



Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

6 November 2014

Dear Committee members

RE: Australian Citizenship and Other Legislation Amendment Bill 2014 [Provisions]

Thank you for the invitation to submit to make a submission in relation to the above bill, in your letter dated 31 October 2014.

Given the very short timeframe for submissions, we have not been able to prepare a detailed submission, however, we wish to make the following general comments.

1. *Proposal to provide discretion to revoke a person's Australian citizenship where the Minister is satisfied that the person became an Australian citizen as a result of fraud or misrepresentation, perpetrated by the Australian citizen themselves or by a third party.*

We refer you to our previous submission to your committee with respect to the *Migration Amendment (Character and General Visa Cancellation) Bill 2014* (**see attachment**). In this submission, we included several case studies of the lived experiences of people in our communities, to demonstrate that there are many reasons why people fleeing persecution and statelessness may have inconsistent evidence with regards identity and their story. While such inconsistency may be seen as fraud, an alternative construction would be to see it as an essential and extraordinary step taken by frightened individuals to secure their safety. Alternatively, inconsistency could be a result of trauma and confusion when asked to recount a re-traumatising story to a stranger who does not speak their language, in a wholly foreign environment and system, without knowing if this an official they can trust.

We urge the Committee to consider such mitigating circumstances and refrain from imposing a narrow view of fraud or misrepresentation that fails to account for real circumstances of persecuted people.

2. *Proposal to extend the good character requirement to include applicants under 18 years of age*

MDA's client base includes many young people, including unaccompanied minors. Our young people are generally extremely resilient and highly motivated to achieve in education and become involved and active members of the Australian community. But being a teenager in a new country is not without its challenges. There are challenges of learning a new language, grappling with a new education system, feeling split between two cultures, dealing with racism and bullying, and intergenerational conflict. For refugee young people, there might be the additional challenges of limited or interrupted prior education and dealing with trauma and loss. In these circumstances, there are some children at risk of disengagement and anti-social behaviour. MDA urges

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the Committee to consider the potential gravity of limiting citizenship rights for children whose “poor character” sits against such a background of adversity.

3. *Proposal to limit automatic acquisition of citizenship at ten years of age to those persons who have maintained lawful residence in Australia throughout the ten years; and proposal to clarify the provision giving citizenship to a child found abandoned in Australia*

MDA appreciates the stated aims of these amendments. However, we note the importance of children being able to have citizenship in the country to which they are most connected, regardless of the actions or visa status of their parents, over which children have no control. We would urge the Committee to prioritise the rights and best interests of the child in such scenarios.

4. *Proposal providing that personal decisions made by the Minister in the public interest are not subject to merits review; and providing the Minister with power to set aside decisions of the Administrative Appeals Tribunal concerning character and identity if it would be in the public interest to do so.*

It is MDA’s firm conviction that the integrity and success of Australia’s immigration and citizenship system is reliant on a robust assessment process that preserves human rights through the entire process right up until applying for citizenship.

Similar to our recommendation in MDA’s previous submission to your committee with respect to the *Migration Amendment (Character and General Visa Cancellation) Bill 2014* (**see attachment**), we recommend that legislation should ensure all citizenship applicants have access to natural justice, so that the process leading to cancellation or rejection is transparent and accountable. Opportunities for review are a critical part of a fair process, even more so when decisions concern the safety of people, as they ultimately do when the person has fled persecution.

Citizenship is the final stage in a long journey to safety for MDA’s communities. For many, it will have been many years since they have enjoyed rights to full civic and political participation; for some previously stateless, it will be the first time they have ever been treated as equal and valid members of a community. We encourage the Committee to consider our comments when assessing the proposed bill.

Yours sincerely

Jamila Padhee
Acting CEO
MDA Ltd

ATTACHMENT



SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

RE: MIGRATION AMENDMENT (CHARACTER AND GENERAL VISAL CANCELLATION) BILL 2014

The Multicultural Development Association (MDA) is committed to building a flourishing multicultural Queensland in which people from different cultural and linguistic backgrounds have an opportunity to thrive and contribute.

MDA has provided specialist settlement support for over 13 years. We currently settle every newly arrived refugee in Brisbane, Rockhampton and Toowoomba. Our current client base includes refugees and asylum seekers. In the past year we have worked with more than 4000 clients from over 66 different countries. A core component of our work is creating welcome by forging connections within and between community groups to facilitate the settlement journey and contribute towards a socially cohesive society.

Introduction

MDA is pleased to provide a submission to the Senate Legal and Constitutional Affairs Committee on the Migration Amendment (Character and General Visa Cancellation) Bill 2014, one of a suite of Bills that propose to amend the Migration Act currently before the Senate.

MDA appreciates that the intent of the Bill is to strengthen Government's capacity to protect Australian nationals from harm, by preventing the entry and residence of individuals who are reasonably suspected of having engaged in dangerous criminal activity. However, the proposed amendments overshoot this mark, and could have significant and adverse affects on asylum seekers and humanitarian arrivals.

Rather than speak to the details of the proposed changes we have selected three cases studies, based on actual client experiences. In this way, the following submission speaks to MDA's experience as a resettlement agent, working with asylum seekers and people from a refugee background. With regards more detailed analysis of the implications of the proposed amendments contained in the Bill, we recommend you to the Refugee Council of Australia's submission on this topic.

