

28 April 2009

The Chair
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

BY FACSIMILE: 02 6277 5794 and by email

Dear Chair

Re: Inquiry into Access to Justice

The following submission relates to terms of reference

- a) **the ability of people to access legal representation and**
- f) **the adequacy of funding and resource arrangements for community legal centres**

1. Provision of a migration agent for community legal centres that are situated in areas with high immigrant/refugee population.

Ahmed and his wife Hakima lived in Mogadishu, Somalia and had four sons. When the youngest son was less than a year old, Hakima was caught in cross fire and shot in the shoulder as was searching for food for the family. The bullet passed straight through her shoulder. Ahmed took her to the hospital. It was overcrowded and Hakima was only treated with an injection to try to staunch the bleeding. She died 2 weeks later from an infection. Ahmed had to leave work to look after his children. He took them to his sister who cared for them while he worked. A few years later, Ahmed met an Australian woman, Hayat. The pair decided to marry and Hayat sponsored Ahmed to Australia. The children stayed with Ahmed's sister in Mogadishu.

Ahmed wants to bring his children to Australia. Ahmed English is limited. He has a part time job and is sending all his money to his sister to care for the boys.

Ahmed tried to get immigration help to bring the boys to Australia. He cannot afford immigration lawyers or migration agents. There are few agencies that have the resources to assist Ahmed. All he needs is help to

LA TROBE LAW
LA TROBE UNIVERSITY
VICTORIA 3086 AUSTRALIA
TELEPHONE: +61 1 9479 2284
FACSIMILE: +61 1 9479 1607
EMAIL: law@latrobe.edu.au
WEB: www.latrobe.edu.au/law

fill the forms out.

In the time it has taken Ahmed to find someone to help him bring the boys to Australia, the eldest son, Mohamed, disappeared whilst on his way home from school. He has never been found. Ahmed thinks that if someone had helped him with the forms earlier, Mohamed would not have disappeared.

Immigration law states that only migration agents may assist people with immigration matters.¹ There is a huge urgent need for migration agents working in a not for profit capacity. Many humanitarian immigrants desperately want to get their family overseas to the safety of Australia. If competent assistance is accessed, applications succeed the first time they are submitted to the Department of Immigration and Citizenship ('DIAC'). Where immigrants have not been able to access professional assistance with further immigration issues, application fail and repeat applications are made and often fail as well.

Legal Aid is not provided for these cases and the Refugee and Immigration Legal Centre does not have the resources to help many families in this position.

In desperation, people turn to migration agents and lawyers which may charge thousands of dollars just for filling out forms.

International research has shown time and time again that some of the most vulnerable groups in a society who have access to justice issues are newly arrived migrants². In addition, when people are granted asylum, anxiety and trauma does not abate until refugees are sure that their family is safe. Migration agents placed in community legal centres that have a high immigrant/refugee demographic would provide legal support in the form of submissions to the DIAC.

2. Provision of a grant of legal aid for permanent residents whose visa is in danger of cancellation on the basis of 'bad character'

Francis is from Sierra Leone. He saw his entire family butchered and managed to escape to a refugee camp. He was accepted as a refugee by Australia. He came to Australia when he was 19. Francis started work as a factory hand, working 15 hours a day. He lived by himself, knew no one. On the way home from work, he was hit by a car that did not stop. Francis suffered brain injury. He could not work. He started drinking because 'it stopped the bad thoughts'. He would go to the park and befriended a neighbour. When he was drunk, he tried to touch women. He tried to rape his neighbour. He was sentenced to 12 months in jail. He was issued with a Notice of Intention to Cancel his visa. He did not understand what was happening. If he returns to Sierra Leone, he fears he will be killed.

LA TROBE LAW
LA TROBE UNIVERSITY
VICTORIA 3086 AUSTRALIA
TELEPHONE: +61 1 9479 2284
FACSIMILE: +61 1 9479 1607
EMAIL: law@latrobe.edu.au
WEB: www.latrobe.edu.au/law

¹ Migration Act 1958 (Cth), Part 3, sections 275 – 332H

² Eg John Guendelsberger, The Right to Family Unification in French and United States Immigration Law 21 Cornell Int'l L.J. 1 (1988)

Section 501 of the *Migration Act 1958* (Cth) provides that a visa may be cancelled if the person holding the visa is found not to have met the character requirement. A person who is sentenced to a continuous prison sentence of 12 months or more is held to have failed the character requirement.

There is no grant of legal aid for assisting people that are in this situation. When a simple submission is done on behalf of a person whose visa is in danger of being cancelled and supporting materials are submitted to the DIAC with the submission, a 'warning' may be given to the person instead of the visa being cancelled. This is what occurred in the above example.

While prison inmates have access to some legal advice, there is no advice or assistance given with respect to immigration matters. Many legal practitioners do not even know that there may be severe immigration consequences for the clients they represented through the criminal court system. Indeed, many prisoners do not even know that they are not Australian citizens and are shocked when they discover they are permanent residents and that their visa is in danger of cancellation.

Assisting people in this situation does not enjoy popular support, rather induces antagonism from the general public.³ This alone should be impetus enough for the provision of resources to assist people with these issues.

I would be pleased to provide any further information required or to address the Committee.

Yours faithfully

Paghona Peggy Sophia Irini Kerdo
Lecturer and Clinical Supervisor
Coordinator Judicial Mentoring Program

LA TROBE LAW
LA TROBE UNIVERSITY
VICTORIA 3086 AUSTRALIA
TELEPHONE: +61 1 9479 2284
FACSIMILE: +61 1 9479 1607
EMAIL: law@latrobe.edu.au
WEB: www.latrobe.edu.au/law

³ See <http://www.theage.com.au/news/National/Lawyers-appeal-over-rapists-deportation/2007/01/02/1167500119124.html>. After this article was written, I received hate mail.