



COMMITTEE-IN-CONFIDENCE

OSEC 2018/1883

Senator Louise Pratt
Chair
Senate Legal and Constitutional Affairs References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Chair,

Further to my letter to you on 13 September 2018, I am writing to provide an update and to expand on my Department's answers to Questions on Notice to the Inquiry into *Allegations concerning the inappropriate exercise of ministerial powers, with respect to the visa status of au pairs, and related matters*.

My Department has located the submission relating to a Visitor visa (subclass 600) granted on 17 September 2015. [REDACTED]

Copies of the remaining 21 submissions in which Minister Dutton used his powers under s195A of the *Migration Act 1958* to intervene and grant a Visitor (subclass 600) visa, between 23 December 2014 and 31 August 2018, are attached. Details that might identify individuals, and names and contact details of APS Departmental Officers have been removed, as agreed with the Committee through the Secretariat on 12 September 2018.

This acquits all matters raised in your letter of 12 September 2018.

Yours sincerely

Michael Pezullo
Secretary
14 September 2018

Sensitive: Personal



Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS15-016866

To Minister for Immigration and Border Protection
Subject Ministerial intervention under section 195A of the *Migration Act 1958* in relation to [REDACTED]

Timing

Recommendation


That you:

- 1. agree to intervene under section 195A of the *Migration Act 1958* to grant [REDACTED] Tourist visa (subclass 600);

intervene / decline to
intervene

- if agreed, please sign the decision documentations at Attachment A.

Minister for Immigration and Border Protection

Signature 

Date: 17/06/2015

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. [REDACTED], arrived in Australia at [REDACTED] Airport on [REDACTED], as the holder of an eVisitor visa (subclass [REDACTED]) valid for a stay period three months. [REDACTED]'s visa allowed multiple entries, up until 9 December 2015. [REDACTED] has not travelled to Australia before.
2. Upon arrival, an Airport Inspector found [REDACTED] did not intend to stay in Australia temporarily for tourism purposes, which were the grounds for the grant of [REDACTED] eVisitor visa. As such, [REDACTED]'s visa was cancelled under section 116(1)(g) of the *Migration Act 1953* (the Act). A copy of the cancellation decision record is at Attachment B. It is noted that [REDACTED] has disputed the findings.
3. Following the cancellation of [REDACTED] visa, [REDACTED] was refused immigration clearance and detained under section 189 of the Act. As a person refused immigration clearance, the Department cannot grant [REDACTED] a further visa onshore.
4. Your office has requested that [REDACTED]'s case be referred to you for consideration under section 195A of the Act.

Option for future management

5. Your non-compellable power under section 195A is enlivened in [REDACTED]'s case as [REDACTED] is in immigration detention.

Ministerial intervention under section 195A

6. If you are inclined to intervene in [REDACTED]'s case under section 195A of the Act, the Department considers the grant of a Tourist visa (subclass 600), with the same conditions as the eVisitor visa [REDACTED] held as the appropriate option. The Tourist visa would be granted with an 'enter before date' of 9 December 2015 and would allow [REDACTED] to remain in Australia for a period of three months at a time.

Sensitive: Personal

7. The Department also recommends placing the same conditions on the Tourist visa, as were attached to [redacted] eVisitor visa (conditions 8115, 8201, 8527 and 8528).

8. If you agree to intervene, please sign the decision documentation at Attachment A.

Decline to intervene

9. Should you not agree to intervene in [redacted] case, [redacted] is liable to be removed from Australia.

Consultation – internal/external

10. Your office, [redacted]

Consultation – Secretary/CEO

11. This submission has not been cleared by the Department’s Secretary, Deputy Secretaries or the CEO of the Australian Customs and Border Protection Service.

Client service implications

12. There are minimal client service implications.

Sensitivities

13. N/A


Financial/systems/legislation/deregulation implications

14. N/A

Attachments

Attachment A Section 195A decision documentation

Attachment B Cancellation decision record

<p>Authorising Officer</p> <p>Cleared by:  Suzanne Muir A/g Assistant Secretary Caseload Assurance Branch</p> <p>Date: 17/06/2015 Ph: [redacted]</p>
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Contact Officer: [redacted], Director, Complex Case Resolution Section, [redacted]

CC Acting Deputy Secretary, Kruno Kukoc
FAS, CPD
Manager, Qld Airports

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to this person's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant this person a Tourist visa (subclass 600).



HON PETER DUTTON MP
Minister for Immigration and Border Protection

17/6/2015

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE MIGRATION ACT 1958**

- DECISION INSTRUMENT -

Name: [REDACTED]
Date of birth: [REDACTED]
Client ID: [REDACTED]

1. The above person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant this person a Tourist visa (subclass 600).
3. I therefore exercise my power under section 195A of the Act to grant a Tourist visa (subclass 600) in favour of this person.



HON PETER DUTTON MP
Minister for Immigration and Border Protection

17/6/2015



Australian Government
Department of Immigration
and Border Protection

Notice of Intention to consider cancellation
under section 116 of the Migration Act 1958
(For use in immigration clearance)

Form
1111

All parts to be completed by an officer of the department.
Please use a pen, and write neatly in English using BLOCK LETTERS.
Tick where applicable

Office use only
ICSE Client ID [REDACTED]

Part A – Notice of intention to consider
cancelling a visa

1 Full name
Family name [REDACTED]
Given names [REDACTED]

2 Sex Male Female Indeterminate /
Intersex / Unspecified

3 Date of birth Day Month Year [REDACTED]

4 Nationality [REDACTED]

5 Country of birth [REDACTED]

6 Relationship status
Married Separated Never married or
Engaged Divorced been in a de facto
De facto Widowed relationship
Not specified

7 Details of previous visa cancellations
Departmental checks confirm the visa holder has not had
any previous visa cancellations.

8 Possible grounds for cancellation
(Include disclosable adverse information given by third parties)
It has come to my attention, as a delegate of the Minister for Immigration
and Border Protection, that there appear to be grounds for cancellation of
your
subclass 651 visa granted on 09-Dec-2014
under section 116 of the Migration Act 1958 because:

Upon arrival at [REDACTED] you claimed that you are
coming to Australia to stay with a [REDACTED]. You expect
to be here for 10 weeks.
You stated that you will not be [REDACTED].
-You stated that you and the [REDACTED] have discussed
the terms of your stay and that in [REDACTED].
-A search of your mobile phone revealed the following
message:
From [REDACTED] on [REDACTED] "I don't know if you are
keen or not to earn some extra cash while you are here
occasionally baby sitting for friends?? Can put the word
out for you if you are and a few friends would use you
occasionally?? Locally?? Bit of cash to fund fun.
You: "Perfect! ...and for baby sitting...Sure! Extra money
for fun is always welcome!"
--A search of your mobile phone revealed the following
message:
To: [REDACTED] on [REDACTED]
"(Hello [REDACTED] thanks a lot! I'm very well and preparing
myself to depart at the end of [REDACTED] to
Australia, How are you?)"
From [REDACTED] How Wonderful! As an Au
Pair or for the University? Good Luck! It will be a
beautiful experience. I'm very good and continue with my
architecture)"
To [REDACTED] "(As an Au Pair)"

Based on the above information, it appears to me that
despite the grant of the visa, you did not have, at the time
of the grant of the visa, or you ceased to have, an intention
only to stay in, or visit, Australia temporarily for the
tourism purposes for which the visa was granted. If this is
the case, then your visa is liable for consideration of
cancellation.