Each of the case studies illustrates the often dire circumstances in which people from a refugee background make choices about information that they disclose when fleeing from persecution. None of these individuals had previously resided in a country in which the judiciary had the autonomy and integrity of the Australian system. It is not hyperbole to note that retaining an Australian visa is a matter of life and death for such individuals. The case studies also illustrate that the proposed changes will put such individuals at risk in ways that are not consistent with the objectives of Australian humanitarian program to provide sanctuary for such at risk individuals.

Recommendations

Australia has a strong track record in providing assistance to some of the most vulnerable of the world's refugees. Australia's resettlement program is hugely successful. It is our firm conviction that the integrity of this system is reliant on a robust assessment process that preserves the human rights of recent arrivals and asylum seekers through the process of making claims for protection, through resettlement and ultimately citizenship. Legislative powers regulating visa cancellation are an important part of the system.

To this end we recommend that the Senate Legal and Constitutional Affairs Committee give consideration to the following factors in considering the proposed amendments:

- Ensure that visa holders have access to natural justice and the process leading to cancellation is transparent and accountable.
- Understand that unwarranted imprisonment is a factor leading to refugee status and in such circumstances the fact of imprisonment should not be sufficient to cause visa cancellation.
- Understand that there are many reasons why people fleeing persecution and statelessness may have inconsistent evidence with regards identity and may be forced to associate with criminals.

CASE STUDY 1

M is a young woman from a refugee background who has been in Australia a little over a year. In her home country, people of M's religion face tremendous persecution. When she was in her early 20s, her father and brother were murdered in front of her, and she was imprisoned, because of her faith. She suffered terribly in prison, was raped by her captors and contracted HIV as a result. Her uncle was eventually able to pay a bribe for her release, but she was imprisoned a further two times, with her uncle paying a bribe each time. After the third time, she fled to a refugee camp in a neighbouring country.

When M first arrived in Australia her mental health was poor and she was suicidal. Her physical health was compromised and she refused medication. Within a year of resettlement, M has started studying for her certificate in Aged Care, at TAFE, and her goal is to someday become a nurse. This vulnerable but extremely resilient woman has gone from being suicidal to being on a pathway to a career within a year. But under the proposed changes to the *Migration Act*, she would be at risk of having her visa cancelled, because in her country she was imprisoned for the "crime" of her religious practice for a cumulative total of more than a year.

CASE STUDY 2

H fled persecution in his country and came by boat to Christmas Island in 2011. Recently, H came to his case manager very distressed and said "I need to have my own name".

H explained for the first time to his case manager that he had given a false name during his escape for safety reasons, to prevent detection. He continued to use this false name for his entire journey to Australia, because he was scared about the implications for his family left behind – including a wife and children, who may be in danger if his persecutors found out that he had fled. He was not sure if he was able to trust the other asylum seekers with whom he was travelling, or if they may be forced into giving his name should they be captured.

When H made his asylum claim in Australia, he did not know how much he could trust Australian officials (having never been able to trust officials before), nor whether the details of his claim would remain confidential, so he continued to give his false name, and made his claim as a single man. H is now a permanent resident in Australia. Although he has only been in Australia about three years, he has begun a successful small business using his skills as a mechanic, and is looking at buying property to expand his business.

But the fact that he used a false name and declared himself single in his original claim means he will be in danger of having his visa cancelled if he tried to correct this in order to seek reunion with his family, and to reclaim his own identity.

CASE STUDY 3

A young boy from a war-torn African country fled with his uncle after his father and brother were murdered by militants. The pair made their way to Indonesia. At the time, the boy was about 14 years old. In Indonesia, unaccompanied children are held in a separate centre to adults, and Australia does not take unaccompanied minors for settlement from offshore. Afraid that he might be separated from his uncle, and placed in this centre with no prospect of being resettled, they told the UNHCR he was an adult, and the UNHCR recorded his age as 18.

At the last minute, a people smuggler offered to take the boy on a boat to Australia for free because he was a child. His uncle did not have funds to pay for his passage to accompany the boy, and as the boy stood on the beach, they made the hurried decision that he should take his chance and go, with his uncle to try to follow later. The boy was detained with adult men in an immigration detention centre for six months, then released into the community.

Now 15, the boy is alone in Australia. The boy's case manager says he clearly appears to be a young teenager, and has taken steps to try to get his recorded age corrected so that he can receive the support he desperately needs as an unaccompanied minor, and can enrol in school.

But under the proposed legislation, this vulnerable child would instead be at risk of having his visa cancelled and being returned to detention or to his country of persecution, because through fear of separation from his only relative, and on the advice of adults, he gave a false age.

Conclusion

MDA has the privilege to work with people from around the world who have fled persecution and been offered sanctuary in Australia, and with some who hope to have this option extended to them. However, their reasons for fleeing include false imprisonment. The conditions under which people flee mean that their identity documents are not always in order. Given circumstances of civil unrest and outright war, individuals may find themselves associating with criminals prior to resettling in Australia.

To this end we hope the Committee will recommend the passage of the Bill only to the extent that:

- Natural justice continues to apply even when the Minister is empowered to make decisions regarding visa cancellation
- When imprisonment, inconsistent identity documents or criminal association is cited as the reason for visa cancellation, for individuals from a refugee background, relevant officials give explicit consideration to whether the history of persecution or the circumstances of flight are mitigating factors.

Indeed these two factors are entwined, and recourse to natural justice is particularly important if due consideration has not been given to the circumstances discussed.