senior position in the police force in his area.

[9] The appellant first came to New Zealand in 2010, aged 17 years, on a student visa. He was issued various temporary visas (and had two brief periods of being

here unlawfully, likely while visa applications were under consideration) until he was granted residence on 5 November 2014.

[10] The grant of residence to the appellant was made on partnership grounds. In 2012, he had begun a *de facto* relationship with a New Zealand citizen, AA.

[11] The appellant's only brother, Manvir, is a New Zealand resident. Their parents have spent half of each year since 2014 in New Zealand and the other half in India. In the last year, their mother spent eight months here to help with the care of the first child of Manvir and his wife.

[12] Since 2015, the appellant has incurred a number of convictions in New Zealand, as follows (the index offending in bold):

<b>Offence date</b>	<b>Sentence date</b>	<b>Offence</b>	<b>Sentence</b>
9 May 2015	10 June 2015	<b>Driving with excess blood alcohol</b>	Fined \$400, disqualified 6 months
21 August 2015	11 September 2015	<b>Driving while disqualified</b>	Fined \$600, disqualified 6 months
21 August 2015	11 September 2015	<b>Failed to remain for evidential breath test</b>	Disqualified 6 months
24 December 2016	14 September 2017	<b>Possessing offensive weapon (other)</b>	2 months' imprisonment
24 December 2016	14 September 2017	Possessing needle/syringe etc for cannabis	2 months' imprisonment
24 December 2016	14 September 2017	Behaving threateningly	2 months' imprisonment
5 June 2016	22 March 2018	<b>Common assault (other weapon)</b>	6 months' imprisonment
5 June 2016	22 March 2018	<b>Wounding with intent to cause grievous bodily harm (stabbing/cutting weapon)</b>	9 years' imprisonment (reduced to 7 years and 9 months' imprisonment on appeal)

[13] The index offences were relied upon as the grounds for the deportation liability notice issued by the Minister on 18 October 2019. That notice has led to the present appeal.

[14] As to the three offences for which the appellant was sentenced on 14 September 2017 (possessing an offensive weapon, possessing a needle or syringe etc for cannabis use and behaving threateningly), Judge Cocurullo's sentencing notes give no account of the findings of fact. The Permanent Court Record identifies the weapon in question as a set of pruning loppers. The Record also notes that the appellant pleaded guilty to those charges. To the Tribunal, the appellant stated that the man he had threatened had been the owner of a liquor store who had been propositioning the appellant's partner, upsetting her.

[15] As to the two offences for which the appellant was sentenced on 22 March 2018 (common assault and wounding with intent to cause grievous bodily harm), the sentencing notes of Judge Ingram record that the appellant had returned home to find an audio speaker missing. He and flatmates formed the view that the victim had taken it. The appellant (who had been drinking) went with a group of associates to the victim's address, in a town some 15–20 minutes away. When the victim opened the door, the appellant punched him in the face without speaking. When the victim then ran to hide, the appellant's associates found him and attacked him. While he was being attacked, the appellant found a pair of scissors in the premises and twice tried to stab the victim as he was being held down and assaulted. With the second thrust, the appellant succeeded in penetrating the victim's chest cavity. The assault on the victim by the other men then continued for some time before the appellant took the speaker and left with his associates. As for the victim, while his lung was not perforated it did collapse, placing him in serious danger for a time. He was taken to hospital by ambulance and made a full recovery, not suffering any long-term injury.

[16] In sentencing the appellant, Judge Ingram rejected the submission that he was easily led and found that the appellant had led the expedition to recover the speaker. He had been the first to initiate violence and he had stabbed a defenceless man who was being held down by others. He then tried to persuade others to say it had been another man who had wielded the scissors. The Judge found the appellant to be a manipulative man, not easily led and prepared to be deceitful in order to avoid blame. From a starting point of 10 years' imprisonment, the Judge deducted a year, to account for a degree of remorse and the impact on the appellant and his family of deportation, which would ruin their dream of all settling in this country, and sentenced the appellant to nine years' imprisonment.

[17] The appellant appealed to the Court of Appeal against both conviction and sentence. In *Singh v R* [2018] NZCA 388, the Court upheld the conviction but

allowed the appeal against sentence. After considering comparative cases, and taking into account both the lack of premeditation for the stabbing and the five months that the appellant spent on a 24-hour curfew with electronic monitoring, the Court adopted a starting point of nine years. It then deducted a year for the hardship flowing from the “inevitable” deportation and three months for the time spent on electronically monitored bail, leaving the appellant with a sentence of seven years and nine months’ imprisonment.

## **THE APPELLANT’S CASE**

[18] It is also necessary to record the evidence given by the appellant, his brother Manvir Singh and BB (the mother of the appellant’s partner) at the hearing in March 2020, after which the Tribunal will record the further evidence given by the appellant and the evidence of both his partner, AA, and Amanda McFadden, psychologist, given on 1 October 2020.

### **Evidence of the Appellant**

[19] The appellant is one of two sons of an Indian couple. His brother, Manvir, came to New Zealand in about 2008 or 2009 and became a New Zealand resident in about 2015 or 2016. He runs his own transport business. Their father is a senior police officer in India and, since about 2012, the appellant’s parents have been dividing their time fairly equally between India and New Zealand. In the last 18 months, his mother has spent more time in New Zealand than in India, to help to care for his brother’s first child. The appellant’s parents have assisted their son Manvir to buy a two-storied house here, in anticipation of becoming residents here in the future.

[20] The appellant came to New Zealand in 2010, initially as a student. Since then, he has worked in various occupations here, including as a courier driver, fruit picker and on his partner’s father’s farm.

[21] The appellant met his partner, AA, in 2012. They began living together not long after they met. At that time, the appellant was flatting with his brother and his brother’s friends and AA lived with him there for a period, before they moved to live with her father.