Cancellation of visa under section 116 of the Migration Act

s 116

- (1) Subject to subsections (2) and (3), the Minister may cancel a visa if he or she is satisfied that:
- the decision to grant the visa was based, wholly or partly, on a particular fact or circumstance that is no longer the case or that no longer exists; or
 - the decision to grant the visa was based, wholly or partly, on the existence of a particular fact or circumstance, and that fact or circumstance did not exist; or
 - its holder has not complied with a condition of the visa; or
 - another person required to comply with a condition of the visa has not complied with that condition; or
 - if its holder has not entered Australia or has so entered but has not been immigration cleared – it would be liable to be cancelled under Subdivision C (Incorrect Information given by holder) if its holder had so entered and been immigration cleared:
 - s 101 – Incorrect information on the application form
 - s 102 – incorrect information on the passenger card
 - s 103 – a bogus document given
 - s 104 – failure to notify the department of changes in circumstances
 - s 105 – particulars of incorrect answers to be given
 - the presence of its holder in Australia is or may be, or would or might be, a risk to:
 - the health, safety or good order of the Australian community or a segment of the Australian community; or
 - the health or safety of an individual or individuals; or
 - the visa should not have been granted because the application for it, or its grant was in contravention of this Act or of another law of the Commonwealth; or
 - in the case of a student visa:
 - its holder is not, or is likely not to be, a genuine student; or
 - its holder has engaged, is engaging, or is likely to engage, while in Australia, in conduct (including omissions) not contemplated by the visa; or
 - a prescribed ground for cancelling a visa applies to the holder.
- (1AA) Subject to subsections (2) and (3), the Minister may cancel a visa if he or she is not satisfied as to the visa holder's identity.
- (1AB) Subject to subsections (2) and (3), the Minister may cancel a visa (the current visa) if he or she is satisfied that:
- incorrect information was given, by or on behalf of the person who holds the current visa, to:
 - an officer; or
 - an authorised system; or
 - the Minister; or
 - any other person, or a tribunal, performing a function or purpose under this Act; or
 - any other person or body performing a function or purpose in an administrative process that occurred or occurs in relation to this Act; and
 - the incorrect information was taken into account in, or in connection with, making:
 - a decision that enabled the person to make a valid application for a visa; or
 - a decision to grant a visa to the person; and
 - the giving of the incorrect information is not covered by Subdivision C. This subsection applies whenever the incorrect information was given and whether the visa referred to in subparagraph (b)(i) or (ii) is the current visa or a previous visa that the person held.
- (1A) The regulations may prescribe matters to which the Minister may have regard in determining whether he or she is satisfied as mentioned in paragraph (1)(a). Such regulations do not limit the matters to which the Minister may have regard for that purpose.
- (2) The Minister is not to cancel a visa under subsection (1), (1AA) or (1AB) if there exist prescribed circumstances in which a visa is not to be cancelled.
- (3) If the Minister may cancel a visa under subsection (1), (1AA) or (1AB), the Minister must do so if there exist prescribed circumstances in which a visa must be cancelled.

Reg 2.43

- (1) For the purposes of paragraph 116(1)(g) of the Act (which deals with circumstances in which the Minister may cancel a visa), the grounds prescribed are:
- that the Foreign Minister has personally determined that:

- In the case of a visa other than a relevant visa – the holder of the visa is a person whose presence in Australia:
 - is, or would be, contrary to Australia's foreign policy interests; or
 - may be directly or indirectly associated with the proliferation of weapons of mass destruction; or
 - In the case of a relevant visa – the holder of the visa is a person whose presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction;
- (b) that the holder of the visa has been assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security, within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*;
- (c) *formitted by SR 2000, 62 with effect from 1/07/2000 – LEGEND note* in the case of a bridging visa held by a person who applied for a substantive visa – that the application for the substantive visa has been determined to be invalid;
- (d) in the case of a visa granted before 1 September 1994 that:
- was continued in force on and after 1 September 1994 as a Transitional (Temporary) visa under the Migration Reform (Transitional Provisions) Regulations; and
 - allowed multiple entries to Australia;
- that, at some time before 1 September 1994, the holder exceeded the period of stay in Australia permitted by the visa;
- (e) in the case of:
- the holder of an Electronic Travel Authority (Class UD) visa who is under 18; or
 - [omitted]*
 - the holder of a Tourist (Class TR) visa, that was applied for using form 601E, who is under 18; or
 - the holder of a Visitor (Class TV) visa who is under 18; or
 - the holder of a Subclass 600 (Visitor) visa in the Tourist stream, that was applied for using form 1419 (Internet), who is under 18; that either:
 - both of the following apply:
 - the law of the visa holder's home country did not permit the removal of the visa holder;
 - at least 1 of the persons who could lawfully determine where the additional applicant is to live did not consent to the grant of the visa; or
 - the grant of the visa was inconsistent with any Australian child order in force in relation to the visa holder;
- (ea) in the case of a Subclass 601 (Electronic Travel Authority) visa – that, despite the grant of the visa, the Minister is satisfied that the visa holder:
- did not have, at the time of the grant of the visa, an intention only to stay in, or visit, Australia temporarily for the tourism or business purposes for which the visa was granted; or
 - has ceased to have that intention;
- (f) in the case of:
- the holder of an Electronic Travel Authority (Class UD) visa who is under 18 and is not accompanied by his or her parent or guardian; or
 - the holder of a Tourist (Class TR) visa, that was applied for using form 601E, who:
 - is under 18; and
 - is not accompanied by his or her parent or guardian; or
 - the holder of a Visitor (Class TV) visa who is under 18 and is not accompanied by his or her parent or guardian; or
 - the holder of a Subclass 600 (Visitor) visa in the Tourist stream, that was applied for using form 1419 (Internet), who is under 18 and is not accompanied by his or her parent or guardian;
- that the holder of that visa does not have adequate funds, or adequate arrangements have not been made, for the holder's maintenance, support and general welfare during the holder's proposed visit in Australia;
- (g) in the case of a temporary visa held by a person other than a visa holder mentioned in paragraph (h) – that the visa holder asks the Minister, in writing, to cancel the visa;
- (h) in the case of a temporary visa held by a person who is under the age of 18 years and is not a spouse, a former spouse or engaged to be married – that:
- a person who is at least 18 years of age, and who can lawfully determine where the visa holder is to live, asks the Minister, in writing, to cancel the visa; and
 - the Minister is satisfied that there is no compelling reason to believe that the cancellation of the visa would not be in the best interests of the visa holder;

Continued on reverse of page 2 ▶

Department of Immigration and Border Protection

Part A – Notice of intention to consider cancelling a visa (continued)

Based on the information above, there appear to be grounds for cancelling your visa under:

- s116(1)(a)
- s116(1)(aa)
- s116(1)(b) because it appears that you have breached condition
- (Refer to reverse of pages 4, 5, 6 and 7 for details of condition)
- s116(1)(c)
- s116(1)(d) because a ground appears to exist at
- (Enter relevant ground here – s101, s102, s103, s104 or s105)
- s116(1)(e)
- s116(1)(f)
- s116(1)(fa) (i) (ii)
- s116(1)(g) because a ground appears to exist at Reg 2.43(1) (ka)
- other

Please refer to reverse of pages 1, 2 and 3 for reference to the relevant legislation.

Where the Minister can cancel a visa under subsection 116(1) of the Act, the Minister must do so if there exist prescribed circumstances in which the visa must be cancelled (see subsection 116(3) of the Act and the 'prescribed circumstances' in subregulation 2.43(2) of the Migration Regulations 1994) – refer to reverse of page 3.

9 Opportunity to comment

The Migration Act 1958 gives you the opportunity to comment on the intention to consider cancellation of your visa and to give reasons why your visa should not be cancelled. Your comments could include:

- why grounds for cancellation do not exist; or
- why your visa should not be cancelled.

You are invited to provide your comments at interview.

Interview will be held on

Beginning at

At the following location DIBP office airport

If you choose not to comment, the delegate may make his/her decision based on the information available to them.

