

RŌPŪ TAKE MANENE, TAKE WHAKAMARU  
AOTEAROA

<b>Appellant:</b>	<b>KY (Fiji)</b>
<b>Respondent:</b>	<b>The Minister of Immigration</b>
<b>Before:</b>	L Wakim (Member)
<b>Counsel for the Appellant:</b>	J Turner
<b>Counsel for the Respondent:</b>	A Gordon
<b>Dates of Hearing:</b>	3 and 4 September 2025
<b>Date of Decision:</b>	4 December 2025

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**DEPORTATION (RESIDENT) DECISION**

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[1] This is an appeal against liability for deportation by the appellant, a citizen of Fiji and a New Zealand resident since September 2020. His liability for deportation arises because he was convicted of driving under the influence of alcohol, and for contravening a protection order (family violence), which mean he is caught by section 161 of the Immigration Act 2009 (“the Act”).

**THE ISSUE**

[2] The appeal is brought on humanitarian grounds. In terms of the statutory test, the appellant claims that he has exceptional circumstances of a humanitarian nature arising from his length of settlement in New Zealand, the prospect of permanent separation from his wife, with whom he has reconciled, the impact on his wife because of her reliance on him for support given her current health conditions, and the financial implications if he is forced to sell his home and business.

[3] The appellant claims that, despite his offending, the exceptional circumstances of a humanitarian nature would make it unjust or unduly harsh for him to be deported. Finally, he claims that there is a low risk that he will reoffend and that it is not otherwise contrary to the public interest for him to remain in New Zealand.

[4] For the reasons set out below, the appeal is allowed to the extent that the appellant's deportation liability is suspended for a period of four years, conditional on him not being convicted of any violence offence or drink driving offence for which he is liable to a sentence of imprisonment.

## **BACKGROUND**

[5] The appellant was born in Fiji in 1987. He met and entered into a relationship with his wife in 2012 and they married in 2013. They moved to New Zealand together in 2016 and were both granted various work visas in the following years.

[6] In September 2020, the appellant (and his wife, as a secondary applicant) was granted residence under the Skilled Migrant category. The same month, the couple separated.

[7] On 7 October 2020, the wife was granted a temporary protection order against the appellant. In an affidavit to the Family Court at the time, she described the appellant as a heavy drinker who had been physically and emotionally abusive throughout their marriage. At various times in Fiji, he had locked her in a room, chained her to a railing, used offensive and abusive language, slapped and hit her, and forced her to have sex without her consent. He also demonstrated controlling behaviour and threatened to harm her family members if she left the relationship. She had reported him to the Fijian police, but returned to the relationship because she did not want to risk the shame of divorce.

[8] The violence had continued in New Zealand. When the appellant was drunk, he would accuse her of having an affair, check her telephone, and threaten to withdraw her name from immigration applications. He continued to physically harm her, including punching her in the face, biting her on the neck, and threatening her with a knife. He took photographs of the wife in the shower and threatened to post them on social media. On 24 September 2020, he tried to

strangle the appellant. She ended the relationship and sought help from a women's refuge.

[9] On 7 October 2020, the Family Court granted a temporary protection order against the appellant. The order was made permanent on 18 November 2020.

#### *Relevant offending*

[10] On 27 October 2020, the appellant contravened the temporary protection order when he made unauthorised contact with his wife. In March 2021, he was convicted, with a sentence to come up if he reoffended within six months.

[11] In August 2021, the appellant was convicted of driving under influence of alcohol in July 2021. He was fined \$450, ordered to pay court costs of \$130, made subject to an alcohol interlock order, and disqualified from driving for 28 days.

[12] The appellant's two convictions meant that, by operation of law, he became liable for deportation under section 161(1)(a)(iii) of the Act. This provision sets out that a person becomes liable for deportation they are convicted of an offence where the court had the power to impose imprisonment for a term of three months or more, and the offence is committed not later than two years after they have first been granted his resident visa.

[13] In early 2023, the couple reconciled and resumed living together.

[14] In April 2024, the appellant was informed about his liability for deportation and asked to complete a deportation liability questionnaire. He was served with a deportation liability notice on 3 April 2025.

### **THE APPELLANT'S CASE**

[15] The Tribunal heard evidence from the appellant, his wife, and a clinical psychologist, Mr Barry Kirker.

#### **Evidence of the Appellant**

[16] The appellant was born in Fiji in 1987 and is the eldest of two sons. His family is Hindu. His father worked as a taxi driver and his mother raised the children. His parents and brother still live in Fiji.

[17] Growing up, the appellant was scared of his father who would beat him, often with implements such as wires, coat hangers, spoons and belts, if he displeased his father or did not perform well at school. His father also beat the appellant's brother and was violent towards their mother.

[18] When the appellant was a teenager, his parents bought a grocery store and later the family moved into a small home next to the shop.

[19] After finishing high school, the appellant studied towards an electrical trade qualification. Around this time, his parents separated. His father re-partnered and moved out of the family home.

[20] With financial assistance from his maternal aunts (who lived overseas), the appellant established a small internet shop attached to his parents' store. A few years later, his brother opened a DVD store in the same building.

[21] Conflict developed between the appellant and his brother over their businesses, with accusations of staff poaching. These arguments sometimes developed into physical fights.

#### *Relationship with his wife*

[22] In 2012, the appellant met his wife when he employed her to work in his internet shop. Their relationship developed despite the disapproval of their parents, as she was a Muslim and he was a Hindu. They eloped in 2013. Both sets of parents eventually accepted the relationship, and the wife moved in with the appellant, his mother and his brother.

[23] During their marriage, the appellant developed a problem with alcohol and was violent and abusive towards the wife. His parents talked to him about it and warned him against being violent, but he continued.

[24] In the household, the appellant's brother also treated the wife badly. He would scream and shout at her and refuse to eat her cooking. There were also tensions between the appellant and his brother; on one occasion, the brother punched the appellant. Around that time, May 2016, the appellant and his wife moved out and went to live with the wife's family.

[25] While living with her parents, the wife suggested that the couple consider moving to New Zealand, where her sister AA had recently immigrated. The appellant agreed. They arrived in New Zealand in August 2016.

*Life in New Zealand and violence against his wife*

[26] The couple initially found life in New Zealand difficult, with the appellant struggling to find employment and convert his electrical qualifications to New Zealand registration. He considered his relationship loving and caring, but when things got stressful, he reverted to heavy alcohol consumption.

[27] While in New Zealand, the appellant admits that he was physically violent towards his wife and forced her to have non-consensual sex. He claims to not recall much of the violence the wife described in her Family Court affidavit, but concedes it is likely to be true.

*The end of the relationship*

[28] In September 2020, the wife ended the relationship. This came as a huge shock to the appellant, as did the issuance of the protection order. After she left, the wife refused all contact with the appellant.

[29] The appellant contravened the protection order in October 2020 when he learned that the wife would be returning the keys of their apartment to the property manager. He planned to try and speak with her there and waited for her at the property manager's office. When she saw him, the wife refused to talk and, as she tried to get into her car, the appellant pulled her arm to convince her to talk with him. She managed to close the car door and the police were called.