[22] AA has suffered from behavioural issues since she was young and had a troubled childhood. In spite of this, she and the appellant have always had a cordial relationship and have been able to talk through any problems. She did want him to stay at home more, with her, and he had to compromise by reducing his hours at work. She did not work herself. The appellant does not know whether she had any difficulties with the police before he met her, but she did not have any during their time together. However, she was arrested at about the same time as the appellant – he thinks on an unrelated charge of car theft – and is currently in prison on another matter which arose just before the appeal hearing (he does not know the nature of the new charge). He understands that she is currently remanded in custody because she could not provide a satisfactory bail address. Even before her own imprisonment, AA was not able to visit the appellant in prison because of the restriction on visitors who had themselves been in prison within two years. They did, however, talk on the telephone and wrote letters to each other. Her detention meant that she was unable to give evidence in support of the appellant at the first hearing.

[23] When he was charged with the June 2016 offences, the appellant was initially granted bail. He continued to live with AA until he was again taken into custody in December 2016, in relation to the ‘possession’ and ‘behaving threateningly’ offences committed in that month. After appearing in court, he was granted electronic bail in February 2017, but, by that point, AA had been charged with unrelated matters and was herself in custody. The appellant was then taken back into custody in July 2017 because he breached his bail conditions by trying to contact the victim by telephone. He says that he only did so because he was answering a call the victim had made to him. Thereafter, he remained in custody until his trial and sentencing. In effect, he has not lived with AA since December 2016. The only time he has seen her since then was, briefly, at his sentencing in March 2018.

[24] The appellant is visited in prison by his brother Manvir, who comes to see him fortnightly, and by his mother when she is in New Zealand.

[25] In prison, the appellant has done both the Short and Medium Intensity Rehabilitation courses. They have helped him to understand his responsibilities and to be more thoughtful. He understands that his behaviour changes if alcohol is involved.

[26] If he is deported, the appellant says that it will end his relationship with his partner. AA is a New Zealand citizen and has never been to India. Although she

has written to the appellant, saying that she would go to India with him, her mental health issues mean that she would need to be close to her mother in New Zealand, who has been her main support throughout her life. Separation from his partner would be distressing and upsetting for the appellant.

[27] Deportation would also leave the appellant far from his family. His parents wish to settle in New Zealand for their retirement. It will be hard for him to be separated from them and hard to stay in touch.

[28] It would also be hard for the appellant to leave New Zealand. It has been his home for 10 years and he has friends and employment here. In contrast, in that time he has been back to India for two months only. He plays sport in New Zealand and visits the *gurdwara* here.

[29] The appellant is also concerned that the victim of his offending has been deported back to India. The victim comes from New Delhi and, although the appellant comes from a village in the Punjab, he believes that the victim has friends in the same village, who would tell the victim that the appellant had returned. The appellant thinks that he would have to be careful and look out for his own safety, in case the victim seeks revenge. He recalls that, just after his sentencing in September 2017, his father received an anonymous telephone call, telling him that “we will welcome your son”.

[30] The appellant acknowledges that, if he returns to India, he will be able to stay in his family home there and his father will be able to assist him to find employment. However, he believes it will be challenging for him to find work because he has been away for so long.

### **Evidence of AA’s Mother, BB**

[31] BB explained to the Tribunal that AA, who is now 29 years old, suffered a serious bout of the virus known as ‘hand, foot and mouth disease’ when young and was later diagnosed as suffering from Asperger’s Syndrome, possibly as a result. AA does not socialise well with people and had a poor education, being expelled from primary school. She was a difficult child to cope with at home and, prior to meeting the appellant, AA had been living with her and doing “whatever she wanted”. Before 2012, she incurred driving and drugs convictions, as well as convictions in relation to the physical abuse of BB. She went to prison when she was 19, and again when she was 21, this second time for being the driver of a car

used in the armed robbery of a dairy. In fact, she had not known that her passenger was intending to rob the dairy – she was simply waiting for him at his request while he went in.

[32] In 2012–2016, however, AA “mellowed” a great deal because she had someone to talk to in the appellant. He would listen to her, which was important to her.

[33] In 2016, AA was arrested for car theft and, since then, has had “niggling” problems with the police. BB has had to call the police to calm her down on occasion. AA’s current imprisonment, BB understands, relates to her having breached periodic detention orders. She will be released in July if she is able to maintain her good behaviour. In prison, she is being treated for depression.

[34] BB has talked to AA about what she would do if the appellant is deported and she has said that she “won’t stick around”. BB is afraid that she means that she will harm herself, or that she will “go downhill” quickly.

[35] The appellant is desperately needed by BB. Without him, she will have to cope with AA on her own. She is 60, but the unending struggle to raise AA has left her feeling physically and mentally 90. She has not seen AA smile in the last two years, because of her separation from the appellant and BB. She does not know where AA will live when she comes out of prison, but she cannot herself take her back. She sees AA every day when she is not in prison, but she can no longer cope with her at home. BB has cut off all her own friendships because she cannot bring herself to visit the stress and unhappiness of caring for AA on other people. It has been a miserable life for BB for a long time. The one person who had brought relief to her, the appellant, is now at risk of being taken away, a prospect which is devastating for her.

[36] The appellant’s offending came as a great surprise to BB. In all the years she has known him, he has never behaved like that. Nor does he drink much. She has never seen him drunk. When he came into the family, BB explained to him that AA was fiery, but he cared for her and stuck by her. For the first time in more than 20 years, BB experienced years of being happy herself as a result of the appellant’s presence in her daughter’s life.



### **Evidence of the Appellant's Brother, Manvir Singh**

[37] Manvir Singh is the appellant's brother. He has been living in New Zealand since about 2008 or 2009 and became a New Zealand resident in about 2015 or 2016. He runs a transport business, moving shipping containers. He is married with an infant daughter. His wife works for the Red Cross and a commercial company and is studying to be an accountant. They own their own house in New Zealand, which his parents helped them to buy. It is a six-bedroom house because he intends his parents to live with them when they retire.

[38] As to AA, Manvir has known her as his brother's partner for a long time. He used to live in the same city. Since the appellant's imprisonment, he has travelled back there on a number of occasions when he has been unable to reach AA by telephone. He has given her money when she has needed it (he estimates \$1,000 in the last year). He knows that she is in prison and would visit her, but the authorities refuse to tell him where she is being held, for privacy reasons.