If your visa is cancelled you may be refused immigration clearance. You may also be detained and removed from Australia as an unlawful non-citizen under s189 of the Migration Act 1958. The visas of any dependants may also be cancelled.

If your visa is cancelled, you may become subject to an exclusion period. If you are subject to an exclusion period as a result of a visa cancellation, you may be prevented from being granted various types of visas for a period of up to 3 years. You may also be prevented from making a valid application for certain classes of visa while in Australia.

If a decision is made not to cancel your visa you will be immigration cleared and allowed to enter Australia.

Except in the case of consideration of cancellation of a visa under Reg 2.43(2), factors the delegate may take into consideration in making a decision whether to cancel your visa include (but are not limited to) the following:

- the purpose of your travel to Australia;

- extent of compliance with the conditions of your visa;
- the degree of hardship which may be caused to you or your family (Note: As per the Convention on the Rights of the Child, the best interests of any child in Australia under 18 years of age will be considered);
- the circumstances in which the ground for cancellation arose;
- your behaviour in relation to the department, now and on any previous occasion.

10 Disclosure of information

Note: The Privacy Act protects information you give in this interview. For more information, see the reverse of page 3.

11 Delegate's details

Signature of officer

Name

Position number 2694

Date Day Month Year Time

12 Visa holder's signature to acknowledge that this notice has been received

Refusal to acknowledge receipt of this notice will not prevent the delegate from making a decision on whether to cancel your visa.

Signature of visa holder

Date

13 Interpreter details

Signature of interpreter via phone

Date

TIS number 1246

Cancellation of visa under section 116 of the Migration Act (continued)

- (i) in the case of the holder of:
- (i) a Subclass 456 (Business (Short Stay)) visa; or
 - (ia) a Subclass 459 (Sponsored Business Visitor (Short Stay)) visa; or
 - (ib) a Subclass 600 (Visitor) visa in the Business Visitor stream; or
 - (ii) a Subclass 956 (Electronic Travel Authority (Business Entrant – Long Validity)) visa; or
 - (iii) a Subclass 977 (Electronic Travel Authority (Business Entrant – Short Validity)) visa –
- that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to stay in, or visit, Australia temporarily for business purposes;
- (fa) in the case of a holder of:
- (i) a Subclass 400 (Temporary Work (Short Stay Activity)) visa; or
 - (ia) a Subclass 401 (Temporary Work (Long Stay Activity)) visa; or
 - (ib) a Subclass 402 (Training and Research) visa; or
 - (ic) a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (id) a Subclass 411 (Exchange) visa; or
 - (ii) a Subclass 415 (Foreign Government Agency) visa; or
 - (iii) a Subclass 416 (Special Programme) visa; or
 - (iv) a Subclass 419 (Visiting Academic) visa; or
 - (v) a Subclass 420 (Entertainment) visa; or
 - (vi) a Subclass 421 (Sport) visa; or
 - (vii) a Subclass 423 (Media and Film Staff) visa; or
 - (viii) a Subclass 427 (Domestic Worker (Temporary) – Executive) visa; or
 - (ix) a Subclass 428 (Religious Worker) visa; or
 - (x) a Subclass 442 (Occupational Trainee) visa; or
 - (xi) a Subclass 488 (Superyacht Crew) visa;
- that the grounds in subregulation (1A) are met; or
- (j) in the case of the holder of:
- (i) a Subclass 600 (Visitor) visa that is not in the Business Visitor stream; or
 - (ii) a Subclass 676 (Tourist) visa; or
 - (iii) a Subclass 679 (Sponsored Family Visitor) visa;
- that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to visit, or remain in, Australia as a visitor temporarily for the purpose of visiting an Australian citizen, or Australian permanent resident, who is a parent, spouse, de facto partner, child, brother or sister of the visa holder or for another purpose, other than a purpose related to business or medical treatment;
- (k) in the case of the holder of a Subclass 976 (Electronic Travel Authority (Visitor)) visa – that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to visit Australia temporarily for tourism purposes;
- (ka) in the case of a holder of a Subclass 651 (e/Visitor) visa – that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to stay in, or visit, Australia temporarily for the tourism or business purposes for which the visa was granted;
- (kb) in the case of the holder of Subclass 457 (Business (Long Stay)) visa that was granted on the basis that the applicant met the requirements of subregulation 457.223(4) – that, despite the grant of the visa, the Minister is satisfied that:
- (i) the holder did not have a genuine intention to perform the occupation mentioned in paragraph 457.223(4)(d) at the time of grant of the visa; or
 - (ii) the holder has ceased to have a genuine intention to perform that occupation; or
 - (iii) the position associated with the nominated occupation is not genuine;
- (l) in the case of the holder of a Subclass 457 (Business (Long Stay)) visa who is a primary sponsored person in relation to a person who is, or was, a standard business sponsor or party to a labour agreement (the *sponsor*) – that:
- (i) the sponsor has not complied, or is not complying, with the undertaking given by the business sponsor in accordance with approved form 1067, 1196 or 1196 (Internet); or
 - (ii) the sponsor has given false or misleading information to Immigration or the Migration Review Tribunal; or
 - (iii) the sponsor has failed to satisfy a sponsorship obligation; or
 - (iv) the sponsor has been cancelled or barred under section 140M of the Act; or
 - (v) the labour agreement has been terminated, has been suspended or has ceased;
- (a) in the case of the holder of a Subclass 457 (Business (Long Stay)) visa who was granted the visa on the basis of a nomination of an activity under regulation 1.20GA as in force immediately before 14 September 2009 – that the holder is living or working within an area specified by the Minister in an instrument in writing for this paragraph;
- (b) *(omitted by SLI 2007, 272 with effect from 10/09/2007 – (b) inserted by SLI 2008, 189 with effect from 27/10/2008 – (b) omitted by SLI 2009, 203 (which amended SLI 2009, 115) with effect from 14/09/2009 – LEGEND note)*
- (c) in the case of a holder of:
- (i) a Subclass 411 (Exchange) visa; or
 - (ii) a Subclass 415 (Foreign Government Agency) visa; or
 - (iii) a Subclass 416 (Special Programme) visa; or
 - (iv) a Subclass 419 (Visiting Academic) visa; or
 - (v) a Subclass 420 (Entertainment) visa; or
 - (vi) a Subclass 421 (Sport) visa; or
 - (vii) a Subclass 423 (Media and Film Staff) visa; or
 - (viii) a Subclass 427 (Domestic Worker (Temporary) – Executive) visa; or
 - (ix) a Subclass 428 (Religious Worker) visa; or
 - (x) a Subclass 442 (Occupational Trainee) visa; or
 - (xi) a Subclass 488 (Superyacht Crew) visa;
- who is a primary sponsored person in relation to a person who is or was an approved sponsor – that 1 of the grounds specified in subregulation (1B) is met;
- (d) in the case of a holder of:
- (i) a Subclass 411 (Exchange) visa; or
 - (ii) a Subclass 419 (Visiting Academic) visa; or
 - (iii) a Subclass 420 (Entertainment) visa; or
 - (iv) a Subclass 421 (Sport) visa; or
 - (v) a Subclass 423 (Media and Film Staff) visa; or
 - (vi) a Subclass 427 (Domestic Worker (Temporary) – Executive) visa; or
 - (vii) a Subclass 428 (Religious Worker) visa; or
 - (viii) a Subclass 442 (Occupational Trainee) visa; or
 - (ix) a Subclass 457 (Business (Long Stay)) visa;
- who is a secondary sponsored person in relation to a person who is or was an approved sponsor – that the person who is or was an approved sponsor of the primary sponsored person to whom the secondary sponsored person is related has not listed the secondary sponsored person in the latest nomination in which the primary sponsored person is identified;
- (e) in the case of a holder of:
- (i) a Subclass 401 (Temporary Work (Long Stay Activity)) visa; or
 - (ii) a Subclass 427 (Domestic Worker (Temporary) – Executive) visa; or
 - (iii) a Subclass 428 (Religious Worker) visa; or
 - (iv) a Subclass 457 (Temporary Work (Skilled)) visa;
- who is a primary sponsored person or a secondary sponsored person in relation to a person who is or was an approved sponsor – that the person who is or was an approved sponsor has paid the return travel costs of the holder in accordance with the sponsorship obligation mentioned in regulation 2.80 or 2.80A;
- (m) that the Minister reasonably suspects that the holder of the visa has committed an offence under section 232A, 233, 233A, 234 or 236 of the Act;
- (n) that:
- (i) a certificate is in force under paragraph 271(1)(f) of the Act, stating that a computer programme was not functioning correctly; and
 - (ii) both of the following apply:
 - (A) the visa was granted at the time, or during the period, that is specified in the certificate;
 - (B) the grant of the visa is an outcome from the operation of that programme, under an arrangement made under subsection 495A(1) of the Act, that is specified in the certificate;
- (o) that the Minister reasonably suspects that the visa has been obtained as a result of the fraudulent conduct of any person;
- (oa) in the case of the holder of a temporary visa (other than a Subclass 050 (Bridging (General)) visa, a Subclass 051 (Bridging (Protection Visa Applicant)) visa or a Subclass 444 (Special Category) visa) – that the Minister is satisfied that the holder has been convicted of an offence against a law of the Commonwealth, a State or Territory (whether or not the holder held the visa at the time of the conviction and regardless of the penalty imposed (if any));

