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

31 August 2018

Dear Sir/madam

This submission is in response to the request for opinions relating to the allegations concerning the inappropriate exercise of ministerial powers, with respect to the visa status of au pairs, and related matters.

I am writing this submission in my capacity as a Registered Migration Agent (RMA) and my views do not represent the views of my employer.

I have been a RMA for 18 years which puts me in a small group of professionals that have been registered for over 15 years. I am currently a Director of a large migration consultancy company, having previously owned a medium sized migration firm. During my career, we have represented approximately ten clients in their requests for Ministerial Intervention. This number is relatively small as we only agree to represent clients where we believe that there is a genuine case and that their circumstances meet the criteria set out by the Minister. My comments relate to these experiences.

I would firstly like to say that I support the ability of people to apply directly to the Minister as this allows people to still be able to be granted a visa in circumstances where there are compassionate and compelling situations, or where there has been an unusually unfair assessment of the case. There are guidelines published on the Immigration website and we have always presented submissions addressing these.

However in my experience I believe that it is often a case of who the applicant knows that decides the outcome, rather than the merits of the application. This appears to be the case with the au pairs who were granted visitor visas despite an assessment by the immigration official at the airport, that they intended to work in breach of the conditions on their visa.

This ability for certain people close to the Minister for Immigration to lobby for a successful outcome is unfair and means that what I consider to be genuine cases are not considered. The following is a brief outline of a case that we presented to the Minister that was not successful.

- Applicants were a family from Vietnam who at the time of the application to the Minister had been in Australia for nine years on a series of temporary visas.

- The family included 3 children, two of who were born in Australia.
- After several years on a subclass 457 visa, the applicant applied for a permanent employer sponsored visa. The main applicant was a qualified butcher and had been employed by a large company in Brisbane. The company keenly supported his application.
- The RMA that represented the applicant for the permanent visa application did not submit any evidence that the applicant met the English requirement despite repeated requests from Immigration. The English test at the time was also able to be waived but no evidence was submitted. The application was eventually refused. The RMA then lodged a series of doomed applications which cost the applicant a significant amount of money. Sadly the applicant's trust in the RMA was misguided and it took some time for the applicant to realize that he needed to get a second opinion.
- By the time the applicant came to me, the only option was Ministerial Intervention which we did on a pro bono basis given the amount of money the family had already lost.
- We argued that the applicants met the guidelines due to the fact that children had spent all or most of their lives in Australia (the eldest daughter who was 11 at the time could not write Vietnamese as all her education was in English – her school reports indicated that was an above average student), the economic benefit to Australia in that the employer heavily relied on the main applicant's skills, and the length of time the family had spent in Australia and their level of integration into the community.
- We submitted a significant amount of evidence to support these claims, including evidence that the main applicant met the English requirement and many letters from the community supporting the family (they were heavily involved in the Catholic Church in their local area).
- Despite all of this, the application was refused and the family was forced to return to Vietnam.

This was a family that was part of the fabric of our country and they had only reached this situation due to the incompetence of the former RMA and their misguided trust in him. They had always strived to do everything legally, never once breaching any conditions of their visas. It seemed so unfair to me that the Minister did not deem it in the interests of Australia to let them stay. They would have made ideal Australians. However they were people without any higher level connections.

I acknowledge that the Minister must receive hundreds of requests for intervention and that previous Immigration Ministers have felt that the power to intervene should be lessened, however there are ways to ensure that the intervention powers are robust and applied with integrity. There are guidelines and every application should be assessed using these, however this appears to not be happening. I am not sure what part of the guidelines applied to the au pairs.

In summary, I believe that the Minister's power to intervene should not be taken away but there should be strict adherence to the published criteria and perhaps even strengthening of these.

I would be happy to expand on any of these comments if required. Thank you for the opportunity to provide a submission.

Yours faithfully

Helen Duncan

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