[39] Manvir feels that theirs is a decent family. The appellant's offending left him distressed and heartbroken. He had never been to a court before his brother's trial and was in a state of shock. Even so, he has supported his brother. Manvir last saw AA a couple of months before the appeal hearing and they talked about the appellant's possible deportation. She told him that she cannot bear to be separated from the appellant. Manvir views AA's recent offending as the product of the appellant's imprisonment and her reaction to that. He worries that she might go to India with the appellant, because it is not a country where there is adequate help for mental health issues.

### **THE EVIDENCE GIVEN ON 1 OCTOBER 2020**

[40] At the reconvened hearing of the appeal on 1 October 2020, the Tribunal heard further from the appellant, and also heard from his partner AA and Ms McFadden, a psychologist retained to provide expert evidence, primarily as to the dependence of AA on the appellant.

### **The Further Evidence of the Appellant**

[41] The appellant wished to clarify that AA's offending had involved being the getaway driver for a dairy robbery (though she had not known beforehand that her

passenger was going to rob the dairy) and that it had occurred about a week after his own arrest in 2016. Before that time, she had not incurred any convictions while she had been in a relationship with him.

[42] The appellant acknowledges that, on the occasion of his first parole hearing, he did not tell the Parole Board of his intention to live with AA on being released. He had received poor advice to the effect that it would compromise his chances of parole to do so, given AA's conviction.

### **The Evidence of the Appellant's Partner, AA**

[43] By the time of the re-convened hearing, AA had been released from prison and was able to give evidence in person to the Tribunal.

[44] AA confirmed that she had had two convictions in the time the appellant had been in prison. The first had been in relation to the robbery of a dairy. She had not known that her passenger had exited the car for the purpose of robbing the dairy but she was charged and convicted as an accessory. She received a sentence of nine months' imprisonment. Home detention was considered but was not suitable. The second offence was "a minor" conviction for theft, for which she was again imprisoned, being released in July 2020.

[45] Following her release, AA has been living with her mother and grandmother, but has approval now to live with her father on his orchard in a rural area. He is setting up a caravan for her, with a bathroom block, so that she can live independently. She is also currently waiting for her probation officer to organise counselling for her.

[46] AA continues to keep in touch with the appellant, by letters, telephone and email. She is living for the day he is released. She would not be able to go to India with him but, even if he is deported, she does not believe that they will ever be separated, no matter the physical distance.

### **The Evidence of Amanda McFadden, Psychologist**

[47] Ms McFadden is a registered Clinical Psychologist. She was retained by the appellant to provide:

- (a) an assessment of the likely impacts of deportation on AA;

- (b) an assessment of the appellant's risk of re-offending;
- (c) identification of factors which may have contributed to offending;
- (d) the presence of remorse; and
- (e) efforts made towards addressing his offending and future risk.

[48] After interviewing the appellant, AA, BB and the appellant's brother Manvir, Ms McFadden drew the following conclusions.

*The appellant*

[49] As to the appellant, he is free from any major mental health difficulties, but does suffer panic attacks. Reflection on his offending brings him to tears and he shows appropriate insight and remorse. He is ashamed of the shame he has brought on his family. He became a periodic drinker in New Zealand, indulging one or two times a month, sometimes to the point of intoxication. Ms McFadden notes that the stress on the appellant of managing a group of orchard workers may have aggravated his drinking and the victim and his co-offenders had also been orchard workers. The appellant had assisted the victim in getting a financial advance from their employer and had been holding various chattels, including a speaker, as security when the victim, having quit work without notice, came and took the speaker back though the loan had not been repaid. The appellant had drunk about eight or nine drinks that evening and this aggravated the anger he had felt at being let down by the victim.

[50] Ms McFadden reports that the appellant believes that he plays an important role in the life of his partner, who was receiving counselling when they first met and was taking anti-depressants. She suffered insecurity and depression and his presence helped her to address these. She struggles to associate with other people, to the extent that she would go to work with the appellant. He was working in an orchard and would set her up in a quiet part of the orchard. He is aware that she gets used by other people, because she is suggestible and her return to offending after his own imprisonment was, he believes, for this reason.

[51] In prison, the appellant has experienced symptoms of anxiety, such as tightness in the chest, restless hands and breathlessness. He has worked hard on his physical health, losing some 30 kilograms and reducing his cholesterol reading from 8 to 3.

[52] In terms of the risk of re-offending, Ms McFadden reports that the appellant has completed the Short Motivational Course, the Medium Intensity Rehabilitation Programme (“MIRP”) and the Maintenance Programme. Following the recommendations in his psychological assessment report, he has been waitlisted for individual treatment for an alcohol and drug programme, a relationship programme and an employment skills programme. He attends the maintenance programme following his MIRP course.

[53] After assessing the appellant against several actuarial tools (both static and dynamic being considered), Ms McFadden concluded:

“I estimate that there is currently a low/moderate risk of Mr Singh engaging in further violent behaviour within the next 5-year period. A clinical override has been applied to reduce the overall estimate from moderate to low/moderate. The override reflects relatively late onset of offending behaviour; and the absence of data to support the presence of entrenched patterns of risk taking, antisocial behaviour or personality traits.

...

Mr Singh has a number of strengths and protective factors. These include a feasible release plan, prosocial family support, a good work ethic, improved insight and empathy, the absence of mental illness and the intellectual capacity to benefit from rehabilitation and support. Mr Singh also impressed as being motivated to make positive changes in his life. The work undertaken in the MIRP programme has assisted him to understand the cognitions and beliefs that likely underpinned his offending behaviour. It was evident within the current assessment that he has retained the knowledge and insights gained and is ready to generalise these outside of the prison environment. Mr Singh’s value system and family support are prosocial.”

[54] Ms McFadden did identify the value in having the appellant’s ongoing treatment take into account his relationship with AA, and for the strengths and vulnerabilities arising from their relationship to be clearly articulated in his safety plan, to assist with risk scenario planning.