[30] After that incident, the appellant tried once or twice to contact the wife through her sister AA (who lived in New Zealand), but she told him to stay away. The wife's mother in Fiji also refused to speak with him.

[31] The Family Court referred the appellant to an anti-violence programme. Between October 2020 and March 2021, the appellant completed 11 sessions about violence and relationships between. The course focused on respecting a partner's boundaries, having two-way conversations, and recognising controlling behaviour. The course also addressed violence and how to remove yourself from a situation and take a breather to calm down. It helped the appellant recognise that some of the patterns in his own behaviour had been learned from his father.

[32] However, during this period, the appellant's heavy alcohol consumption increased further; from drinking between a quarter and a half bottle of whiskey every night, he started drinking between three-quarters and a full bottle of whiskey per night.

[33] In July 2021, the appellant drove under the influence of alcohol. He crossed the centre line and crashed into a power pole. His car was written off, but he was unhurt. The police notes of the incident record that the appellant told the police that someone else had been driving the car. The appellant does not recall that conversation.

[34] After his conviction, the appellant also took steps to address his alcohol abuse. He decreased his alcohol consumption considerably by ceasing drinking during the week. This change was helped by the court-imposed interlock order, which meant his car would not work if he did not pass a breath test before driving. On weekends, he exchanged straight whiskey for cans of alcohol and went to bed earlier. The appellant did not seek any external help for his alcohol problems because he believed he was successfully managing it himself.

[35] The appellant changed jobs and found work in the South Island. He had no contact with his wife. He did not have any other relationships while they were separated.

#### *Resumption of relationship*

[36] In late 2022, the wife initiated contact with the appellant and they began talking over the telephone. The appellant was eager and happy to show his wife that he had changed, in case there was the possibility that she would consider reconciling. After several weeks chatting on the telephone, the couple decided to meet in person.

[37] The appellant learned that during the period of separation, his wife had changed roles within the beauty industry but had also completed a diploma in counselling. However, she had then suffered a serious head injury in mid-2022. Unable to work, she had been receiving Accident Compensation Corporation (ACC) payments. She hoped to undertake a bachelor's degree qualification in counselling in 2023.

[38] The wife told the appellant that she was currently living with AA, who had recently separated from her husband, and AA's son in a city in the North Island. While they had been separated, she had had other relationships, including a serious relationship where she had committed to someone in a traditional marriage ceremony. However, she had ended the relationship when he started to demonstrate controlling and abusive behaviour.

[39] The couple decided to resume their relationship in early 2023. The appellant's role in the South Island was a "fly in/fly out" role; so he began to stay with the wife (and AA and her son) during his time off. Sometimes, the wife would come to the South Island and stay with him, continuing her studies remotely. The wife spoke to a lawyer about the protection order who advised that the wife should write a letter in which she gave permission for the appellant to live with her despite the protection order, and that the appellant should keep that letter as evidence of her consent.

[40] This living arrangement continued for around eight months throughout 2023. When they were not together, they spoke every day on the telephone. Having time together and time apart was a good test for the relationship. The appellant was happy to have the chance to show his wife how much he had changed and that he understood that his past behaviour was wrong. He had learned about respecting and understanding his wife. The protection order remained in place and the appellant told the wife it was her decision about when she wanted to have it lifted.

[41] In late 2023, the couple decided to buy a house together. Kāinga Ora helped with the deposit. However, the title is in the appellant's name only. Because the wife was not in paid employment at the time, the bank advised that their mortgage application would not be successful if the wife was listed.

[42] During this period, the appellant also established and registered his own electrical business in which the wife became a 50 per cent shareholder.

#### *Alcohol relapse*

[43] Around July 2024, the appellant felt like he was relapsing because he had resumed drinking alcohol on weekdays. After discussion with his wife, he self-referred to an alcohol abuse service. He completed a five-day detoxification programme and six individual counselling sessions which taught him to identify triggers and management tools for anger. He also attended group sessions. He was discharged from the programme in June 2025. He now only drinks occasionally; for example, his last drink was at a family birthday party where he drank two bottles of beer.

### *Changes to his behaviour*

[44] When the appellant reflects on his behaviour towards his wife, he considers that much of the violence occurred when he was under the influence of alcohol. Although he did not realise it at the time, the childhood trauma he experienced from being beaten by his father, and observing his father's violence against his mother, was also relevant. Moreover, in Fiji, violence against women is common, and everyone turns a blind eye to it. In New Zealand it is different.

[45] The appellant now takes responsibility for his past actions. He has completed counselling sessions and non-violence courses. He has learned about boundaries and the need to give his wife space. He has also learned techniques to manage his own anger, including going for walks, removing himself from a situation and taking a break, and breathing exercises. He has taken up new hobbies including meditation and gardening. He has more insight into why he used alcohol to manage his emotions and has developed better techniques to deal with stress.

[46] If the appellant has the urge or trigger to drink, he now distracts himself by meditating or going for a walk. He goes out more and has started new projects to avoid just sitting at home. It has changed his lifestyle, and he doesn't have the same urge to drink, even when he is idle. The appellant has found it valuable to listen to others in the same or similar situation. Although he is confident that he can maintain his current behaviour, he has attended some group sessions to help.

[47] The couple have not attended counselling together, but the appellant feels their relationship is much stronger because of the changes he has made. He had a better understanding about how his behaviour was his problem, and not the fault of others or something to be blamed on alcohol. He was willing to undergo further rehabilitation if the psychologist thought it was necessary.

### *Current situation*

[48] The couple have lived together since December 2023 in the house the appellant owns. In July 2025, the wife decided to apply to have the protection order lifted.

[49] The wife continues to suffer symptoms from her June 2022 accident, including migraines, headaches, fatigue and shoulder pain. She has been diagnosed with nystagmus, an involuntary eye movement condition with no known

treatment. She manages her condition and symptoms through coping strategies including taking regular breaks and she depends on the appellant's support. She continues to receive weekly ACC payments.

[50] The wife's conditions mean that she is not able to work in paid employment but she has been in fulltime study over the last three years. She is now in the final semester of a counselling degree which she has managed with accommodations made by the university (including having materials read out loud/recorded for her as she struggles with reading, and the provision of additional time to complete assignments). She is currently in the final stages of completing a practical placement which involves a set number of hours of counselling in the community. However, it will take her longer to complete those placement hours than the rest of her cohort because she cannot complete full days of work.

[51] The wife's health also limits her capacity for many basic life and household tasks. She is not able to drive more than a few kilometres around their local neighbourhood, and otherwise relies on public transport or the appellant to drive. He also completes most household chores, including the cooking, laundry and cleaning, with the wife helping where she can. For example, she will put the clothes in the washing machine, but he will hang them out, bring them in and put them away. He does the majority of the cooking, but she will chop an onion. He helps her to monitor her pain and her fatigue levels and reminds her to rest. He takes her to medical appointments, although as time has gone on, these have decreased — now only about one per month.

[52] The appellant works for his own electrical business which he established in April 2024. He provides electrician services to large infrastructure projects and has recently qualified as an electrical inspector. He is the only employee of the business, but he supervises three apprentices who are working towards their full electrician licences. Generally, he works between 40 and 50 hours per week but he has flexibility in his working day, so has been able to take the wife to her medical appointments.

