Dissenting report

Introduction

The Committee's 1999 review concluded that:

> regulation 4.31B may have been effective in reducing… abuse, although this is difficult to gauge given the short time that the fee has been in place.[1]

and went on to recommend that a sunset clause be applied to the regulation:

> to allow for a more thorough assessment of its effectiveness.[2]

Subsequently a sunset clause of 1 July 2001 was placed on the regulation, and a further review announced, to take place prior to that date.

The 1999 dissenting report rejected this view because it was completely contrary to (i) the evidence; (ii) the overwhelming proportion of the submissions to the inquiry; (iii) a logical and sustainable refugee determination process; and, most importantly, (iv) justice and fairness for genuine refugee applicants.[3]

On those grounds it was recommended that:

> regulation 4.31B cease to operate after 1 July 1999.[4]

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1 JSCM, *Review of Migration Regulation 4.31B,* p. 37.

2 JSCM, *Review of Migration Regulation 4.31B,* p. 43.

3 Dissenting Report**,** JSCM, *Review of Migration Regulation 4.31B,* p. 49.

4 Dissenting Report**,** JSCM, *Review of Migration Regulation 4.31B,* p. 59.

The 2001 Review

In 2001 nearly two-thirds of the submissions opposed the regulation and its associated fee. These ranged from private citizens to national and international bodies such as National Council of Churches in Australia (NCCA), the Federation of Ethnic Communities' Councils of Australia, Amnesty International Australia and the Australian Section of the International Commission of Jurists (ICJ). Organisations with expertise in refugee and migration matters such as the Australian Catholic Migrant and Refugee Office (ACMRO), Refugee Advice and Casework Service (Australia) Inc, the Migration Institute of Australia, and the Network for International Protection of Refugees, were opposed to the fee. So too were submissions from the lawyers' organisations, the Young Lawyers' Law Reform Committee and Kingsford Legal Centre (KLC), on behalf of NSW Combined Legal Centres Group.

Impact on genuine refugee applicants

As in 1999, many submissions raised the issue of the hardship caused to applicants by the 'financial intimidation' of the fee.[5] NCCA considered that the existence of the fee placed applicants under pressure to abandon their appeal.[6] ICJ was concerned that the fee added to the trauma of genuine applicants,[7] and the ACMRO argued that they:

> should not be deterred, discouraged, or psychologically impeded from making an appeal to the RRT because of fear of incurring the fee.[8]

KLC provided concrete evidence of the effect of the fee on an asylum seeker:

> from a South Asian country…the victim of a political persecution… an amputee whose disability arose out of an assault perpetrated by a gang of a rival political party. The client had been surviving on charity since arriving in Australia several years ago. Mr X asked the RRT for a one month adjournment as his primary witness was overseas collecting evidence on his behalf. The RRT refused to grant the adjournment stating that due to a high level of

5 Ms T. G. Lesses, Submissions, p. 55.
6 NCCA, Submissions, p. 36.
7 ICJ, Exhibit 1, p. 4
8 ACMRO, Submissions, p. 64.

> document fraud any evidence the witness produced would be the result of corrupt practices anyway. Subsequently the claimant's refugee application before the RRT was refused and a $1000 fee imposed. The claimant was devastated, firstly at the bias displayed by the Member and the lack of natural justice and procedural fairness in determining his refugee application and secondly at the prospect of having to find $1000 within seven days. Mr X was fortunate to have assistance in making an application to the Minister but the case highlights the plight of those who might not have access to legal or other support services and who are denied a "fair go". His reduced mobility, unfamiliarity with the English language, inability to support himself coupled with the treatment at the hands of Australia's immigration officials made a difficult situation worse and prolonged the angst that had begun in his home country when he was bashed for his political beliefs.
>
> In the above case if Mr X is not successful, he will have to pay the post decision fee but what would this be paying for? Would it be for the apparent efficient mode of determination where he has had to wait approximately two years for his case to be heard (all the while leading a hand to mouth existence and being dependent on charity) or would it be for the apparent "fair" and "unbiased" way his application was determined?[9]

The evidence is that the fee is oppressive and the majority should not brush such examples aside.

Conclusion

Regulation 4.31B is designed:

> primarily to address the growing misuse of the PV process by people lawfully in the community.[10]

On the evidence presented to the Committee it is not obvious that there is significant abuse.

In 1999 I was of the view that there was no clear evidence that the fee has contributed to a reduction of abuse in the system.[11]

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9 KLC, Submissions, p. 123.

10 DIMA, Submissions, p. 81.

11 JSCM, *Review of Migration Regulation 4.31B,* p. 54.

Now, two years later, the take-up rates show that the 'positive effects of the fee', which were expected to be:

> seen most clearly in the group of 'low refugee producing' nationalities,[12]

has not occurred.

As the fee is not clearly countering abuse, and has negative effects on applicants who are already under great strain, it should cease to operate.

Recommendation

I recommend that regulation 4.31 B cease to operate after 1 July 2001

Andrew Bartlett

Australian Democrat Senator for Queensland

June 2001

12 DIMA, Submissions, p. 93.