[55] In her oral evidence to the Tribunal, Ms McFadden highlighted the fact that the appellant is a late-onset offender. His stressors appear to have developed in relation to situational factors.

AA

[56] Ms McFadden found AA to be anxious and unsure, with an emotional and social maturity below the level expected for her age. She self-reported her dependency on others and multiple symptoms of mood disturbance. She was tearful, but also hypervigilant with a strong startle response and would suppress her

emotional responses. There was no evidence of psychosis but, at times, her thought processes were jumbled and lacked coherency.

[57] As to her background and development, Ms McFadden reviewed AA's medical and educational records and gained information from AA's mother, as well as from AA herself.

[58] Since her release from prison some three weeks before being seen by Ms McFadden, AA had stayed briefly with the appellant's brother in Auckland before going to stay with her father, and then her mother. She has re-established contact with two close friends in Z town and has also continued to keep in touch with the appellant by telephone calls and letters.

[59] In summary, Ms McFadden found:

"[AA] has a complex history. She has presented with emotional and behavioural regulation difficulties from early childhood. These were initially conceptualised as ADHD and conduct disorder. There was multi-agency intervention, and for a period of time [AA] was placed in a residential schooling environment. As a preteen [AA] was abducted and sexually assaulted by a male/female co-offending dyad .... In the context of [AA] being sentenced for offending as a young adult, she was diagnosed with Asperger's Syndrome. [AA] relates to this diagnosis and it provided some relief to family to have an explanation for her constellation of difficulties that made sense and was non-blaming. [AA] has also suffered from chronic symptoms of depression and anxiety for which she is treated with medication. She has grappled with substance abuse across her adolescent and adult life.

[AA's] emotional and social functioning is impaired relative to other neuro typical women of her age. She described difficulties in social interactions and relationships, which range from difficulties with reciprocation, difficulties maintaining relationships, difficulties reading social cues and adjusting her behaviour accordingly, and a failure to initiate or respond to social interactions.... [AA] can easily become overwhelmed and anxious in social situations. When overwhelmed she may struggle to regulate emotions and can react in a manner that is experienced as domineering or aggressive by others. She has long-standing difficulties with separation and primary attachment relationships...."

[60] As to the impact of the appellant's possible deportation on AA, Ms McFadden concluded:

"[AA's] mother holds considerable anxiety about how she will cope with a permanent separation should Mr Singh be deported. [BB's] concerns are considered reasonable and realistic when considering [AA] history of poor coping and mental health difficulties; and her propensity to engage in offending behaviour in the context of emotional dysregulation and substance abuse.

The harm caused by the loss of this relationship is likely to [be] exacerbated by her constellation of social and emotional impairments and difficulties coping independently with day-to-day life.... In the event that Mr Singh is deported she will need considerable... support to process this loss and [to] develop an alternate life plan. She will likely be highly reliant on her parents for social, emotional and practical support."

## Documents and Submissions

[61] For the appellant, counsel has lodged written submissions (undated), together with two bundles of documents – one headed “Attachments” and indexing 74 documents, and the other attached to a letter dated 13 March 2020 from counsel, indexing a further 11 attached documents, comprising 29 pages. Many documents in the first bundle relate to the appellant’s offending, conduct in prison and participation in rehabilitation courses, while those in the second bundle are directed at AA’s mental health, including her childhood and educational difficulties and reports by medical experts. These documents are referred to hereafter, as relevant.

[62] On the resumed appeal hearing on 1 October 2020, counsel lodged the following further documents:

- (a) psychologist’s report dated 16 September 2020, by Amanda McFadden;
- (b) Provision of Advice to Courts, dated 2 March 2018, in relation to the appellant’s offending;
- (c) Otara Community Corrections report dated 15 November 2019;
- (d) Parole Assessment Report for December 2019, updated to 14 April 2020;
- (e) Rehabilitation Programme Intervention Report dated 8 November 2019.

[63] In summary, the appellant submits:

- (a) The appellant has exceptional humanitarian circumstances arising cumulatively from the mental health of the appellant’s partner, the effect of deportation on the appellant’s immediate family in New Zealand and his relatively long presence in New Zealand, for nine years. As to the appellant’s partner, her mental health issues include a serious mental disorder (depression), substance abuse disorder, and behavioural and developmental issues. These mental health issues have been stabilised by the relationship between the appellant and his partner and the potential for a relapse as a consequence of his deportation is self-evident.

- (b) As to whether deportation would be unjust or unduly harsh, the appellant acknowledges that the assessment requires a balancing exercise between the consequences of deportation and the reasons why the appellant is liable for deportation. It is accepted that the appellant's offending was serious but there were mitigating factors, including the lack of premeditation and the fact that the attack by the appellant was not prolonged. It is also the case that the appellant had experienced some provocation in the theft of the speaker. The appellant points to parallels with the decisions of the Tribunal in *Duberly v Minister of Immigration* [2016] NZIPT 600178 and *Timu v Minister of Immigration* [2011] NZIPT 500051. As to the impact of the appellant's abuse of alcohol in terms of his offending, it is submitted that he has taken serious steps to address this, including undertaking the Short and Medium Intensity Rehabilitation Programmes of which he attended all 55 sessions of the latter. The cumulative impact of deportation on the appellant and his partner, and the psychological and emotional stress on his other immediate family members and the consequences for other people affected by his partner's mental health, such as her mother, amount to a level of harshness that can rightly be described as unduly harsh.
- (c) As to the public interest, the appellant has undergone a clear evolution in his thinking and has demonstrated a strong desire for a complete overhaul of the direction of his life, including his successful re-integration into society. He has used his time in prison to improve himself and he has strong support from his family in New Zealand. The Tribunal should find that the risk of his re-offending is not a significant public interest concern.

## **THE RESPONDENT'S CASE**

[64] For the respondent, counsel lodged written submissions dated 12 March 2020 and has provided Immigration New Zealand records in relation to the immigration history of the appellant and his immediate family members.