#### *Impact of deportation*

[53] Deportation would be devastating for the appellant. He would be separated from his wife, whom he loves and with whom he is in a committed relationship. They hope to have a family.

[54] If the appellant was deported, it would be the wife's decision as to whether she accompanied him to Fiji, but the appellant did not want to jeopardise her dream of becoming a counsellor. He considered that her health conditions would make life extremely challenging — finding new accommodation, paying rent (as she could not afford the current mortgage repayments on their home), coping with a potential return to employment if/when her ACC support ended.

[55] Given her current state of health, the wife could not realistically live alone but she had no practical family support available. She no longer had contact with her sister AA and although her mother and stepfather were currently living in New Zealand, the wife was not comfortable living with them. When she last stayed with them, the wife had raised concerns about her stepfather's behaviour with her mother, but she was ignored and her concerns dismissed. The wife stopped all contact with them for several months. In any event, they held only temporary visas and had no guarantee of remaining in New Zealand. It would not be possible to live with extended family members who had their own lives.

[56] For the appellant, a return to Fiji would be difficult. He would feel shame when people discovered that he had been deported. Although he could live with his mother and brother, the dynamics with his brother are difficult. When he last visited in 2022, the brother instigated a physical fight. The appellant's internet shop, which he gave to his brother when he left Fiji, has declined in recent years, so he would have to start again from scratch. His New Zealand qualifications as an electrician would not be recognised, and he would have to re-train under the Fijian electrical licensing process, which could take between five and seven years to reach the equivalent stage that he has achieved in New Zealand.

[57] Even if the appellant found electrical work, he would not earn sufficient income in Fiji to service his current mortgage (which is around \$1,000 per week). The wife's ability to contribute to future mortgage payments is still uncertain, given her current health status and inability to work. If he cannot maintain the mortgage payments, he may have to sell the house. This would be financially devastating as he believes it is currently worth significantly less than the \$930,000 that he paid for it. The outstanding mortgage is \$730,000.

[58] The impact of deportation would leave the appellant depressed and increase the likelihood of an alcohol abuse relapse. He is not sure if there are any services in Fiji to help.

[59] There would also be an impact on the three apprentice electricians the appellant is supervising. However, it is possible that someone at his current construction site might be able to take over those supervision responsibilities.

### **Evidence of the Appellant's Wife**

[60] The wife was born in Fiji, the middle of three sisters. Her father died in 2014, and her mother has since re-partnered. Her mother and stepfather are currently in New Zealand as holders of temporary visas; her older sister AA is a permanent resident in New Zealand; and her younger sister lives in Fiji as she completes her nursing training. The wife also has several aunts, uncles and cousins who are permanently based in New Zealand.

[61] The wife had a comfortable, loving and very stable childhood. She was raised as a Muslim. Her father and mother owned a shoe shop, and her father also worked as a taxi driver. Her father was very kind, never raised his voice and never drank alcohol or smoked. The family divided chores evenly and the wife never heard her parents argue or fight.

[62] After high school, the wife completed studies in hotel management. When she was about 19 years old, she started working at the appellant's internet shop. Their relationship developed without the approval of their parents as they were from different religions. When she told her parents that she and the appellant had eloped, they were upset. However, they eventually came to accept the relationship.

[63] After marriage, the wife found living with the appellant's family very difficult. It was very different to what she had known in her home. She was expected to do all the cooking and cleaning for the household; when she moved in, they stopped employing a housemaid. The wife's mother-in-law was very disapproving of how the wife dressed and spoke, and always complained that the wife's cooking and cleaning was not good enough (although she did this in addition to her work in the internet shop).

[64] The appellant's brother was difficult to live with. He was loud and aggressive and often instigated physical fights with the appellant. For example, the brother would poke the appellant with a stick and then run away. The wife did not understand this behaviour; although the brothers were adults they were fighting like children. She had never lived with men before and found it very unusual.

[65] On top of this, the appellant drank heavily. Prior to their marriage, the wife had not seen the appellant drinking although, on reflection, she considers it possible that he was sometimes drunk, but she did not realise it because she had never been around alcohol. When she shared her concerns about the appellant's drinking, her mother-in-law told her that, as a woman, it was her role to submit and endure such behaviour.

[66] When sober, the appellant was a loving and responsive partner, although he did display some controlling behaviour. However, he changed into a completely different person when he was drunk. The wife does not recall any time the appellant was violent towards her when he was sober.

[67] In Fiji, the appellant was abusive and violent towards the wife, as detailed in the affidavit she prepared for the Family Court. When she reflects on her affidavit, the wife considers she may have exaggerated or embellished the regularity or frequency of the events she described. But otherwise, the affidavit is accurate. The wife considers that the appellant's controlling behaviour was based on the traditional gender roles that he grew up with: women should stay at home and cook and clean and not leave the house without a husband's permission. Further, a wife should constantly reassure a husband that she was not with another man.

[68] The wife did not confide in her own family about how unhappy she was in her marriage; she was embarrassed because they had warned her against the relationship. On one occasion, when the appellant locked her in a room, the wife sought help from her family and moved out. However, she returned to live with her husband and his family because, when he was sober, their relationship was good and she was happy.

[69] The couple decided to immigrate to New Zealand to escape the social and family pressures in Fiji. They had some extended family living here, and the wife's sister, AA. The wife's mother encouraged the move; she hoped the appellant would be a better husband in New Zealand.

[70] It was a stressful period for the couple when they first arrived in New Zealand. They struggled to find work and the appellant's violence and abuse towards the wife continued, especially when he drank. The wife started work in the beauty industry.

[71] In 2020, the wife contacted a women's refuge about the appellant's violence. They gave her information about family violence and warning signs. Then, in September 2020, the appellant tried to strangle the wife. She believed he would seriously harm her and left the relationship immediately. She moved in with AA.

#### *After separation*

[72] After the separation, the wife developed depression. She attended counselling sessions and was prescribed antidepressants. She completed a diploma in counselling while continuing to work and, in 2021, started a new relationship. The couple participated in a cultural marriage, but after about four months, the wife ended the relationship when her partner started to exhibit controlling behaviour.

#### *Accident*

[73] In June 2022 the wife slipped on some stairs, hit her head and shoulder as she fell, and was knocked unconscious. Since then, she has had several medical problems which include a shoulder injury, migraines, light sensitivity, forgetfulness and fatigue. Since the accident, she has been unable to continue in paid employment and has been receiving weekly ACC payments. She has undergone numerous tests but her condition has deteriorated further. She has been diagnosed with nystagmus which is an involuntary movement of the eyes.

#### *Reconciliation*

[74] It was the wife's mother who encouraged her to consider reconciling with the appellant. Her mother had heard, through the Fijian community, that the appellant had made efforts to attend counselling and improve his behaviour.

[75] The wife was cautious about a reconciliation. She called and spoke with the appellant on the telephone on many occasions before they met in person. On every occasion they spoke he was sober; this was a significant indication to the wife that things were different. He also admitted that what he had done was wrong and told her about his driving conviction and its implications. He had never admitted to being wrong before and the wife considered this was a big change.