Continued on reverse of page 3 ►

Department of Immigration and Border Protection

Decision

Office use only	
ICSE Client ID	[REDACTED]

Part B – Record of decision whether to cancel visa

1 Full name

Family name
[REDACTED]

Given names
[REDACTED]

2 Date of birth

Day	Month	Year
[REDACTED]	[REDACTED]	[REDACTED]

3 Current visa details

subclass 651 visa granted on

Day	Month	Year
[REDACTED]	[REDACTED]	[REDACTED]

4 Visa holder's response

The visa holder received the notice of intention to consider cancelling the visa at: (insert time and date from Item 12 Part A)

Day	Month	Year
[REDACTED]	[REDACTED]	[REDACTED]

The visa holder:

DID NOT RESPOND to the notice of intention to consider cancelling the visa Go to Question 6

RESPONDED to the notice of intention to consider cancelling the visa Give details at Question 5 and/or Question 8

5 Time interview commenced
(This should be a reasonable period after the time at Question 4)

Day	Month	Year
12:04 hrs	17-Jun	2015

Grounds for cancellation
Provide a summary of why the visa holder considers the GROUNDS for cancellation DO or DO NOT exist

[REDACTED] disputed that grounds for cancellation exist and stated that her primary reason for travelling to Australia today was to practice English.

Cancellation of visa under section 116 of the Migration Act (continued)

- (ob) in the case of the holder of a temporary visa (other than a Subclass 050 (Bridging (General)) visa, a Subclass 051 (Bridging (Protection Visa Applicant)) visa or a Subclass 444 (Special Category) visa) – that the Minister is satisfied that the holder is the subject of a notice (however described) issued by Interpol for the purpose of providing a warning or intelligence that:
- (i) the holder has committed an offence against a law of another country and is likely to commit a similar offence; or
 - (ii) the holder is a serious and immediate threat to public safety;
- (f) in the case of the holder of a Subclass 771 (Transit) visa – that, despite the grant of the visa, the Minister reasonably suspects that the holder of the visa:
- (i) did not have, at the time of the grant of the visa, an intention to transit Australia; or
 - (ii) has ceased to have that intention.
- (1A) For paragraph (1)(a), the grounds are that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have at the time of grant of the visa, or has ceased to have, a genuine intention to stay temporarily in Australia to carry out the work or activity in relation to which:
- (a) the visa holder's visa was granted; or
 - (b) if the visa holder is identified in a nomination after the visa is granted – the visa holder was identified in a nomination.
- (1B) For paragraph (1)(c), the grounds are the following:
- (a) the approval of the person as a sponsor has been cancelled, or the approved sponsor has been barred, under section 140M of the Act;
 - (b) if the approved sponsor is a party to a work agreement – the work agreement has been terminated or has ceased;
 - (c) if the primary sponsored person is required to be identified in a nomination – the criteria for approval of the latest nomination in which the primary sponsored person is identified are no longer met;
 - (d) the person who is or was an approved sponsor has failed to satisfy a sponsorship obligation.
- (1C) For subsection 116(1A) of the Act, the Minister may have regard to the following matters in determining whether he or she is satisfied as mentioned in paragraph 116(1)(a) of the Act that participation in a course of study by the holder of a student visa has been deferred or temporarily suspended by the provider of the course of study:
- (a) because of the conduct of the holder;
 - (b) because of the circumstances of the holder, other than compassionate or compelling circumstances;
 - (c) because of compassionate or compelling circumstances of the holder, if the Minister is satisfied that the circumstances have ceased to exist;
 - (d) on the basis of evidence or a document given to the provider about the holder's circumstances, if the Minister is satisfied that the evidence or document is fraudulent or misrepresents the holder's circumstances.
- (2) For subsection 116(3) of the Act, the circumstances in which the Minister must cancel a visa are:
- (a) in the case of a visa other than a relevant visa – each of the circumstances comprising the grounds set out in:
 - (i) sub-subparagraphs (1)(a)(i)(A) and (B); and
 - (ii) paragraph (1)(b); and
 - (aa) in the case of a relevant visa – the circumstance comprising the grounds set out in subparagraph (1)(a)(ii); and
- (3) In this regulation:
- [BUSINESS SPONSOR omitted by SLI 2009, 202 with effect from 14/09/2009 – LEGEND note]*
- relevant visa** means a visa of any of the following subclasses.
- | | |
|--------------------|-------------------|
| (aa) Subclass 050; | (f) Subclass 447; |
| (a) Subclass 200; | (g) Subclass 449; |
| (b) Subclass 201; | (h) Subclass 451; |
| (c) Subclass 202; | (i) Subclass 785; |
| (d) Subclass 203; | (j) Subclass 786; |
| (e) Subclass 204; | (k) Subclass 866. |

Important information about privacy

The personal information you give in this interview is protected by law, including the *Privacy Act 1988*. Important information about the collection, use and disclosure (to other agencies and third parties, including overseas entities) of your personal information, including sensitive information, can be found below, and is contained in form 1442i *Privacy notice*. Form 1442i is available from the department's website www.immi.gov.au/allforms/ or offices of the department. You should ensure that you read and understand the *Privacy notice*.

- 5.1 At or before the time or, if that is not practicable, as soon as practicable after, an Australian Privacy Principles (APP) entity collects personal information about an individual, the entity must take such steps (if any) as are reasonable in the circumstances:
- (a) to notify the individual of such matters referred to in subclause 5.2 as are reasonable in the circumstances; or
 - (b) to otherwise ensure that the individual is aware of any such matters.
- 5.2 The matters for the purposes of subclause 5.1 are as follows:
- (a) the identity and contact details of the APP entity;
 - (b) if:
 - (i) the APP entity collects the personal information from someone other than the individual; or
 - (ii) the individual may not be aware that the APP entity has collected the personal information;
 the fact that the entity so collects, or has collected, the information and the circumstances of that collection;
 - (c) if the collection of the personal information is required or authorised by or under an Australian law or a court/tribunal order—the fact that the collection is so required or authorised (including the name of the Australian law, or details of the court/tribunal order, that requires or authorises the collection);
 - (d) the purposes for which the APP entity collects the personal information;
 - (e) the main consequences (if any) for the individual if all or some of the personal information is not collected by the APP entity;
 - (f) any other APP entity, body or person, or the types of any other APP entities, bodies or persons, to which the APP entity usually discloses personal information of the kind collected by the entity;
 - (g) that the APP privacy policy of the APP entity contains information about how the individual may access the personal information about the individual that is held by the entity and seek the correction of such information;
 - (h) that the APP privacy policy of the APP entity contains information about how the individual may complain about a breach of the Australian Privacy Principles, or a registered APP code (if any) that binds the entity, and how the entity will deal with such a complaint;
 - (i) whether the APP entity is likely to disclose the personal information to overseas recipients;
 - (j) if the APP entity is likely to disclose the personal information to overseas recipients—the countries in which such recipients are likely to be located if it is practicable to specify those countries in the notification or to otherwise make the individual aware of them.