[65] In summary, the respondent submits:

- (a) There are no exceptional humanitarian circumstances, even cumulatively, in this case. As to the predicament of the appellant's partner, the respondent acknowledges her mental health challenges but submits that she is currently well-cared for, with her parents helping her to establish independent living and with an understanding now, through Ms McFadden's advice, of a plan to assist her and the availability of support services including the Support Net Kupenga Hao Ite Ora Z town (the Needs Assessment Coordination Service in the Bay of Plenty) for funded autism support, and re-activation of her ACC sensitive claims counselling. This support will be able to continue, should the appellant not be in New Zealand.
- (b) It would not be unjust or unduly harsh to deport the appellant, given the gravity of his offending, which began the year after he was granted residence, and the finding by the Department of Corrections, in its Advice to the Courts report, that the appellant was a medium risk of re-offending. Further, while the appellant is presented as a good influence on AA, it is a reality that they both ended up offending and his drinking and cannabis use must have been a factor. Nor is he the only support network available for her here.
- (c) Even acknowledging the positive public interest considerations in family unity and respecting New Zealand's international obligations, the appellant is liable for deportation as a result of five convictions arising out of four separate incidents, indicating a pattern of drugs, alcohol and violence. He presented to the report writer as aggrieved at his situation and blaming others. Judge Ingram found him to be a manipulative man, prepared to be deceitful. Parole was declined in December 2019 on the grounds that the appellant still had some work to do, to satisfy the Parole Board that he was not an undue risk to the community. While Ms McFadden found that his treatment in prison and motivation to change enabled her to reduce the clinical finding of medium risk of recidivism to one of low-medium, even that is too much of a risk. As well as the risk of re-offending, to allow the appellant to remain in New Zealand would undermine public confidence in the immigration system.



[66] The parties and the Tribunal have been provided with copies of the file prepared for the Minister of Immigration before the deportation liability notice was issued.

## STATUTORY GROUNDS

[67] The appellant's liability for deportation arose under sections 161(1)(a)(iii) and 161(1)(b) of the Immigration Act 2009 (the Act) because:

- (a) he has been convicted of an offence for which the court has the power to impose imprisonment for a term of three months or more if committed at any time not later than two years after he first held a residence class visa; and
- (b) he has been convicted of an offence for which the court had the power to impose imprisonment for a term of two years or more, the offence being committed not later than five years after he first held a residence class visa.

[68] Section 206(1)(c) of the Act provides the appellant with a right to appeal against his liability for deportation. The grounds for determining humanitarian appeals against deportation are set out in section 207 of the Act:

- “(1) The Tribunal must allow an appeal against liability for deportation on humanitarian grounds only where it is satisfied that—
  - (a) there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand; and
  - (b) it would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand.”

[69] In regard to section 47(3) of the Immigration Act 1987 (the analogous predecessor to section 207(1)(a)), the majority of the Supreme Court stated, in *Ye v Minister of Immigration* [2010] 1 NZLR 104, that three ingredients had to be established: (a) exceptional circumstances; (b) of a humanitarian nature; (c) that would make it unjust or unduly harsh for the person to be removed from New Zealand.

[70] Because there are family interests at issue in this appeal, regard must be had to the entitlement of the family to protection as the fundamental group unit of society, exemplified by the right not to be subjected to arbitrary or unlawful interference with

one's family – see Articles 17 and 23(1) of the 1966 *International Covenant on Civil and Political Rights* (“the ICCPR”). Whether such rights would be breached depends on whether deportation is reasonable (proportionate and necessary in the circumstances) – see the United Nations' Human Rights Committee's *CCPR General Comment 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation* HRI/GEN/1/Rev9 (Vol I) (8 April 1988) and the discussions in *Toonen v Australia* (Communication No 488/1992, UN Doc CCPR/C/50/D/488/1992, 4 April 1994) and *Madafferi v Australia* (Communication No 1011/2001, UN Doc CCPR/C/81/D/1011/2001, 26 August 2004) at [9.8].

## **ASSESSMENT**

[71] At the outset, the Tribunal reminds itself that its decision of 22 May 2020 has been set aside and that it is required to make a fresh assessment, in the light of all the evidence now before it. If some of the assessment which follows is repetitious of the Tribunal's first decision, it is because it is found to continue to apply, taking into account the new evidence against which it has been considered. The Tribunal's overriding obligation to the appellant and to the other persons affected by his possible deportation is to reach a decision which takes into account all of the information, free from any conclusions reached earlier. It has borne this obligation in mind throughout.

### *The appellant*

[72] The appellant is a 29-year-old man from the Punjab, in India. He arrived here as a student in September 2010 and was granted residence on the basis of his relationship with his partner, in November 2014.

[73] It is accepted that the appellant is well-settled in New Zealand, having been here for all but two months (in 2016) of the past nine-and-a-half years (though he has spent the past two-and-a-half of those years in prison). His brother is a resident here and his parents spend at least half of their time here, on temporary visas, with a long-term view to retire here. The family is close. Moderating the appellant's nexus to New Zealand somewhat is the fact that he lived in India until he was 17 years old and will be familiar with the life and customs there. A return to India would not be to a country he does not know, and he would be able to access accommodation and avenues to employment with his father's assistance.

[74] It is accepted that deportation would separate the appellant from his brother and would mean that he saw less of his parents, given their consequent need to spend time in both New Zealand and India, assuming their two sons to be in those countries. His brother is well-settled here, with his own business and a young family. It is reasonable that he would not relocate to India. These separations would, it is accepted, cause sadness and distress for the appellant, particularly as it would mean the end of the family's dreams to become established here as a unit. Balanced against that, the appellant is a grown man and has been living a largely independent, adult life which he can be expected to resume wherever he is. The Tribunal does not overlook the importance placed on family in Indian culture, including Sikh culture, but both the appellant and his brother elected to travel overseas to live independently from their parents for extended periods and they are used to self-reliance. It will, however, be hard for the parents who would normally expect to be able to receive their son's support in their old age.