[76] The wife decided to give the relationship a second chance. She thought it was wise to test the relationship by moving in together temporarily so she could assess whether the appellant had changed. This period went well; she felt he had made a complete change into a respectful person. They moved in together permanently when they bought a house in December 2023.

[77] The appellant encouraged the wife to enrol in her bachelor's degree and gave her \$10,000 towards the fees. She took out loans for her second and third years of studies. He has also made her study possible because of his practical support and help. Her symptoms have made completing the course difficult, as she struggles with focus and concentration. The university has made some adjustments for her (such as reducing the weekly hours for her current practical "placement") and provided other dispensations to assist her to meet course requirements. She hopes to graduate at the end of the 2025, or mid-2026, depending on when she can complete the necessary placement hours.

[78] It had been a big decision to risk trying the relationship again, but the wife was proud that it had turned out well. The appellant now accepted his mistakes and understood that change would be a lifelong journey. He had not been violent in any way since they had reconciled. He had also become far more aware of his controlling behaviour and no longer asked where she was going or what she was doing, except to monitor her fatigue levels and check she was eating. He was a better listener and respectful of her in the way that they talked. She had also told him all about the relationships she had during their period of separation. In the past, this would have angered him, but he was now able to accept it. In Fiji, the appellant would never have done the majority of the domestic chores, but he now did them willingly.

[79] The wife's health conditions are still being investigated by medical specialists and her ACC payments continue. However, without better treatment and/or an improvement in her symptoms, she will not be able to work full time.

#### *Relationship with her sister*

[80] The wife was previously very close with AA. AA was pleased when the couple separated, as she and the appellant had not got along after an incident where AA called the police when the appellant, drunk, spat on her husband.

[81] After the separation, the wife lived with AA (by then separated from her husband) and her son for almost two years. During this period, the wife paid AA rent and spent a lot of time caring for her nephew. She now considers that AA was very controlling and was using her as a childcare provider. She currently has no contact with AA.

*Impact of the appellant's deportation*

[82] The appellant's deportation would be devastating for the wife. If he returned to Fiji, she would likely not accompany him. Her life is in New Zealand. She has student loans to repay and her employment prospects arise out of her training focused on Te Ao Māori and the New Zealand health system. She did not know if there would be the necessary medical support in Fiji for her own health conditions, and without employment, she could not support herself.

[83] The couple would be permanently separated, and the wife would lose the appellant's emotional, physical and financial support, just as she is adjusting to the possibility that she has a life-changing chronic condition. Living alone with her health conditions would be extremely challenging, and there are no family members with whom she could easily live: her mother was only the holder of a temporary visa; she no longer had contact with AA; and her more distant relatives were friendly but not in a position to support her.

*Protection order*

[84] In July 2025, the wife made an application to the Family Court to discharge the protection order. The appellant put no pressure on her to do so; it was her decision. She was satisfied that the appellant had changed his behaviour and felt sure of her safety. If the appellant was ever violent again, she would not hesitate to go immediately to the police; she was now more vocal and stronger about such matters.

[85] The wife considers that the appellant had abused alcohol as a form of emotional regulation because of his childhood experiences, using it to soothe both his happy and sad emotions. He had then found adjusting to life in New Zealand difficult and they had both faced racism and difficulties settling into society. The wife's counselling studies had taught her that alcohol addiction should be treated as a disease and that, while disharmony in marriages may well be normal, abuse was not. The appellant had replicated how he saw his father treat his mother, until he was given the opportunity to do otherwise.

[86] The wife also considers that the protection order created a power imbalance in the relationship; if she ever complained irrationally about something, the appellant could get in serious trouble. Further, the couple were trying to have a baby and she did not want a child to be born into a family with a protection order.

[87] The wife believes that everyone deserves a second chance and was proud of the appellant. He had proved that he had changed, and she was satisfied that his changes were genuine. He now had a self-awareness that he did not have before. When it looked like his drinking habits might relapse, he had spoken with her and initiated the search for external treatment. The wife felt the appellant understood that his progress was part of a longer process that would continue, but that he had left the abusive part behind and did not want to take the past into the future.

### **Evidence of Mr Kirker**

[88] Mr Barry Kirker, clinical psychologist, provided a written report (25 July 2025) and gave evidence via audio-visual link (AVL) to the Tribunal. He conducted a clinical and forensic interview with the appellant and had access to the police summary of facts and other information regarding the appellant's offending; the wife's affidavit (6 October 2020) in support of her application for a protection order; and documents from the courses the appellant had completed. Mr Kirker also interviewed the wife via AVL for 30 minutes.

[89] As a result of new information about the wife's medical conditions being provided to Mr Kirker at the hearing, he provided an updated report (24 September 2025).

[90] Mr Kirker's updated report records a consistent account from the appellant about his background, life in New Zealand, and offending. It records the treatment courses the appellant had completed (outlined below, at [101(c)]), and how the appellant now reports only having one or two drinks in a social setting. Mr Kirker noted:

Both [the appellant and his wife] over-attributed his offending and related problem behaviour to his abuse of alcohol rather than problematic beliefs and attitudes and a propensity for interpersonal aggression. It seems that [the wife] is not able to objectively consider [the appellant's] risk of relapse to alcohol abuse and/or further intimate partner violence due to her thinking being clouded by her emotional and financial needs, despite the reported personal growth she has achieved.

[91] Mr Kirker concluded that:

[The appellant] appears to have been an aggressive and controlling husband with a significant alcohol use problem. He appears to have had minimal rehabilitation for his problematic interpersonal tendencies, including an apparent propensity for violence in intimate partner relationships and delayed intervention for his alcohol use disorder. [The wife] has resumed her marriage with [the appellant], believing he has changed, and it is reported that over the last 18 months, there have been no reported incidents of further domestic violence, and it is reported that [the appellant] has been able to control his drinking.

[92] Mr Kirker observed that the psychological factors behind the appellant's offending mostly related to his upbringing and culture including disinhibition and impaired judgement due to alcohol intoxication, difficulties managing negative emotions, especially anger; normalisation (through paternal modelling) of physical violence and entitlement as a means to control situations; beliefs that a man had the right to seek sex and the rights of women were secondary; that he could get away with problematic behaviour; and that he had poor problem-solving skills and communication and vulnerability difficulties in close relationships.

[93] Mr Kirker concluded that, if the appellant was deported, he would experience emotional distress, including sadness from missing his wife (who would likely remain in New Zealand) and a sense of shame from failing to see through the life he had built for himself in New Zealand.

[94] The wife would experience a moderate degree of distress if the appellant was deported. It would likely mean the end of her marriage, a loss for her especially after the emotional investment of resuming the relationship. She would have concerns about financial security and whether she could achieve her career goals, and about her recovery from her injury and the need for ongoing assistance. Her long-term prognosis would be dependent on the nature of her relationship with the appellant post-deportation, and whether he can continue to provide financial support, or if she could get support from elsewhere. She has family in New Zealand and can access psychological support.