Department of Immigration and Border Protection

Part B – Record of decision whether to cancel visa (continued)

6 Assessment

I am satisfied that there are:

GROUNDS

OR

NO GROUNDS

for cancellation of the visa holder's visa under:

s116(1)(a)

s116(1)(aa)

s116(1)(b) because I am satisfied that you have breached condition [redacted]

(Refer to reverse of pages 4, 5, 6 and 7 for details of condition)

s116(1)(c)

s116(1)(d) because I am satisfied a ground exists at [redacted]

(Enter relevant ground here – s101, s102, s103, s104 or s105)

s116(1)(e)

s116(1)(f)

s116(1)(fa) (i) (ii)

s116(1)(g) because I am satisfied a ground exists at

Reg 2.43(1) (ka) [redacted]

other [redacted]

Please refer to reverse of pages 1, 2 and 3 for reference to the relevant legislation.

Where the Minister can cancel a visa under subsection 116(1) of the Act, the Minister must do so if there exist prescribed circumstances in which the visa must be cancelled (see subsection 116(3) of the Act and the 'prescribed circumstances' in subregulation 2.43(2) of the Migration Regulations 1994) – refer to reverse of page 3.

7 Details of the evidence and findings about whether the delegate is satisfied GROUNDS for cancellation DO or DO NOT EXIST

[redacted] arrived at [redacted] airport on [redacted]. Through a baggage examination and at interview it became apparent to me that grounds existed to consider cancellation of [redacted] subclass [redacted] visa under s116(1)(g) and Reg 2.43(1)(ka) as [redacted] did not appear to have an intention to stay in Australia temporarily for tourism purposes for which the visa was granted, or had ceased to have that intention.

Evidence supporting this was:

- [redacted] claimed that the purpose of [redacted] stay in Australia was to stay with a [redacted] where [redacted] would be expected to [redacted]

- Messages located on [redacted] mobile phone indicated that [redacted] was willing to earn extra money working as a baby sitter.

- Messages located on [redacted] phone indicated that [redacted] is travelling to Australia to work as an au-pair.

[redacted] disputed that grounds for cancellation exist and stated that although [redacted] would be living with the [redacted]

[redacted] primary reason for travelling to Australia to day was to live in a house where [redacted] could practice [redacted] English 24 hours per day.

On the basis of the above evidence, I am satisfied [redacted] did not have, at the time of the grant of the visa, or has ceased to have, an intention only to stay in, or visit, Australia temporarily for the tourism purposes for which the visa was granted.

Visa conditions

- 8101 The holder must not engage in work in Australia.
- 8102 The holder must not engage in work in Australia (other than in relation to the holder's course of study or training).
- 8103 The holder must not receive salary in Australia without the permission in writing of the Secretary.
- 8104 (1) Subject to subclauses (2) to (6), the holder must not engage in work for more than 40 hours a fortnight while the holder is in Australia.
- (2) If the holder is a member of the family unit of a person who satisfies the primary criteria for the grant of a student visa, the holder must not engage in work in Australia until the person who satisfies the primary criteria has commenced a course of study.
- (3) If the holder is able to engage in work in accordance with subclause (2), the holder must not engage in work for more than 40 hours a fortnight while the holder is in Australia unless subclause (4) or (5) applies.
- (4) Subclause (3) does not apply if:
- (a) the visa for which the primary criteria were satisfied is:
- (i) a Subclass 573 (Higher Education Sector) visa; or
- (ii) a Subclass 574 (Postgraduate Research Sector) visa; and
- (b) the course of study is a course for the award of a masters or doctorate degree that is registered on the Commonwealth Register of Institutions and Courses for Overseas Students.
- (5) Subclause (3) does not apply if:
- (a) the visa for which the primary criteria were satisfied is a Subclass 576 (Foreign Affairs or Defence Sector) visa; and
- (b) the course of study is a course for the award of a masters or doctorate degree.
- (6) In this clause:
fortnight means the period of 14 days commencing on a Monday.
- 8105 (1A) The holder must not engage in any work in Australia before the holder's course of study commences.
- (1) Subject to subclause (2), the holder must not engage in work in Australia for more than 40 hours a fortnight during any fortnight when the holder's course of study or training is in session.
- (2) Subclause (1) does not apply:
- (a) to work that was specified as a requirement of the course when the course particulars were entered in the Commonwealth Register of Institutions and Courses for Overseas Students; and
- (b) in relation to a Subclass 574 (Postgraduate Research Sector) visa if the holder has commenced the masters degree by research or doctoral degree.
- (3) In this clause:
fortnight means the period of 14 days commencing on a Monday.
- 8106 The holder must engage in work in Australia only if the work is relevant to the conduct of the business, or performance of the tasks, specified in the visa application.
- 8107 (1) If the visa is not a visa mentioned in subclause (3) or (4), and was granted to enable the holder to be employed in Australia, the holder must not:
- (a) cease to be employed by the employer in relation to which the visa was granted; or
- (b) work in a position or occupation inconsistent with the position or occupation in relation to which the visa was granted; or
- (c) engage in work for another person or on the holder's own account while undertaking the employment in relation to which the visa was granted.
- (2) If the visa is not a visa mentioned in subclause (3) or (4), and subclause (1) does not apply, the holder must not:
- (a) cease to undertake the activity in relation to which the visa was granted; or
- (b) engage in an activity inconsistent with the activity in relation to which the visa was granted; or
- (c) engage in work for another person or on the holder's own account inconsistent with the activity in relation to which the visa was granted.
- (3) If the visa is a Subclass 457 (Business (Long Stay)) visa that was granted on the basis that the holder met the requirements of subclause 457.223 (2) or 457.223 (4):
- (a) the holder must:
- (i) work only in the occupation listed in the most recently approved nomination for the holder; and
- (ii) unless the circumstances in subclause (3A) apply – work only for:
- (A) the standard business sponsor, former standard business sponsor, party to a labour agreement or former party to a labour agreement (the sponsor) who nominated the holder in the most recently approved nomination; or