[75] Having seen and heard from AA, the Tribunal is satisfied that she would not accompany the appellant to India. Not only is she not an Indian citizen, she has never lived there. Her convictions are likely to be an impediment to travel and even if she were to attempt to join him, the Tribunal is satisfied that it would be short-lived. It notes that AA is close to her family and that, when she and the appellant moved to Auckland to live with the appellant's brother at one point, her separation from her family in Z town caused her such distress that they ended up moving back there. In New Zealand, she has the support of her mother and access to New Zealand's medical and mental health services, to which she would have significantly reduced access if she were living in India.

[76] For these reasons, the Tribunal proceeds on the basis that AA would ultimately decide that she could not go to India (or, if she did go, would not be able to remain long) and deportation would separate the appellant from his partner. That would cause significant grief and anguish to the appellant. He is, the Tribunal accepts, devoted to his partner. He has supported her loyally, in spite of her difficulties with socialisation, for some eight years. Even in prison, he has maintained close and enduring contact with her, and she with him.

[77] Before turning to the other persons affected by the appellant's deportation, it is necessary to address briefly the appellant's claim that he would be at risk of harm at the hands of his victim, and the victim's family, if he returns to India. That submission is rejected as no more than speculation. The appellant's father is said to have received one anonymous threat by telephone, shortly after the appellant's

sentencing. Even assuming that to be true, such a threat does not establish a risk of any harm befalling the appellant. Nearly four years have passed since the incident and nearly two years since the single, anonymous threat. It is not axiomatic that people invariably react to violence with violence, especially after such time and the cooling of emotions. The risk, such as it is, is further mitigated by the appellant's father's position as a senior police officer and the fact that the victim's family members live more than 200 kilometres from the appellant's family, akin to the distance from Auckland to Rotorua. Even the likelihood of a chance meeting is remote.

*The appellant's partner, AA*

[78] The papers describing AA's early years document her dysfunctional and disruptive behaviour at home and school, including bullying and picking on other bullies.

[79] On 22 February 2000, a Behaviour Assessment Report by Special Education Services recorded that she had no close friends, that she would dominate any group of children, ignore the rules of any game they were playing and attack other players. It documented her physical attacks on other children, both during and after school. Her relationship with her elder sister (then aged 16 years) was one of "constant challenge and put downs, and at times both verbal and physical aggression from both parties". She would kick or hit her mother and, on other occasions, exit the house (remaining on the property) screaming or shouting for a sustained time.

[80] A letter of 10 February 2003 from AA's mother to the Police Youth Aid service described being "at the end of the line" and the escalation of AA's aberrant behaviour and threats of suicide. AA showed a lack of interest in the home schooling she was forced to provide (schools being unwilling to take her). Her mother pleaded for help in getting AA into some kind of 'camp' for those with behavioural problems, to help her and to save BB's sanity.

[81] A 2004 Health Assessment Report (author unstated) recorded the following about AA (then aged about 14 years):

"Aggressive tendencies, non controllable outbursts increasing in frequency....  
Diagnosed with Conduct Disorder but no help forthcoming for parents to address behavioural problems....

Recently hospitalised via ambulance for high alcohol intake causing unconsciousness...

[AA] and mother in denial of the extreme high risk of potential [suicide]... In depth psychotherapy counselling URGENT... [AA] writes down thoughts of suicide....

Possible [developmental delay]....

[H]istory of head injuries due to street fights... [needs] anger/behavioural management course.... Known to attract violent outbursts from others, causing injuries to herself, on a regular basis...

Kidnapped at 12 yrs by friend's parent and her boyfriend subjected to sexual abuse... forced to take the drug "P"....

Both parents concerns for the safety of themselves and others, when [AA] has these uncontrollable outbursts....

[AA] has a desire to join the Police Force as she wants to help people. [AA] and her parents have also identified her compassion and patience towards elderly and disabled people. [AA]'s parents have stated that her strength is ability to love and express it, she never leaves the house without kissing her mother goodbye, regardless of any prior event."

[82] A contemporaneous letter of 28 July 2004, by Robyn Aldridge, nurse case manager at Pacific Health Mental Health Service to the police, stated:

"The diagnosis made by Professor Werry and Dr Lourens of Severe Conduct Disorder remains as the primary diagnosis.

I have been unable to engage [AA] in any assessment and treatment of her apparent substance abuse problems. Her problems lie within care and protection primarily and her recent behaviour is an indicator that her behaviour will probably worsen.

The suggestion made by Professor Werry is that [AA] is placed within a contained appropriate residence...."

[83] That did not occur, and AA continued to live with her mother, causing her unending stress and hardship, until her early 20s, when she met the appellant.

[84] A 27 August 2014 letter by Dr Ross Ogle to Immigration New Zealand stated:

"I have been [AA's] General Practitioner since her childhood.... As a child [AA] had a number of Behavioural Issues which brought her to the attention of Special Education Service at her Primary School. These issues were around Impulse Control and Defiant Behaviour. As a teenager this culminated in her receiving a conviction for Common Assault.

As a young adult, [AA] has grown through these issues, has found a positive benefit from medication for Depression and also has a stable relationship with [the appellant]. [AA] appears to have her life on track now with little apparent risk of returning to her youthful excursions from normal behaviour."

[85] It is accepted that Dr Ogle's prediction of future good conduct by AA was predicated upon his assumption that she would continue to be in a stable relationship with the appellant.

[86] Against this background of AA's development, it is possible to now turn to the assessment by Ms McFadden.

[87] Ms McFadden interviewed AA (and her mother) at some length. She recorded AA's upbringing, her clinical record and her relationship with the appellant. Much of the narrative has already been recorded here and need not be repeated, but Ms McFadden does record the additional information that AA was abducted by a paedophile couple as a 12-year-old child and was sexually abused over a five-day period, until she was rescued by the police. AA never received any professional help after this traumatic event and her mother looks back on it as a point in AA's life after which she deteriorated noticeably.