#### *Risk of reoffending*

[95] With respect to risk, the results of the application of the LS/CMI risk assessment tool indicated that the appellant was on the border of the "low" and "moderate" risk categories for reoffending (reflected by his scores across the eight variables assessed). For the variable of Family/Marital, his score was medium (despite his currently supportive and positive relationship) because of the history

of significant abuse that was hidden, and “some uncertainty about current relationship dynamics and motivations”.

[96] On the basis of both static factors (including the limited criminal history) and the dynamic criminogenic factors, Mr Kirker concluded that the appellant had “a low risk of reoffending in general but a moderate risk of harm if reoffending”. He would be most at risk of reoffending if he experienced relationship dissatisfaction, was unable to manage negative emotions, justified the use of aggression and threats, could not identify solutions to his stress or problems, and relapses into alcohol abuse. The most likely victim would be somebody with whom he is in an intimate relationship.

[97] For his risk to further reduce or remain low, Mr Kirker recommended the appellant undertake individual counselling focusing on matters which had not yet been addressed. His wife could attend for some sessions, focused on relationship and lifestyle balance. A written relapse plan was particularly recommended.

[98] In his oral evidence, Mr Kirker confirms that as a psychologist, he believes that people can change and improve their behaviour. He lacked sufficient evidence about the state of the couple’s relationship to comment on their current dynamic. However, he understood that the wife no longer felt the need for the protection order (and had applied to have it lifted) and believes that she is capable of getting help should the appellant become violent again.

[99] Mr Kirker confirms that the appellant is a low risk to the general public. However, his past behaviour is very negative so it would take more information about positive changes to reduce his risk level further.

[100] Mr Kirker opines that it would be more likely the appellant would relapse into alcohol abuse in Fiji than in New Zealand because he would have lost a lot of motivation (to save his marriage, to grow his business etc). Although services were available there, they were much better in New Zealand. With a written plan, the chance of relapse in New Zealand would diminish further.

### **Documents and Submissions**

[101] For the appellant, counsel has lodged submissions (28 August 2025) and the following documents:

- (a) Statements from the appellant and his wife (both dated 27 August 2025).

- (b) Medical reports related to the wife's health; and documents relating to the couple's fertility treatment.
- (c) Documents relating to counselling and treatment programmes undertaken by the appellant, which include
  - (i) A letter (14 April 2025) from Manline confirming that, on 7 October 2020, the appellant was referred, by the Family Court, to attend and complete a "Living Without Violence" programme. He attended 11 sessions and completed the programme on 28 March 2021.
  - (ii) A discharge summary (16 February 2025) from the Auckland City Mission confirming the appellant had completed six days of detoxification after being admitted on 10 February 2025, participated in group activities and recovery-focused meetings, and supported his peers. It was recommended that he attend a 12-step recovery focused group meeting, engage with safe and supportive social networks, and maintain a positive level of health and fitness through regular exercise and a balanced diet.
  - (iii) A letter (16 April 2025) from a CADS clinician confirming the appellant had completed six one-on-one counselling sessions and had "managed to control his alcohol use after completing his programme".
  - (iv) A discharge summary (11 June 2025) from CADS, confirming the appellant had attended/completed an assessment; six individual counselling sessions; a five-day social detox programme; and an eight-week "Taking Action" group programme.
- (d) Documents related to the appellant's electrical qualifications, and his registered electrical business.
- (e) The sale and purchase agreement for the appellant's house.
- (f) The psychological reports from Mr Kirker (25 July 2025 and 24 September 2025)

- (g) 18 letters in support of the appellant from friends, colleagues and family members.

[102] On 5 November 2025, in response to a request from the Tribunal, counsel provided an additional bundle of documents (variously dated between July 2022 and September 2025) related to the wife's accident, including specialist reports, full medical history notes, and confirmation of ACC payments.

[103] The bundle included a report (7 January 2025) from a neurologist, who considered all the medical documents and met with wife for the purposes of conducting an impartial review for ACC. The neurologist recorded that the wife had fallen and hit her shoulder and head and may have been briefly knocked unconscious. She developed oscillopsia (the sensation that the environment is in constant motion when it is not actually moving) about a week after the fall.

[104] The wife reported headaches as currently her worst symptom, brought on by concentrating or visually focusing on something for more than 15 minutes. She also suffered shoulder and neck pain, aggravated by shoulder movement such as housework, and was combined with a restricted range of motion. Her oscillopsia was constant but she could suppress it for seconds if she focused intently on something. She suffered nausea three or four days a week, lasting between 15 minutes and several hours and for which nausea tablets provided little relief. She was also prone to forget recent conversations or what she had just read. The neurologist concluded:

[Since the fall] Oscillopsia has persisted and this is matched by the finding by all clinicians that she has nystagmus, maximal on gaze left. She believes it has gradually become worse since 2022. I believe [it] is probably driving her headaches, nausea and forgetfulness. She also reports ongoing neck and shoulder pain but this is non-disabling. This combination of symptoms has prevented her from returning to work although she is now studying [at university].

[105] The neurologist indicated that he was seeking further opinions from medical colleagues with expertise in abnormal eye movements, and that the wife's shoulder should be reviewed by an orthopaedic surgeon. A subsequent report from an orthopaedic surgeon (24 September 2025) recorded that an ultrasound showed supraspinatus tendinosis and mild subacromial bursitis. He administered a steroid injection which could be expected to take full effect within two weeks, and could be repeated if symptoms recurred.

*Submissions*

[106] Counsel submits that the appellant's liability for deportation should be cancelled, or suspended for up to five years for the following reasons:

- (a) The appellant has exceptional circumstances of a humanitarian nature. He and his wife will be significantly adversely affected by deportation which would result in their separation. They have reconciled after a period of separation, and have lived together since February 2023, purchasing a home in December 2023.
- (b) The impact on the wife would be significant. She is currently supported — financially, practically and emotionally — by the appellant. His support includes taking his wife to hospital appointments, helping with household responsibilities, and stepping in whenever her symptoms become overwhelming. This allows her to focus on her studies and long-term goals. His deportation would result in significant disruption to her study and career, given her health challenges, and place a very heavy burden on her to meet her own basic needs such as housing, food and healthcare. She would not be able to maintain the mortgage payments on the house, which would force its sale. Deportation would also impact on the couple's current plans to conceive a baby with fertility assistance. Deportation would also have a considerable impact on the appellant. He would have to close his business and the three electricians he is currently supervising towards their full registration will be impacted. He is well settled in New Zealand with extended family support. His New Zealand qualification is not recognised in Fiji, so deportation will erase years of progress in his study and career and force him to start again. He would also suffer cultural shock and deep cultural shame.
- (c) It would be unjust and unduly harsh to deport the appellant because, relative to the reasons why he is liable for deportation, the adverse consequences are disproportionate. His convictions are not of considerable seriousness in the overall scheme of criminal offending, as reflected by the sentences imposed by the Court. He has provided reasonable explanations as to the circumstances of the offending.

- (d) It would not be contrary to the public interest to allow the appellant to remain in New Zealand. Following his offending, he has taken steps to address his alcohol abuse and improve his life. Mr Kirker's report indicates that the appellant has a low risk of reoffending and that he poses a minimal risk to others. There is also a positive public interest in allowing the appellant to continue to run his business which supports the trainee electricians.