- (B) if the sponsor is a standard business sponsor or a former standard business sponsor who lawfully operates a business in Australia – an associated entity of the sponsor; and
- (b) if the holder ceases employment – the period during which the holder ceases employment must not exceed 28 consecutive days.
- (3A) For subparagraph (3) (a) (ii), the circumstances are that:
- (a) the holder's occupation is specified in an instrument in writing for subparagraph 2.72 (10)(d)(i) or (ii); or
- (b) the holder is continuing to work for the sponsor, or the associated entity of the sponsor, for the purpose of fulfilling a requirement under a law relating to industrial relations and relating to the giving of notice.
- (3B) If the visa is a Subclass 457 (Business (Long Stay)) visa that was granted on the basis that the holder met the requirements of subclause 457.223 (8), (9) or (10):
- (a) the holder must work only in the occupation or position in relation to which the visa was granted; and
- (b) if the holder ceases employment – the period during which the holder ceases employment must not exceed 28 consecutive days.
- (4) If:
- (a) the visa is:
- (i) a Subclass 411 (Exchange) visa; or
- (ii) a Subclass 419 (Visiting Academic) visa; or
- (iii) a Subclass 420 (Entertainment) visa; or
- (iv) a Subclass 421 (Sport) visa; or
- (v) a Subclass 423 (Media and Film Staff) visa; or
- (vi) a Subclass 427 (Domestic Worker (Temporary) – Executive) visa; or
- (vii) a Subclass 428 (Religious Worker) visa; or
- (viii) a Subclass 442 (Occupational Trainee) visa; and
- (b) in the case of a holder of a Subclass 442 (Occupational Trainee) visa – the occupational training is not provided to the holder by the Commonwealth;
- the holder must not:
- (c) cease to engage in the most recently nominated occupation, programme or activity in relation to which the holder is identified; or
- (d) engage in work or an activity that is inconsistent with the most recently nominated occupation, programme or activity in relation to which the holder is identified; or
- (e) engage in work or an activity for an employer (within the meaning of subregulation 2.72A(8)) other than the employer identified in accordance with paragraph 2.72A(7)(a) in the most recent nomination in which the holder is identified.
- 8108 The holder must not be employed in Australia by any one employer for more than 3 months, without the prior permission in writing of the Secretary.
- 8109 The holder must not change details of times and places of engagements specified in the application to be undertaken in Australia during the visa period, without the prior permission in writing of the Secretary.
- 8110 The holder:
- (a) must not engage in work in Australia except in the household of the employer in relation to whom the visa was granted; and
- (b) must not work in a position or occupation inconsistent with the position or occupation in relation to which the visa was granted; and
- (c) must not engage in work for another person or on the holder's own account while undertaking the employment in relation to which the visa was granted; and
- (d) must not cease to be employed by the employer in relation to which the visa was granted, unless paragraph (e) applies; and
- (e) except with the written permission of the Foreign Minister, must not remain in Australia after the permanent departure of that employer.
- 8111 The holder must not:
- (a) perform work in Australia except in the household of the employer who is the holder's sponsor in relation to the visa; or
- (b) remain in Australia after the permanent departure of that employer.
- 8112 The holder must not engage in work in Australia that might otherwise be carried out by an Australian citizen or an Australian permanent resident.
- 8113 The holder must not work in Australia otherwise than as a member of the crew of a non-military ship.
- 8114 The holder must not work in Australia otherwise than as a member of the crew of a superyacht.
- 8115 The holder must not work in Australia other than by engaging in a business visitor activity.

Department of Immigration and Border Protection

Part B – Record of decision whether to cancel visa (continued)

8 Reasons the visa should not be cancelled

Provide a summary of the reasons the visa holder gave why their visa should not be cancelled

_____ gave the following reasons why _____ visa should not be cancelled:

- "It didn't occur to me that I couldn't take money for a job."
- "I said was an _____ but it is not true." _____ stated that _____ did not explain to _____ friend that _____ would not be paid and that the amount of work is not the same as the work an _____ would need to perform.
- "It was a sacrifice for me to come here. I worked everyday I didn't come to school."
- "I only come to Australia to study and speak English."
- "It will be hard for me to go back to _____. It was my dream from when I was a child to come to Australia to live for a little bit of time. It seems beautiful and very different."

Extent of compliance with visa conditions

This factor is not relevant as _____ visa is not being considered for cancellation for a breach of visa condition under s116(1)(b).

9 Delegate's assessment of the reasons the visa should not be cancelled. (This question does not need to be completed if decided at Question 6 that no grounds for cancellation exist.)

Note: Not applicable to mandatory cancellation under Reg 2.43(2). Go to Question 11

These factors include, but are not limited to, the following. The delegate should consider any relevant factor.

Purpose of travel to and stay in Australia

_____ advised me that _____ is here to stay with a _____ for the entirety of _____ stay and practice her English. _____ states _____ is not being paid for this work.

The _____ confirmed these details and verified that _____ will not be paid for this work.

I note however that the visa holder has also agreed to undertake paid work as a baby sitter. In addition to this, the _____, _____, stated that initially, the visa holder did expect to be paid for the _____ and _____ that _____ would perform while a visitor at their residence.

Therefore I give little weight in favour of _____ claim.

The degree of hardship which may be caused to the visa holder, their family members and others, if the visa is cancelled. (Where applicable, the best interests of a child in Australia under 18 years must be considered in accordance with Australia's obligations under the Convention on the Rights of the Child.)

I have considered the degree of hardship that may be caused to _____ if her visa is cancelled.

_____ has informed me that it has been a dream of _____ since _____ was a child to live in Australia for a little while. _____ has stated that it will be hard for _____ to return to _____ without realising _____ dream and I have applied some weight in favour of _____ claim.

_____ has also stated that it was a sacrifice for _____ to travel to Australia as _____ worked everyday that _____ did not attend school. I have also considered that cancellation of this visa may result in some financial loss for the visa holder and I therefore give this some weight in _____ favour.

Visa conditions (continued)

- 8201 (1) While in Australia, the holder must not engage, for more than 3 months, in any studies or training.
 (2) However, subclause (1) does not apply to a visa mentioned in the table:

Item Visa

- 1 Subclass 580 (Student Guardian) visa in relation to which the holder is undertaking an ELICOS of less than 20 hours per week.
- 1A Subclass 602 (Medical Treatment) visa in relation to which the holder:
 (a) is under 18; and
 (b) has experienced a change in circumstances while in Australia; and
 (c) has the written permission of the Minister to engage for more than 3 months in any studies or training because of compelling and compassionate circumstances
- 2 Subclass 675 (Medical Treatment (Short Stay)) visa in relation to which the holder:
 (a) is under 18; and
 (b) has experienced a change in circumstances while in Australia; and
 (c) has the written permission of the Minister to engage for more than 3 months in any studies or training because of compelling and compassionate circumstances
- 3 Subclass 685 (Medical Treatment (Long Stay)) visa in relation to which the holder:
 (a) is under 18; and
 (b) has experienced a change in circumstances while in Australia; and
 (c) has the written permission of the Minister to engage for more than 3 months in any studies or training because of compelling and compassionate circumstances
- 8202 (1) The holder (other than the holder of a Subclass 560 (Student) visa who is a Foreign Affairs student or the holder of a Subclass 576 (Foreign Affairs or Defence Sector) visa) must meet the requirements of subclauses (2) and (3).
 (2) A holder meets the requirements of this subclause if:
 (a) the holder is enrolled in a registered course; or
 (b) in the case of the holder of a Subclass 560 or 571 (Schools Sector) visa who is a secondary exchange student – the holder is enrolled in a full-time course of study or training.
 (3) A holder meets the requirements of this subclause if neither of the following applies:
 (a) the education provider has certified the holder, for a registered course undertaken by the holder, as not achieving satisfactory course progress for:
 (i) section 19 of the *Education Services for Overseas Students Act 2000*; and
 (ii) standard 10 of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007;
 (b) the education provider has certified the holder, for a registered course undertaken by the holder, as not achieving satisfactory course attendance for:
 (i) section 19 of the *Education Services for Overseas Students Act 2000*; and
 (ii) standard 11 of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007.
 (4) In the case of the holder of a Subclass 560 visa who is a Foreign Affairs student or the holder of a Subclass 576 (Foreign Affairs or Defence Sector) visa – the holder is enrolled in a full-time course of study or training.
- 8203 The holder must not change his or her course of study, or thesis or research topic, unless approval is given by the Minister after the Minister has obtained an assessment from the competent Australian authorities that the holder is not likely to be directly or indirectly a risk to Australian national security.
- 8204 The holder must not undertake or change a course of study or research, or thesis or research topic, for:
 (a) a graduate certificate, a graduate diploma, a master's degree or a doctorate; or
 (b) any bridging course required as a prerequisite to a course of study or research for a master's degree or a doctorate;
 unless approval is given by the Minister after the Minister has obtained an assessment from the competent Australian authorities that the holder is not likely to be directly or indirectly a risk to Australian national security.