[88] As to AA's mental health and her dependence on the appellant, Ms McFadden concludes:

"[AA's] emotional and social functioning is impaired relative to other neurotypical women of her age. She described difficulties in social interactions and relationships, which range from difficulties with reciprocation, difficulties maintaining relationships, difficulties reading social cues and adjusting her behaviour accordingly, and a failure to initiate or respond to social interactions. Difficulties with non-verbal behaviour used for social interaction were observed within the current assessment. [AA] can become easily overwhelmed and anxious in social situations. When overwhelmed she may struggle to regulate her emotions and can react in a manner that is experienced as domineering or aggressive by others. She has long-standing difficulties with separation and primary attachment relationships, which can lead her to feel dependent or behave in a clingy/needy manner. Her substance use can be conceptualised as a tension reduction behaviour, in that [it] has likely enabled her to feel more socially competent and less inhibited. However, it has also increased the risk of her engaging in offending behaviour and/or being exploited by others.

[AA's] level of adaptive functioning is not commensurate with her age. She requires support to organise herself and to initiate adaptive behaviours. There is a clear pattern of her relying on family members and then on Mr Singh for support. [AA] consistently described Mr Singh as a loving and supportive partner. The data gathered indicates that Mr Singh has showed good and insight to [AA's] vulnerabilities. He is identified as a caring and stabilising influence."

[89] As to her dependency on the appellant, Ms McFadden adds:

"[AA] described a sense of dependency on Mr Singh that must be considered through the lens of her neuro disability and her mental health issues. It was evident that within the relationship with Mr Singh [AA] has felt accepted and secure. She has confidence in Mr Singh's ability to meet her needs and to do so in a way that preserves a sense of dignity. She has experienced significant trauma in her life and within this intimate relationship she has felt cared for and nurtured. These positive changes in her psychological state appeared to have been born out [by] the lifestyle and behavioural changes (e.g., reduced substance abuse, improved adaptive functioning) that her family observed over the course of the relationship. Equally, in the context of Mr Singh being charged and imprisoned, [AA] appears to have relapsed to past patterns of risky behaviour.

[AA's] mother holds considerable anxiety about how she will cope with a permanent separation should Mr Singh be deported. [BB's] concerns are considered reasonable and realistic when considering [AA's] history of poor coping and mental health difficulties; and her propensity to engage in offending behaviour in the context of emotional dysregulation and substance abuse."

[90] The Tribunal accepts that, since the appellant entered AA's life, he has been a positive influence for her. The heartfelt evidence of BB was convincing in this regard and is supported by the assessment by Ms McFadden. It is evident that the years 2012–2016 saw a significant improvement in her behaviour and social skills, resulting in BB having, as she described it, the first years of happiness she (BB) had had in 20 years. It is also apparent that the arrest of the appellant in 2016 coincided with a decline in AA's ability to cope. She was offending (the lack of information makes it unclear whether this was provoked by the appellant's arrest and detention but Ms McFadden considers that it was), a pattern of behaviour which has continued down to her own recent incarceration. It is clear that AA remains vulnerable to her Severe Conduct Disorder and that, in the absence of the positive influence of the appellant's presence, she will likely continue to engage in poor and disruptive conduct in her interactions and relationships with others. At the age of 29 years, any developmental progress is well in the past and it is not realistic to expect that her disorder will improve significantly for biological reasons. The best hope for AA (and for those who interact with her) is that she has levels of support which are protective and which teach her to moderate her poor responses.

### *BB*

[91] BB gave frank and candid evidence to the Tribunal. Twenty years of caring for a troubled, rebellious and confrontational daughter have taken their toll on her. She had little or no assistance from AA's father, from whom she is long divorced. She describes herself as, even today, having no friends because she could never risk allowing her daughter to enter the lives of other people. Her letter written in desperation to the Police Youth Aid organisation 20 years ago is impossible to read without appreciating her despair and exhaustion, even at that time. And it was a further decade or more before the appellant met AA. BB's relief at the improvement in her daughter, as a result of their relationship, is not difficult to understand.

[92] It is also accepted that BB views the possible deportation of the appellant with foreboding and anguish. It will, she fears, be left to her to bear the brunt of her daughter's grief. Given her long experience with her daughter, the Tribunal understands her fear that AA will respond with rage and confrontation. It is also accepted that BB, at least in part, bears the brunt of that reaction. However, she is

able to seek help from the public health system and it is clear from AA herself that she is finding long-term support from her father, on whose property she is now independently living and from whom she is finding some employment.

*The appellant's parents and brother*

[93] It is accepted that the appellant's parents and brother will be upset and distressed if he is deported. As a family, they have held to a long-term plan of eventually settling here when the appellant's father is ready to retire. In anticipation of this, his parents have financially assisted the appellant's brother to buy a six-bedroom house here. It will significantly diminish the success of that plan if the appellant has to return to India. If that happens, the appellant's parents will likely need to continue to make return trips to India from New Zealand, if they are to maintain close links with the appellant.

[94] The assistance that the appellant's brother has lent to him, not only in his early years in New Zealand but also during his incarceration, including his concern and care for AA, indicates the strength of attachment between the brothers. It is accepted that separation caused by deportation will cause them both great sadness.

*Conclusion on exceptional circumstances of a humanitarian nature*

[95] The Tribunal is satisfied that there are exceptional circumstances of a humanitarian nature in the appellant's case. They arise from the long-standing mental health issues of his partner and the deterioration in her ability to manage her life and relationships if separated from him and the serious hardship which would fall on the shoulders of BB, who would be compelled to cope, once again, with a daughter suffering from deteriorating mental health, who is prone to violent, uncontrollable outbursts. Added to this is both the adverse impact on the appellant's brother and parents and the anguish and distress which separation will bring to the appellant and AA.

**Whether it would be Unjust or Unduly Harsh for the Appellant to be Deported**

[96] Where, as in this case, exceptional humanitarian circumstances are found to exist, the Tribunal must go on to assess whether those circumstances would make it unjust or unduly harsh for the appellant to be deported. According to the Supreme Court in *Guo v Minister of Immigration* [2015] NZSC 132, at [9], this assessment is to be made "in light of the reasons why the appellant is liable for deportation and



involves a balancing of those considerations against the consequences for the appellant of deportation”.