## **THE RESPONDENT'S CASE**

### **Documents and Submissions**

[107] For the respondent, counsel has lodged:

- (a) submissions (28 August 2025);
- (b) a copy of the file prepared for the Minister of Immigration before the deportation liability notice was issued; and
- (c) Immigration New Zealand electronic records for the appellant; the wife; and the wife's sister, mother, and stepfather.

[108] In summary, the respondent submits that the appellant's appeal should be dismissed:

- (a) It is acknowledged that the appellant's separation from his wife will be difficult, but it does not meet the high threshold of exceptional circumstances of a humanitarian nature. He lived in Fiji until he was 29 years old and, with time, can readjust to life there. He has not been out of Fiji so long as to have lost all contact with those he knew before leaving and his parents and brother remain there. There is no evidence that he would not be able to find employment and he has extensive New Zealand work experience as an electrician and sufficient skills to assist in that search. Although the general standard of living in Fiji may not be as high as in New Zealand, a difference in living standards is not exceptional. Although he may suffer inconvenience or hardship, none of his circumstances, either alone or in combination, amount to exceptional circumstances of a humanitarian nature.

- (b) When balanced against his humanitarian circumstances it would not be unjust or unduly harsh to deport the appellant. His offending took place just eight weeks after he first held a residence class visa. He can adjust to life in Fiji, has family support, is a qualified electrician and has transferable skills and work experience.
- (c) It would be contrary to the public interest to allow the appellant to remain in New Zealand despite the public interest in ensuring New Zealand's international commitments are met (including the right to be free from unlawful or arbitrary interference in family life and to support the family unit as the fundamental group unit of society). Mr Kirker's report concludes that the appellant is at a low risk of reoffending in general but there is a moderate risk of harm if reoffending. There is also an adverse effect on the credibility of the immigration system; the public expect those who are given the privilege of residence to behave in a manner that reflects this and the appellant's convictions demonstrate he has not acted in accordance with such public expectations.

## **STATUTORY GROUNDS**

[109] The appellant's liability for deportation arose under section 161(1)(a)(iii) of the Act because he was convicted of two offences, for each of which the court had the power to impose imprisonment for a term of three months or more, and the offending was committed not later than two years after the appellant first held a residence class visa.

[110] Section 206(1)(c) of the Act provides the appellant with a right to appeal 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.

[111] In regard to section 47(3) of the Immigration Act 1987 (which is analogous to section 207(1)(a) above), 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.

[112] To determine whether it would be unjust or unduly harsh for an appellant to be deported from New Zealand, the Supreme Court stated, in *Ye*, at [35], that an appellant must show a level of harshness more than a “generic concern” and “beyond the level of harshness that must be regarded as acceptable in order to preserve the integrity of New Zealand’s immigration system”.

[113] 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).

[114] 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 No 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation* (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 para 9.8.

## **ASSESSMENT OF HUMANITARIAN APPEAL**

### **Whether there are Exceptional Circumstances of a Humanitarian Nature**

[115] As to whether circumstances are exceptional, the Supreme Court noted, in *Ye v Minister of Immigration*, at [34] that they “must be well outside the normal run of circumstances” and, while they do not need to be unique or rare, they do have to be “truly an exception rather than the rule”.

[116] The appellant is a 38-year-old married man from Fiji. He has lived in New Zealand since 2016 when he arrived here with his wife, whom he had married

in 2013. She is now a permanent resident of New Zealand. The appellant has a number of extended family members living permanently in New Zealand, but his immediate family — his parents and brother — reside in Fiji.

[117] The wife was physically, sexually and psychologically abused by the appellant, in both Fiji and New Zealand, from the time they married in 2013 until she left him in September 2020, behaviours exacerbated by his abuse of alcohol. In October 2020, the Family Court issued a temporary protection order against the appellant (made final in November 2020) and the couple remained separated for over two years. During that period, the wife suffered a fall which has resulted in a shoulder injury, a diagnosis of nystagmus, and various related debilitating symptoms.

[118] In late 2022, the wife initiated a reconciliation with the appellant. Since mid-2023, they have largely lived together and moved into their own house in December 2023.

*Separation from wife and difficulties faced in Fiji*

[119] Having lived in New Zealand for over nine years, it is accepted that the appellant is well-settled. He has completed qualifications, established his own business, and made friends and connections in this country.

[120] The primary impact of deportation on the appellant would be separation from his wife, who, the Tribunal accepts, would not return to Fiji with him. This would cause the appellant emotional distress and sadness, especially given they have now been reconciled for almost three years, after a two-year separation, and are trying to start a family together.

[121] The appellant states that he will face difficulties finding work in Fiji as his New Zealand qualifications and registration will not be recognised. The Tribunal accepts that the appellant's New Zealand electrical registration will not be accepted in Fiji and that retraining (to get to the same level as he has achieved here) could take several years. However, the appellant is skilled and experienced electrician who is well placed to meet those requirements and to find employment in the industry. Further, while acknowledging the poor relations between the appellant and his brother, there is no evidence to indicate that his family would not be willing or able to support him, at least temporarily, while he re-established himself. It is also recognised that the stress and uncertainty of deportation may increase the likelihood that the appellant may relapse into alcohol abuse in Fiji.

[122] However, the appellant is still relatively young, has family support and experience and skills which would serve him well in restarting a life in Fiji. He also has developed tools and skills in his courses to help with emotional management, family relationships, and managing alcohol. There are also services available to support people with alcohol use problems in Fiji, including a counselling programme, and the recently announced establishment of a specialist recovery and rehabilitation centre; see J Macanawai “Empower Pacific Tackles Drug Crisis” *Fiji Sun* (22 August 2025); L Cava “Rehab Centre Promises Hope for Those Battling Addiction” *FBC News* (4 November 2025).

[123] There are other consequences of deportation for the appellant. His business will close, his clients will have to replace his services, and the three trainee electricians will need to find another qualified electrician to supervise their practice requirements. Further, it is unlikely that, in Fiji, the appellant would earn sufficient income to meet the current mortgage requirements on his home. The value of the home has decreased significantly (online estimates available to the Tribunal indicate it is now worth between \$700,000 and \$850,000, compared to the \$930,000 the appellant paid in 2023). If he was forced to sell, it would be at a loss and may not even cover the current outstanding mortgage (\$730,000), which would leave him in debt.

[124] The Tribunal accepts that the appellant has been in New Zealand for almost 10 years, during which time he has maintained employment, gained qualifications, established a business, and formed connections within the community. The Tribunal also accepts that separation from his wife will be a source of considerable sadness for him and will likely add to the challenges that he will face re-establishing himself in Fiji. This may also increase the likelihood of alcohol abuse relapse. None of these circumstances are, themselves, beyond the norm or exceptional. They are, however, taken into account in the Tribunal’s overall assessment of the appellant’s humanitarian circumstances.

#### *The appellant’s wife*

[125] The wife was the victim of the appellant’s violence for seven years. She eventually ended the relationship after seeking help from a women’s refuge. After two years of separation, she reconciled with the appellant.