- 8205 If the holder is at least 11 years of age and:
 (a) is from a country other than a country that is designated, by Gazette Notice, as a country in relation to which this condition does not apply; and
 (b) intends to study in a class-room environment for a period greater than 4 weeks;
 the holder must, before commencing that study, pass a chest x-ray examination carried out by a medical practitioner who is qualified as a radiologist.
- [8206 omitted by SLI 2007, 190 with effect from 1/07/2007 – LEGEND note]
- 8207 The holder must not engage in any studies or training in Australia.
- 8301 After entry to Australia, the holder must satisfy relevant public interest criteria before the visa ceases.
- 8302 After entry to Australia, all relevant members of the family unit must satisfy the relevant public interest criteria before the visa ceases.
- 8303 The holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.
- 8401 The holder must report:
 (a) at a time or times; and
 (b) at a place: specified by the Minister for the purpose
- 8402 The holder must report:
 (a) within 5 working days of grant, to an office of Immigration; and
 (b) to that office on the first working day of every week after reporting under paragraph (a).
- 8403 The holder must visit an office of Immigration specified by the Minister for the purpose, within the time specified by the Minister for the purpose, to have evidence of the visa placed in the holder's passport.
- 8501 The holder must maintain adequate arrangements for health insurance while the holder is in Australia.
- 8502 The holder of the visa must not enter Australia before the entry to Australia of a person specified in the visa.
- 8503 The holder will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa, while the holder remains in Australia.
- 8504 The holder must enter Australia as the holder of the visa to which the condition applies before a date specified by the Minister.
- 8505 The holder must continue to live at the address specified by the holder before grant of the visa.
- 8506 The holder must notify Immigration at least 2 working days in advance of any change in the holder's address.
- 8507 The holder must, within the period specified by the Minister for the purpose:
 (a) pay; or
 (b) make an arrangement that is satisfactory to the Minister to pay; the costs (within the meaning of Division 10 of Part 2 of the Act) of the holder's detention.
- 8508 The holder must make a valid application for a visa of a class that can be granted in Australia, within the time specified by the Minister for the purpose. Note: For the meaning of valid application see s46 of the Act. Broadly, a valid application is one that is formally in order for consideration, not necessarily one that can be granted.
- 8509 Within 5 working days after the date of grant, the holder must:
 (a) make a valid application for a substantive visa; or
 (b) show an officer a ticket for travel to a country other than Australia that the Minister is satisfied will allow the holder to enter on his or her arrival.
- 8510 Within the time specified by the Minister for the purpose, the holder must, either:
 (a) show an officer a passport that is in force; or
 (b) make an arrangement satisfactory to the Minister to obtain a passport.
- 8511 Within the time specified by the Minister for the purpose, the holder must, show an officer a ticket for travel to a country other than Australia that the Minister is satisfied will allow the holder to enter on his or her arrival.
- 8512 The holder must leave Australia by the date specified by the Minister for the purpose.
- 8513 The holder must notify Immigration of his or her residential address within 5 working days of grant.
- 8514 During the visa period of the visa, there must be no material change in the circumstances on the basis of which it was granted.
- 8515 The holder of the visa must not marry or enter into a de facto relationship before entering Australia.
- 8516 The holder must continue to be a person who would satisfy the primary or secondary criteria, as the case requires, for the grant of the visa.

Department of Immigration and Border Protection

Part B – Record of decision whether to cancel visa (continued)

Cifent circumstances in which the ground for cancellation arose

█ claims that █ applied for the eVisitor visa because █ only intended a three month stay in Australia and would not be undertaking paid work. However, when the message located on █ mobile phone regarding working as a baby sitter to earn 'extra cash' was put to █, █ stated that it didn't occur to █ that █ couldn't take money for a job on the eVisitor visa. I therefore give little weight in favour of the visa holder's claim as a reason not to cancel.

█ also stated that █ did not consider █ intended onshore activities to be "work" as █ would not be working in a restaurant everyday or seeking employment that attracts a salary. While I give some weight in favour of █ claim that █ misunderstood the meaning of "work", it is the responsibility of the visa holder to be aware of the conditions of the visa they hold.

10 Other relevant reasons (if applicable)

I have considered the legal consequences of a decision to cancel the visa, which includes detaining, removal, exclusion periods or bars from applying for other visas. I do not consider the consequences will severely impact █, therefore I apply little weight in █ favour when considering this factor.

Visa holder's behaviour in relation to the department, now and on any previous occasion

█ has been honest, forthcoming and cooperative in █ dealings with the Department today and I therefore give this some weight in █ favour.

11 Decision

After weighing up all of the information available to me, I am satisfied that the grounds for cancelling the visa outweigh the reasons for not cancelling. I have therefore decided to cancel the visa.

OR

After weighing up all of the information available to me, I am satisfied that the reasons not to cancel the visa outweigh the grounds for cancellation. I have therefore decided not to cancel the visa.

OR

After weighing up all of the information available to me, I am not satisfied that there is a ground for cancellation. I have therefore decided not to cancel the visa.

12 Delegate's details

Signature of officer



Name

█

Position number

2694

Date

Day █ Month █ Year █ Time █

Visa conditions (continued)

- 8517** The holder must maintain adequate arrangements for the education of any school-age dependant of the holder who is in Australia for more than 3 months as the holder of a Subclass 560, 570, 571, 572, 573, 574, 575 or 576 visa (as a person who has satisfied the secondary criteria) or Subclass 563 visa.
- 8518** Adequate arrangements must be maintained for the education of the holder while he or she is in Australia.
- 8519** The holder must enter into the marriage in relation to which the visa was granted within the visa period of the visa.
- 8520** The relevant person who holds a Subclass 300 visa on the basis of having satisfied the primary criteria must enter into the marriage in relation to which that visa was granted within the visa period of that visa.
- [8521 omitted by SR 1996, 75 with effect from 1/08/1996 – LEGEND note – PRE 1/10/1996 TRANSITIONAL PROVISION]**
- 8522** The holder must leave Australia not later than the time of departure of the person:
- (a) who has satisfied the primary criteria and
 - (b) of whose family unit the holder is a member.
- 8523** Each person who:
- (a) is a member of the family unit of the holder (being a spouse or de facto partner of the holder or an unmarried child of the holder who has not turned 18); and
 - (b) has satisfied the secondary criteria; and
 - (c) holds a student visa because of paragraphs (a) and (b);
- must leave Australia not later than the time of departure of the holder.
- 8524** The holder must satisfy the remaining criteria (within the meaning of Part 303 of Schedule 2) on or before a date specified by the Minister.
- 8525** The holder must leave Australia by a specified means of transport on a specified day or within a specified period.
- 8526** The holder must notify the Secretary in writing, not earlier than 7 days before the day the visa ceases to be in effect, and not later than that day, of the holder's place of residence in Australia by posting the notification to the Central Office of Immigration in the Australian Capital Territory.
- 8527** The holder must be free from tuberculosis at the time of travel to, and entry into, Australia.
- 8528** The holder must not have one or more criminal convictions, for which the sentence or sentences (whether served or not) are for a total period of 12 months duration or more, at the time of travel to, and entry into, Australia.
- 8529** The holder must, after entering Australia:
- (a) undergo a medical examination carried out by:
 - (i) a Commonwealth Medical Officer; or
 - (ii) a medical practitioner approved by the Minister; or
 - (iii) a medical practitioner employed by an organisation approved by the Minister; and
 - (b) undergo a chest x-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia, unless the holder:
 - (i) is under 11 years of age and is not a person in respect of whom a Commonwealth Medical Officer has requested such an examination; or
 - (ii) is a person:
 - (A) who is confirmed by a Commonwealth Medical Officer to be pregnant; and
 - (B) who has been examined for tuberculosis by a chest clinic officer employed by a health authority of a state or territory; and
 - (C) who has signed an undertaking to place herself under the professional supervision of a health authority in a state or territory and to undergo any necessary treatment; and
 - (D) whom the Minister is satisfied should not be required to undergo a chest x-ray examination at this time.
- 8530** The holder must not deviate from the organised tour referred to in clause 600.252 of Schedule 2.
- 8531** The holder must not remain in Australia after the end of the period of stay permitted by the visa.

