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

Dear Secretary,

SUBMISSIONS TO THE ENQUIRY INTO THE EFFICACY, FAIRNESS, TIMELINESS AND COSTS OF THE PROCESSING AND GRANTING OF VISA CLASSES WHICH PROVIDE FOR OR ALLOW FOR FAMILY AND PARTNER REUNIONS

1. I refer to the Committee's invitation to provide submissions in respect of the enquiry into the efficacy, fairness, timeliness and costs of the processing and granting of visa classes which provide for or allow for family and partner reunions.
2. I am a solicitor and I commonly represent clients in migration and citizenship matters, including clients applying for visas that allow for family and partner reunions.
3. I would like to bring the Committee's attention to three (3) specific matters set out below.

Capping

4. Some of the relevant visa subclasses are designed for applicants who apply from overseas and who wait overseas until a decision is made. Other visa subclasses are for applicants who are inside Australia when they apply, and who wait in Australia until a decision is made. For example, applicants can apply for partner visas onshore or offshore. The same applies to parent visas.
5. The time it takes for the Department of Home Affairs ("the Department") to process these types of visa applications is often too long. The wait time for partner visas is often 12 to 18 months (or longer) and the wait time for parent visas is many years.
6. Part of the reason for the substantial delay is that the number of visas which can be issued in a year is capped.
7. Consideration should be given to abolishing any annual caps, at the very least in respect of onshore applications. Presumably, the purpose of these caps is to allow the Government to plan the number of people who come to Australia, and to achieve certain economic and social outcomes. The practical reality, however, is that onshore applicants are already physically in Australia, they all need housing, many of them work, some of them attend school, use medical facilities and so on. (For example, onshore partner visa applicants are eligible for Medicare from the moment they apply for their visa.)

8. Bearing in mind that the purpose of these visas is to reunite families and partners, it is submitted that the public interest is that these visa applications be finalised without any delay (arising from capping) so that the visa applicants and their Australian citizen relatives can have certainty and can move on with their lives.

Parent visas

9. Broadly, there are two (2) types of permanent parent visas: contributory and non-contributory. A contributory parent visa is one where the applicant is asked to pay an application fee, currently in the sum of \$47,755 – per parent. A non-contributory visa is one where the applicant is not required to pay such a high application fee.
10. As far as non-contributory parent visas are concerned, the Department says on its website that a new application would take approximately 30 years to process. The processing of contributory parent visa applications at present is said to take just under 5 years. This means if a parent wants the certainty of a permanent visa, they would have to apply for a contributory parent visa.
11. In practice it follows that:
 - 11.1 Australians whose parents have modest financial resources will not be able to permanently reunite with their parents;
 - 11.2 If Australians seek to permanently reunite with their parents, they should expect to pay the Government about \$100,000 – assuming both parents are alive. And the cost to the family can be close to \$200,000 if two sets of parents wish to reunite with their Australian children.
12. This system is fundamentally unfair. It sees parents as a cost only.
13. In fact, parents coming to Australia also bring significant economic benefit to the country. For example, many migrating parents are grandparents as well. They would be able to assist with many aspects of looking after their young Australian grandchildren. As an example, many of them would be willing to look after the children on a regular basis. This would ease pressure on the childcare system and would also allow young parents to increase their savings. A young couple which is thereby able to save \$100 per week on childcare could boost their savings by about \$5,000 per year – no doubt making it easier to be able to afford housing.
14. As an alternative to the current system, consideration should be given to abolishing parent visa capping and substantially reducing the application fee (probably by about 75%). In exchange, parent category permanent visas could perhaps have a condition imposing a longer period during which parent migrants are unable to access Medicare and social security benefits, thereby requiring them to self-fund their health care needs. Given that Australian citizens are eligible to Medicare and social security benefits, a practical consequence of the suggested reform would probably be that parent migrants would remain on permanent resident visas longer and would face a longer wait time before they become eligible to Australian citizenship.

Administrative Appeals Tribunal

15. Decisions by the Department can be reviewed in the Administrative Appeals Tribunal, on application by the visa applicant.

16. At present, these applications are dealt with in the Tribunal's Migration and Refugee Division.
17. In my experience, it is presently unrealistic to expect a decision in under 2 years, and in many instances the Tribunal takes longer.
18. From the date of visa application to the date of the Tribunal's decision, applicants still have to wait about 4 years. This is not an uncommon scenario. In fact, in a recent matter in which I acted for the successful partner visa applicant, the process took 5 years from the initial visa application to the Tribunal's decision. The Tribunal had the file for about 3 years.
19. One of the real issues seems to be that it takes far too long to allocate a matter to a Tribunal Member. Once this allocation occurs, in many cases Members expeditiously review and decide matters.
20. There are many reasons why the Tribunal takes so long. It is unnecessary to canvass these reasons here because a thorough review was conducted in 2019 by the Hon Ian Callinan AC. His Honour made numerous recommendations on how the Tribunal's work can be made more effective.
21. I have acted for several clients before the Tribunal since the above review was tabled. I have not experienced any changes, nor any improvement in the speed by which the Tribunal decides cases. If anything, the delays seem to get longer.
22. The long waiting time is not only stressful, but in many instances, it significantly interferes with people's ability to lead and plan a normal life. For example, couples who otherwise plan to have children may not be able to do so for fear that a negative outcome would separate them (and would separate their child from one of the parents). And for people waiting offshore, they are unable to permanently reunite with their loved one during this time.
23. In my submission immediate action is required to restore the proper and efficient functioning of the Tribunal.

Yours faithfully,

Oszkar Denes
Principal
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