[126] If the appellant was deported, the Tribunal is satisfied that the wife would not accompany him. In Fiji, she would be unlikely to receive the same level of care and support for her ongoing health conditions, which are currently under

specialist review and for which she continues to receive ACC payments. She is also yet to complete her degree qualification. The wife's evidence is that she loves the appellant, that they have overcome challenges together, and are committed to a future together. She wants to have a family with him, and separation would cause her significant emotional distress.

[127] The wife considers that the appellant has fundamentally changed; he no longer drinks to excess and has not been violent or controlling towards her since they reconciled. He engages in positive behaviours which are quite different to how he previously viewed the world, including accepting that she had relationships while they were separated, and performing most of the household chores which he would previously have considered a woman's responsibility. Further, the wife would now have no hesitation in seeking help from the police if the appellant was violent.

[128] The Tribunal recognises the wife's current vulnerability, due to her reliance on the appellant for the practical support needed for her medical challenges. However, she presented as an intelligent and capable individual who had approached reconciliation with the appellant in a cautious manner which reflected both her own lived experience, and the learnings which had come from her studies in counselling. She tested the appellant's behaviour in stages — first talking over the phone, then meeting in person, then spending short periods living together, before choosing to live together on a permanent basis. Through this incremental process, conducted while the protection order remained in place, the wife has been able to gauge whether the appellant's professed change has been genuine and long lasting. Reassured that it is, she recently applied to have the protection order lifted.

[129] However, without the appellant in New Zealand, the wife's life would be made significantly more difficult. Her health conditions require assistance to fully care for herself at home, she cannot drive more than very short distances, and is currently unable to maintain paid employment. Without practical support, she would not be able to study (or potentially return to paid work) and manage her living arrangements. She no longer has a relationship with her sister, and her mother's presence here is only temporary.

[130] The wife is the primary victim of the appellant's offending. She has seen his rehabilitation progress and made it clear that she does not wish him to be deported. The Tribunal gives considerable weight to her submissions.

### *Rehabilitation*

[131] The appellant has taken steps to address his convictions through court imposed, and self-initiated processes. At the hearing, the appellant claimed he could not remember many of the events described in the wife's affidavit to the Family Court, because he was often drunk at the time. However, he accepted that it was accurate.

[132] The appellant has an alcohol abuse problem, currently in remission, having regularly consumed over half a bottle of whiskey most evenings at its height. After his conviction, he self-managed a significant decline in his alcohol consumption, assisted by the alcohol interlock order which made it easier to abstain from alcohol during the weekdays. He then self-referred in early 2025 after discussions with his wife, and feeling his alcohol intake was increasing. He completed a multi-day detox programme, six counselling sessions, and eight weeks of a group treatment programme.

[133] The Tribunal recognises that the appellant has taken proactive steps to address a relapse in his alcohol consumption, and that currently, he appears to have reduced his alcohol consumption to very low levels. His wife is a supportive and protective factor against a relapse into alcohol abuse, and the appellant indicated a willingness to engage with group programmes, as recommended by Mr Kirker, who also considered a written relapse prevention plan for alcohol abuse would be particularly valuable.

[134] The Tribunal observes that, in the hearing, the appellant talked more openly about his drinking but avoided addressing his violent behaviour unless directly questioned. The Tribunal remains concerned that, as indicated by Mr Kirker, the couple have over-attributed the appellant's offending and related problem behaviour to his abuse of alcohol. He has completed, at the referral of the Family Court, a course on living without violence in 2020, but there little other evidence from the appellant (including when he was asked in the hearing) about how he would explain how he has addressed some of the beliefs and practices that must have also underpinned his violence towards the wife.

### *Conclusion on exceptional circumstances of a humanitarian nature*

[135] Some of the factors outlined above, by themselves, would be the challenging, but ordinary, circumstances of deportation, rather than exceptional circumstances of a humanitarian nature. For example, it is acknowledged that it

may be challenging for the appellant to re-establish himself in Fiji in employment, that he may be disadvantaged financially if he is forced to sell his house in New Zealand and close his business, that he will feel sadness and distress at being separated from his wife; and that he has taken steps to address his alcohol abuse problem, and changed his approach to relationships.

[136] On top of those factors, is the significant impact of the appellant's deportation on the wife. She is currently navigating a diagnosis of a chronic condition, and other related debilitating symptoms which substantially impact on her ability to live a full and functioning life without practical support. With limited other support available in New Zealand, in the appellant's absence, she would be unlikely to complete her degree, or be able to re-enter the workforce.

[137] Taking into account all of the above circumstances on a cumulative basis, and in particular the situation of the appellant's wife, the Tribunal is satisfied that there are exceptional circumstances of a humanitarian nature in the appellant's case.

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

[138] 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*

[139] As set out in the police vetting report provided by the respondent, there are two offences which triggered the appellant's deportation liability because they were both offences for which the court had the power to impose imprisonment for a term of three months or more, and were committed not later than two years after the appellant first held a resident visa.

[140] First, on 27 October 2020, just a few weeks after he had been granted residence, the appellant breached a temporary protection order that had been issued against him on 6 October 2020. The police summary of facts records that the wife was leaving a real estate agent's business when she saw the appellant.

She screamed and ran to a vehicle. The appellant approached the vehicle and prevented the wife from closing the door by holding it open and made multiple attempts to communicate with the wife. When she called the police, he moved away from the vehicle and left the scene after five minutes. The police vetting report also records that, on 29 October 2020, the appellant contacted the wife's friends and family, but the wife did not want to make a formal complaint and the appellant was warned not to do it again.

[141] On 29 March 2021, the appellant was convicted and sentenced to "come up for sentence if called upon" for a period of six months.

[142] The appellant has admitted that he perpetrated years of violence against his wife. However, he was never charged or convicted in relation to that abuse, although the protection order was granted because of his violent behaviour. Before the Tribunal however, the only relevant conviction is the breach of the temporary protection order. While any breach of a Family Court issued protection order is serious, this offending clearly falls at the low end of the scale of serious offending, as reflected in the sentence imposed (to come up for sentence if called upon in respect of any further offending within six months) when the maximum sentence was three years imprisonment.

[143] Second, on 8 July 2021, 10 months later, the appellant drove under the influence of alcohol (with a breath alcohol reading of 971 microgram (mcg) per litre, exceeding the legal limit of 400 mcg/litre). The police summary of facts records that at about 1.45am, while driving, the appellant crossed the centre line and crashed into a power pole. He left the scene on foot and was found asleep about 200 meters from the crash. The vehicle and power pole were extensively damaged, but nobody was injured.

[144] On 11 August 2021, the appellant was convicted of having a breath alcohol level over 400 mcg/per litre of breath (971 mcgs). He was fined \$450 and liable for court costs; disqualified from driving for 28 days; and ordered to apply for a zero-alcohol licence and alcohol interlock device. For the same offending, he was also convicted of operating a vehicle carelessly and ordered to pay reparations of \$6,992 (towards the costs of repairing the power pole). This offence did not trigger deportation liability because it was not an offence which was punishable by a sentence of imprisonment of three months or more.

