

Ms P O'Neil
Principal Member
Immigration Review Tribunal
PO Box 3001
CANBERRA ACT 2601

21 December 1990

Dear Pam

The Government's response to the first report of the Joint Standing Committee on Migration Regulations, dealing with illegal entrants in Australia, was tabled in Parliament on 16 October 1990. I attach a copy of that document.

Included in the response was a concession to certain illegal entrants who were in Australia illegally before 19 December 1989. Such persons will have a limited opportunity from 10 December 1990 to apply for permanent residence on specified compassionate criteria involving relationships with Australian citizens or permanent residents.

The Government also decided that an Australian citizen or permanent resident who nominated the applicant would be entitled to apply for review, direct to the Immigration Review Tribunal. This concession would not apply, however, if the applicant had been arrested under the Migration Act before the primary application was lodged.

In recognition that there may be unsuccessful review cases which have exceptional features which could not be provided for under the regulations, I also announced that administrative arrangements would be made for the Principal and Senior Members of the Tribunal to refer such cases to me for consideration under my power conferred by section 137 of the Migration Act to set aside a decision of the Tribunal and substitute a more favourable decision where I think it is in the public interest to do so.

The purpose of this letter is to set out the arrangements that I propose for referral of such cases by you or the Senior Members of the Tribunal.

As you are aware, my power under s137 can be exercised in respect of any adverse decision of the Tribunal. While the arrangements I am proposing in this letter have been developed specifically as part of the response to the Joint Standing Committee's report on illegal entrants, I would be pleased to consider other exceptional cases arising from decisions of the Tribunal referred to me by you or a Senior Member in accordance with the guidelines below and these arrangements.

Guidelines on the types of cases which would be of particular concern to me were tabled in Parliament on 16 October. These are:

the circumstances of the case are such that the regulations could not have anticipated them; and

the consequences of not having recognised the circumstances in the regulations were clearly not intended; and

the applicant presents strong compassionate circumstances of such order that failure to recognise them would result in irreparable harm and continuing hardship to an Australian citizen or lawful permanent resident aggrieved by the decision.

These guidelines, of course, cover only cases which present the most extraordinary circumstances. Accordingly, I anticipate that very few cases will be referred under these arrangements.

I would note that the section 137 power is conferred specifically on the Minister and, under the Migration Act, I am responsible to Parliament for my exercise of that power. While the identification by senior Tribunal members of appropriate cases for my consideration under the above guidelines would be of great assistance, any decision will remain for me to make.

I am concerned to avoid as much as possible raising any expectation on the part of the applicant that exercise of my s.137 powers will follow the referral of a case to me under these arrangements. It seems to me that raised expectations could most readily be avoided if appropriate cases were referred in as informal a manner as possible. I have in mind a letter from you or the relevant Senior Member to me.

I envisage that the letter will set out the reasons why you or the relevant Senior Member consider that the case meets the above guidelines and will attach a copy of the relevant Tribunal decision. As it is likely that I will seek advice also from my department on these cases, I would appreciate a

(24)

I believe that the arrangements proposed in this letter will facilitate the objectives of my statement tabled in Parliament on 16 October. However, if you have any comments I would be pleased to hear from you.

Yours sincerely

Signed

Gerry Hand