

Good Afternoon Senators

There is really quite a strict procedure for the making of a request for Ministerial intervention.

Someone makes a request in writing, and usually, the Director of the Ministerial intervention unit may read the submission and make a decision as to how it proceeds.

The Director will either make a decision of the matter as to whether there will or will not be intervention. If there is going to be an intervention, the Director will just write to the Applicant advising that there will be intervention. If the Director acts in this way, the Director will have acted unlawfully because the Migration Act requires the Minister to make this decision and not the Director to make the decision. Further, it is the Minister for Immigration who should be making this decision and not the Assistant Minister or some other Minister. Minister means Minister for Immigration and no one else. Further this power to intervene cannot be delegated. Even though the Courts have suggested that this can be delegated, the Courts have got it wrong. The legislation states specifically that the decision must be made personally by the Minister for Immigration and no one else.

So when the Director makes the decision to either intervene or not to intervene, the Director is acting unlawfully and the decision to intervene or for that matter to not intervene is unlawful. According to the Bhardwaj case, the decision to intervene or not to intervene has not been made. It is as if there never was a decision to intervene or not to intervene.

The Courts however do not like this approach because this means that the whole Ministerial intervention process would come to a grinding halt because almost all of the decisions on intervention are made by the Director and not by the Minister.

Great weight is placed by the Department of Immigration on the concept that the whole Ministerial intervention process is non-compellable. Yes we all accept that the power is non-compellable. That is, the Minister cannot be forced to exercise the power. With respect however, that is not the point. When the Minister decides to exercise the power, that is, to either intervene or not, the exercise of the power must be exercised according to law. This means that the exercise of the power must be exercised according to the rules of natural justice. When the Minister exercises the power to say refuse to intervene, the Minister must accord the Applicant with natural justice. This means that the Minister must at the very least read the Applicant's submission, and further, the Minister must then make the decision and give the Applicant the reasons why the request for intervention was refused. At this present point in time, this doesn't happen. The Minister never reads the submission, and the Minister never provides the Applicant with the reasons for either the grant or refusal of intervention.

So with every decision of the Minister to either intervene or not, the Minister acts unlawfully because the Minister has never read the file or for that matter given reasons for the decision. In the case of the au pair girls, they were never given reasons for the decision. Even though the Minister decided to intervene, the Minister did not make this decision personally, and further, the Applicant's never got a statement of reasons for the decision. In the case where the Minister decides not to intervene, the Minister must give the Applicant a statement of reasons. It is not question of compellability. Here the Minister has decided to intervene, and the decision-making process has not been exercised according to law.

If the Minister does not accord the Applicant with natural justice, then the Courts will intervene and force the Minister to act according to law quite irrespective of whether the process is described as being non-compellable.

I have lodged hundreds of requests for intervention and the Minister has never ever decided to intervene. Many deserving cases. Individuals who have been raped and their houses have been burnt down. How can the case of au pair girls be in some way more deserving than individuals who have been assaulted?

The guidelines. The guidelines constitute an unreasonable fetter on the exercise of the discretion which is vested in the Minister personally. They are unlawful. Once again the Courts don't want to hear about this because the whole system would collapse. The guidelines are the creation of the Minister. Despite the Minister's own guidelines, the Minister chooses to intervene. Please do not insult my intelligence with this rubbish.

The reason why the Department recommends that there be no intervention is because their promotion is linked to the number of times they recommend that there be no refusal. Like all good little sycophants, they will say anything to please their Minister.

I have a lot of other things to say, however I will raise them at the hearing.

Thank you

Hugh Ford