*The appellant's offending*

[97] There is no doubt that the appellant's offending was serious. In the Tribunal's view, while it was not the worst offending of its kind, in that no lasting harm was caused, it was nevertheless towards the upper end of the scale of seriousness. It involved using a stabbing implement to penetrate the victim's chest, at a time when he was on the ground, helpless under the attack of the appellant's associates. That the injury was not more serious in the long term is hardly to the appellant's credit.

[98] Also of serious concern, is the appellant's subsequent use of a weapon to threaten another man at a time when he was already on bail.

[99] It is likely not a coincidence that those 2016 offences followed on from a string of alcohol-related offences in 2015. Indeed, the appellant acknowledges that he had been drinking prior to the June 2016 offending.

[100] It is to the appellant's credit that he has undertaken both the Short and Medium Intensity Rehabilitation Programmes in prison. Ms McFadden's conclusion as to the risk of re-offending is that actuarial tools would indicate a moderate risk of re-offending in like manner, but that she considers it appropriate to apply a clinical override to this, reducing the risk, in her assessment, to one of low/moderate. This reflects the relatively late onset of offending and the absence of data to suggest entrenched patterns of risk taking, antisocial behaviour or personality traits.

*The exceptional humanitarian circumstances*

[101] The appellant's offending must be weighed against the exceptional humanitarian circumstances discussed above. The Tribunal has the greatest concern for the welfare of AA and her mother, for all of the reasons explained above, though it also weighs in the balance the adverse consequences to the appellant and his family.

[102] For AA, the appellant has been a source of support who, for an extended period, helped her to address her disorder and to manage it. Ideally, she would return to that support and mitigation of her behaviour if he were to stay in New Zealand. However, that outcome is far from certain. They have now been apart for nearly four years and both will have been affected by prison life. They will

not return to the same life that they shared early in their relationship and, indeed, it is evident that, by 2015–2016, they were already engaging in self-destructive behaviour in terms of alcohol and drugs. The Tribunal declines to accept that their offending in 2016 was an aberration in an otherwise stable and constructive relationship.

[103] While there will be hardship for AA if the appellant is deported, it is not the case that she will be without support. As Ms McFadden concludes:

“In the event that Mr Singh is deported she will need considerable... support to process this loss and [to] develop an alternate life plan. She will likely be highly reliant on her parents for social, emotional and practical support. [AA] is currently accessing support from probation services and her GP. In my view this should be supplemented by a referral to Support Net Kupenga Hao Ite Ora [Z town], which is the Need Assessment Coordination Service in the Bay of Plenty for Ministry of Health funded autism supports; and by reactivation of her ACC sensitive claims counselling. I spoke to [AA] and her mother about these options within the assessment.”

[104] the Tribunal must weigh in the balance the fact that AA has available to her, as a New Zealand citizen, access to the mental health care described by Ms McFadden through the public health system. It is also the case that AA has found considerable support from her parents since leaving prison and they, too, are now aware of the support services available for her. While it is accepted that BB spent many years fruitlessly battling to get help for her daughter and that, beyond reports and recommendations, both she and AA may well feel that they fell through the cracks in terms of accessing such help, it is available today should AA choose to access it. The appellant is not the only potential support structure for AA.

[105] As to BB, the Tribunal acknowledges the pain and suffering she has experienced over many years, raising a daughter with a mental health disorder largely on her own. At the same time, at the age of 30 years AA is no longer a child and BB appears to have the assistance of AA’s father in providing her with support. She will not need to devote herself entirely to AA’s care.

#### *Conclusion on unjust or unduly harsh to deport*

[106] Weighing the offending against the exceptional humanitarian circumstances, both outlined above, the Tribunal is satisfied that it is not unjust or unduly harsh for the appellant to be deported from New Zealand. It is accepted that there are harsh consequences for all of the parties discussed above, but they are not, even cumulatively, unduly harsh given the gravity of the offending.

[107] For the sake of completeness, the Tribunal has considered the cases of *Duberly v Minister of Immigration* [2016] NZIPT 600178 and *Timu v Minister of Immigration* [2011] NZIPT 500051, as referred to in submissions, but finds the factual matrix in each case so different to the present appeal that they are not of assistance.

### **Public Interest**

[108] The finding that the appellant does not have exceptional humanitarian circumstances which would make it unjust or unduly harsh for him to be deported means that the appeal must fail and it makes it unnecessary to consider the 'public interest' limb of the test.

### **DETERMINATION**

[109] The Tribunal finds:

- (a) there are exceptional circumstances of a humanitarian nature; but
- (b) those exceptional humanitarian circumstances do not make it unjust or unduly harsh for the appellant to be deported from New Zealand.

[110] The appeal is declined.

### **Order Removing the Period of Prohibition on Re-Entry**

[111] The appellant's brother is permanently resident in New Zealand and it is likely that, in the future, his parents will wish to spend at least part of the year here. Given the lack of any other immediate family in India, the Tribunal considers it appropriate that the appellant have the ability to apply for temporary visas in the future. While he will still need to address other obstacles, such as the ineligibility for a visa or entry permission imposed by section 15 of the Act and the character requirements of immigration instructions, nevertheless the Tribunal is able to remove the period of prohibition on entry to New Zealand that would otherwise apply. The Tribunal stresses that the outcome of any application for a visa is a matter for Immigration New Zealand.

[112] The appeal being declined, the Tribunal orders pursuant to section 215(1) of the Act the removal altogether of the period of prohibition on entry to New Zealand

that would otherwise apply under section 179 of the Act following the appellant's deportation from New Zealand.

[113] Given the reality that the appellant's costs are likely to be borne by his family for some time, the Tribunal considers it inappropriate to expect his family to bear any costs associated with his removal if he does wish to seek a temporary visa and these remain outstanding. Pursuant to section 215(2) of the Act, the Tribunal orders that the removal of the period of prohibition is not subject to section 180(1).

[114] The appeal is declined in the above terms.

### **Order as to Depersonalised Research Copy**

[115] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's partner's name and the name of her mother.

"C M Treadwell"  
C M Treadwell  
Member

Certified to be the Research  
Copy released for publication.

C M Treadwell  
Member