[145] It is self-evident that driving under the influence of alcohol is inherently serious offending, given the potential harm that can result, and the Tribunal recognises that the appellant's alcohol reading was more than double the legal limit. This high reading meant that, even though it was his first offence, he was subject to a mandatory alcohol interlock sentence (under section 65AB of the Land Transport Act 1988). However, against a maximum sentence of three months' imprisonment or a fine of \$4,500, the sentence imposed indicates that the court considered the offending to fall at the low end of seriousness.

*Conclusion on unjust or unduly harsh to deport*

[146] Weighing the appellant's offending — the contravention of a protection order and a single driving offence, both of which fall at the low end of the serious scale — against the exceptional humanitarian circumstances outlined above at [119]–[134], the Tribunal is satisfied that it is unjust or unduly harsh for the appellant to be deported from New Zealand.

**Public Interest**

[147] In cases where the Tribunal has determined that the appellant has exceptional humanitarian circumstances which would make it unjust or unduly harsh to deport the appellant, the Tribunal must also be satisfied that it would not, in all those circumstances, be contrary to the public interest to allow the appellant to remain in New Zealand.

[148] As Hansen J held in *Garate v Chief Executive of Department of Labour* (HC Auckland, CIV-2004-485-102, 30 November 2004), at [41] (discussing section 63B of the 1987 Act, the predecessor to the later section 47(3)):

Section 63B(2)(b) requires all circumstances to be looked at afresh through the prism of the public interest. For this purpose, it seems to me, the Authority is required to weigh those factors which would make it in the public interest for the appellant to remain against those which make it in the public interest that he leave. The former are likely to include (although will not be confined to) the exceptional circumstances of a humanitarian nature relied on under subpara (a), for it must be in the public interest that a family with established roots in this country should be permitted to stay, and to stay together, and that international conventions directed to those ends are respected.

[149] This approach was endorsed by the majority of the Supreme Court in *Helu v Immigration and Protection Tribunal and Minister of Immigration* [2015] NZSC 28 which agreed that the factors personal to an appellant and his family which were taken into account when deciding it was unjust or unduly harsh to

deport him, and that finding in itself (Elias CJ at [8]), are relevant to the analysis of whether it would not be contrary to the public interest to allow him to remain in New Zealand.

[150] The factors relevant to the overall assessment of the public interest are therefore the exceptional humanitarian circumstances in this appeal, the interest in preserving family unity; in New Zealand meeting its obligations under international conventions with respect to that obligation; the public interest in the risk of the appellant reoffending; and the public interest in avoiding unjust or unduly harsh outcomes.

*The exceptional circumstances of a humanitarian nature*

[151] The exceptional humanitarian circumstances which would make it unjust or unduly harsh to deport the appellant have been found to be the mutual distress for the couple in being separated and the end of their relationship; the disproportionate impact of deportation on the wife because of her health challenges; and the financial implications for the couple in losing the appellant's home and business.

*Family unity*

[152] There is a positive public interest in the preservation of family unity (in this case, the appellant and his wife), and in the observance of New Zealand's international obligations in that regard. The couple have been married for over 12 years, although they were separated for two years between 2020 and 2022. They are currently in a committed and genuine relationship where they provide mutual support to each other and are trying, with the assistance of fertility measures, to conceive a child.

*Risk of reoffending*

[153] The risk of reoffending is an important adverse public interest consideration, and when seen alongside in the light of the public interest in preventing violence against women. The degree of risk of future offending which the public can be expected to tolerate varies according to the severity of the offending. The more serious the crime, the lower the chance of reoffending must be, if it is not to trigger an adverse public interest finding. See *Pulu* DRT 13/2007 (17 July 2007) at [101]–[114], approved by the High Court in *Pulu v Minister of Immigration* at [12], both reported at [2008] NZAR 429.

[154] In *Helu (supra)*, the Supreme Court accepted (at [192]) that "... a sliding scale assessment of the gravity and probability of future offending may helpfully indicate the weight to be given to the risk of reoffending when assessing the public interest".

[155] The appellant had a long history of serious violence and abuse against his wife between 2013 and 2020. Although it did not result in criminal charges or convictions, it has been recognised by the Family Court and it has been acknowledged by the appellant. He has not sought to minimise the impact of his violence on his wife and has undertaken some rehabilitation courses. There is no evidence that he has been violent towards the wife since they reconciled, and an updated police vetting report obtained by the Tribunal (2 September 2025) indicates no further convictions or police call-outs since the offending outlined above.

[156] The Tribunal accepts that the appellant has experienced a level of change in his attitude, and that his proactive management of his alcohol problem will assist him to maintain this non-violence in the future. The appellant's rehabilitation around his alcohol use, and his wife's support of his sobriety, are likely to continue to be protective factors that reduce his risk of reoffending, and he has not reoffended since 2020.

[157] The Tribunal also considers the risk of the appellant offending with violence against the wife, and the public interest in preventing violence against women. It acknowledges the steps taken by the appellant, the wife's evidence that she would not tolerate violence again, and the lack of offending over the past five years.

[158] The Tribunal also notes Mr Kirker's recommendation that the couple undergo counselling together, and that the appellant produce a written relapse plan regarding alcohol, which it considers are wise suggestions that the couple should adopt.

[159] Taking all of these factors, including Mr Kirker's assessment that the appellant's overall risk of reoffending is low, the Tribunal is satisfied that the appellant's risk of reoffending is sufficiently low that the public interest does not favour deportation.

[160] However, to address any residual risk, the Tribunal makes an order (below) under section 212 of the Act, suspending the appellant's liability for deportation for a further period of five years. He will continue to be at risk of deportation, should he offend within that timeframe.

*Conclusion on public interest*

[161] Weighing the considerations relevant to an assessment of the public interest (the cumulative exceptional circumstances, summarised at [150] and the public interest in maintaining the unity of families, protecting the public from unacceptable risk of further driving or family violence-related offending, and the public interest in avoiding unjust or unduly harsh outcomes where possible), the Tribunal is satisfied that it would not be contrary to the public interest to allow the appellant to remain in New Zealand.

**DETERMINATION AND ORDERS**

[162] For the foregoing reasons, the Tribunal determines:

- (a) there are exceptional circumstances of a humanitarian nature; and
- (b) that those exceptional humanitarian circumstances make it unjust or unduly harsh for the appellant to be deported from New Zealand; and
- (c) it is satisfied that it would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand.

[163] The appeal is allowed.

**Suspension of Deportation Liability**

[164] The appeal being allowed, the Tribunal orders, pursuant to section 212(1), that the deportation liability of the appellant be suspended for a period of four years from the date of this decision, subject to the condition that he does not, before the end of that period, commit a further offence involving violence for which he is convicted and liable to a sentence of imprisonment; or a driving offence involving drink or drugs for which he is convicted and liable to a sentence of imprisonment.

[165] The appeal is allowed in the above terms.

**Order as to Depersonalised Research Copy**

[166] Pursuant to clause 19 of Schedule 2 of the Act, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's name and any particulars likely to lead to the identification of the appellant or his partner.

"L Wakim"  
L Wakim  
Member

Certified to be the Research  
Copy released for publication.

L Wakim  
Member