

June 16, 2010

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Re: Migration Amendment (Visa Capping) Bill 2010

Dear Sir,

I am making this submission regarding the proposed arrangements for capping and terminating visa applications based on the class or classes of applicant applying for the visa. I refer to the statement published in the Australian Parliament website saying that,

“The Migration Amendment (Visa Capping) Bill 2010 (the Bill) seeks to amend the Migration Act 1958 to enable the Minister for Immigration and Citizenship (the Minister) to cap visa grants and terminate visa applications based on the class or classes of applicant applying for the visa. In particular, the Bill would enable the Minister to make a legislative instrument to determine the maximum number of visas of a specified class or classes that may be granted in a financial year to visa applicants with specified characteristics, and treat outstanding applications for the capped visa as never having been made. The proposed amendments are intended to address issues relating to the General Skilled Migration (GSM) visa program.”

I have read a few media reports published in recent days, which I believe to be authentic, regarding the visa capping issue and I could not restrain myself from making a submission about this matter which will solely reflect my own opinion, perception and understanding.

I can apparently understand the motive for capping the number of particular visas that may be granted in a financial year since the circumstances of the number of total outstanding applications and the number of available places in a financial year was well explained in the explanatory memorandum of the Migration Amendment Bill 2010. What I do not comprehend is the fact behind the proposed arrangements to terminate the outstanding applications as these will be treated as never having been made. The following sections explain my concern especially regarding the termination of the outstanding applications (which were lodged in a date in the past) of the capped visa:

1. My husband came in Australia in 2004 as a student and completed an Advanced Diploma in Hospitality Management and Commercial Cookeries. He had chosen this course since the occupation was in demand list at that time and there was a hope that he can build a better career in this field after finishing this course and also with possible opportunities for enabling pathways to apply for skilled migration and thereby broadening the chances for having a better job since permanent residency is one of the primary criteria

for securing a good job in Australia. As his wife, I find nothing wrong in him making a decision like this since I think it is very natural for people to always look for opportunities for a better career and a better life. Even people residing in their home country often migrate from one city to another for an improved living.

2. He applied for the skilled migration in August 2007 nominating cook as his occupation and now it has been almost three years and his application has still not been finalised. I came to Australia in 2007 as a postgraduate research student and got married to him here in Australia in 2008 to give a success to our long 12 years relationship. He could not add my name as a secondary applicant in his application since we got married after he lodged his application and there is a rule that he can add my name only when his application is granted. Since my arrival here, I have closely seen the hurdles he has gone through to maintain his study and work together, to fulfil the requirements set by the immigration department to apply for GSM and finally I was happy when he met all the requirements and applied for the GSM visa in August 2007. As his wife, I have observed the intense stresses he has faced during this long waiting period but still was calm and waiting patiently for the decision. We could not find any proper reason for his application not being processed during these three years. Many applicants lodged their application at the same time when my husband lodged his one and also nominating the same occupation. Many of their applications were finalised by early 2008 but my husband's application was not processed. We then waited with the hope that this might be processed in the next financial year and when it was not, we waited for one more year and we still are waiting with no outcomes. The new addition to our existing stresses is the recently proposed visa capping bill where there is a chance of his application getting terminated if this bill comes into effect and the visa grant for the occupation cook is capped.
3. Since I have heard about the new bill, many thoughts are popping into my mind. After September 2007, there have been many new changes in the criteria to apply for GSM including this new bill but if this bill becomes effective what happens to the students who applied before September 2007 meeting all the requirements that exist at that time, where many students applying more or less the same time were granted their GSM visas and where many students like my husband were assigned case officers and did not get their application being finalised and waited that long to get an outcome of their applications?
4. I think an individual student should not suffer when there arises a problem about the huge number of GSM applications. Because when individual students lodged their application in the past by nominating a particular occupation, in most cases, they did it knowing the fact that their occupation is in the demand list. They did not know how many students were enrolled in that course or how many students had nominated this occupation and how many applications were likely to be lodged in that financial year. However, if after some time or even after some years it has been observed that there are enormous students nominating a single occupation, there is no way to blame these students since they were completely unaware of the matter. This issue comes into attention only in recent days when there are some media releases

about the number of GSM applicants and the limited number of places available for GSM.

5. In my opinion, overseas students live a more stressful life here than a local student. They have to adjust themselves in a completely new environment during the first days of arrival here and then they have to go through continuous hurdle to keep their study and work going well together and they also feel some sorts of mental distress and loneliness for leaving far away from their home country, from their parents and relatives, being deprived of sharing their happiness and sorrows with their family members, not being privileged to attend any family wedding, funeral of their close relatives, etc. They try to cope with all these difficulties and with the passage of time finally get themselves well adapted here and find their ways to build a better life here. As an overseas student I can feel these from my own experience. And if all on a sudden any legislation like the visa capping bill comes into operation, this will definitely ruin all their dreams and efforts.
6. If this proposal is accepted by the parliament and becomes effective, in my opinion, this will be an unfair and an undeserved decision to the thousands of valid and lawful applications.
7. From my limited knowledge and perception, I will request the Minister of Immigration and Citizenship to assign highest priority to the applications which were lodged earlier and in a genuine way irrespective of the type of occupation being nominated since the occupations that the applicants nominated in their application were in the skill list during their lodgement and the implementation of new rules should not affect the applications which were lodged before the rules came into effect. Therefore, my request is to process the outstanding applications on a first come first serve basis keeping in mind that each applicant was skilled in their own category and the applicants have made valid and authentic applications according to the rules prevailing at that period of time.

My humble request to the decision makers is that while considering the demand-supply issues of GSM, availability of places for migrants, employment opportunities, etc in making your final decisions, please also consider the emotions, sufferings and dreams the thousands of applicants felt during this long waiting period.

Best Regards