- 8532** If the holder has not turned 18 and is not a Foreign Affairs student or a Defence student:
- (a) the holder must stay in Australia with a person who is:
 - (i) a parent of the holder or a person who has custody of the holder; or
 - (ii) a relative of the holder who:
 - (A) is nominated by a parent of the holder or a person who has custody of the holder; and
 - (B) has turned 21; and
 - (C) is of good character; or
 - (b) the arrangements for the holder's accommodation, support and general welfare must be approved by the education provider for the course to which the holder's visa relates, and the holder must not enter Australia before the day nominated by the education provider as the day on which those arrangements are to commence.
- 8533** The holder must:
- (a) in the case of a holder who was outside Australia when the visa was granted, notify the education provider of the holder's residential address in Australia within 7 days after arriving in Australia; and
 - (b) in all cases:
 - (i) notify the education provider of any change in the holder's residential address in Australia within 7 days after the change occurs; and
 - (ii) notify his or her current education provider of a change of education provider within 7 days after the holder receives:
 - (A) a certificate of enrolment from the new education provider; or
 - (B) if no certificate of enrolment is required to be sent, or if a failure of electronic transmission has prevented an education provider from sending a certificate of enrolment – evidence that the applicant has been enrolled by the new education provider.
- 8534** The holder will not be entitled to be granted a substantive visa, other than:
- (a) a protection visa; or
 - (b) a student visa the application for which must be made on form 157P or 157P (Internet); or
 - (c) a Subclass 497 (Graduate – Skilled) visa; or
 - (d) a Subclass 580 (Student Guardian) visa; while the holder remains in Australia.
- 8535** The holder will not be entitled to be granted a substantive visa, other than:
- (a) a protection visa; or
 - (b) a student visa the application for which must be made on form 157P or 157P (Internet); or
 - (c) a Student (Temporary) (Class TU) visa that is granted to an applicant who satisfies the criterion in clause 570.230, 571.229, 572.229, 573.229, 574.229, 575.229, 576.227 or 580.229 of Schedule 2; while the holder remains in Australia.
- 8536** The holder must not discontinue, or deviate from, the professional development programme in relation to which the visa was granted.
- 8537 (1)** While the nominating student (within the meaning of Part 580 of Schedule 2) in relation to the holder is in Australia, the holder must reside in Australia.
- (2)** While the holder is in Australia, the holder must:
- (a) stay with the nominating student (within the meaning of Part 580 of Schedule 2) in relation to the holder; and
 - (b) provide appropriate accommodation and support for the nominating student; and
 - (c) provide for the general welfare of the nominating student.
- 8538** If the holder leaves Australia without the nominating student (within the meaning of Part 580 of Schedule 2) in relation to the holder, the holder must first give to the Minister evidence that:
- (a) there are compelling or compassionate reasons for doing so; and
 - (b) the holder has made alternative arrangements for the accommodation, support and general welfare of the nominating student until the holder's return to Australia; and
 - (c) if the nominating student has not turned 18, the alternative arrangements are approved by the education provider for the course to which the nominating student's visa relates.
- 8539** While the holder is in Australia, the holder must live, study and work only in an area specified by the Minister in an instrument in writing for item 6A1001 of Schedule 6A, as in force:
- (a) when the visa was granted; or
 - (b) if the holder has held more than 1 visa that is subject to this condition – when the first of those visas was granted.

Department of Immigration and Border Protection

Notification of decision

Part C – Notification of decision to cancel visa under s116 of the Migration Act 1958

1 Full name
Family name
Given names

2 On
you were notified of an intention to consider cancelling your
subclass visa granted on
under section 116 of the Migration Act 1958.

3 You:
DID NOT RESPOND to the notice of intention to consider cancelling the visa
RESPONDED to the notice of intention to consider cancelling the visa
Your comments have been taken into account in making this decision.

4 I am satisfied that there are grounds for visa cancellation under:
s116(1)(a)
s116(1)(aa)
s116(1)(b) because I am satisfied that you have breached condition
s116(1)(c)
s116(1)(d) because I am satisfied a ground exists at
s116(1)(e)
s116(1)(f)
s116(1)(fa)
s116(1)(g) because I am satisfied a ground exists at Reg 2.43(1)
other

Please refer to reverse of pages 1, 2 and 3 for reference to the relevant legislation.

Where the Minister can cancel a visa under subsection 116(1) of the Act, the Minister must do so if there exist prescribed circumstances in which the visa must be cancelled (see subsection 116(3) of the Act and the 'prescribed circumstances' in subregulation 2.43(2) of the Migration Regulations 1994) – refer to reverse of page 3.

After weighing up all of the information available to me I was satisfied that the grounds for cancelling your visa outweighed the reasons for not cancelling.

A copy of the department's decision record is attached.

5 Your visa (and the visa of any dependants) has been cancelled on
Day Month Year

As your visa has been cancelled you may be refused immigration clearance. You may also be detained and removed from Australia as an unlawful non-citizen under s189 of the Migration Act 1958.
Where your visa is evidenced in your passport, it will be stamped 'INOPERATIVE' due to the cancellation. Note: The decision to cancel is not merits-reviewable under the Migration Act 1958.
Other relevant agencies will be advised that your visa has been cancelled.

6 Delegate's details
Signature of officer
Name
Position number
Date Time

7 Visa holder's signature to verify that Part B (Record of decision whether to cancel visa) and Part C (Notification of decision to cancel visa under s116) has been received
Signature of visa holder
Date Time

8 Interpreter details
Signature of interpreter
Date Time
TIS number

The information recorded on this form may be used as a basis for recording the electronic report of the cancellation.

Sensitive: Personal



Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MST5-022962

Received
15 SEP 2015
Minister for Immigration
and Border Protection

To Minister for Immigration and Border Protection
Subject Possible Ministerial intervention under section 195A of the Migration Act 1958 in the case of [REDACTED]
Timing As discussed with the Departmental Liaison Officer, this submission was requested by the Minister's Office on 14 September 2015.

Recommendation

That you:

- intervene under section 195A of the Migration Act 1958 to grant [REDACTED] a Visitor visa (subclass 600) for three months, to allow him to lodge a valid onshore Partner (Combined) visa (subclass 820/801) application;
 - if agreed, please sign the decision documentation at Attachment B.

agreed not agreed

Minister for Immigration and Border Protection

Signature.....

Date: 15/09/2015

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Sensitive: Personal

Key Issues

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Background

Immigration history

5. Details of [REDACTED] immigration history are available at Attachment A.

Health, Identity, Character and Security

6. There is no evidence before the Department to indicate that there are any health, identity, character or security concerns in relation to [REDACTED] however, before being granted a Partner visa, [REDACTED] will be required to meet health, character, identity and security requirements.

Options for future management

7. Should you agree to intervene in [REDACTED] case, it is open to you to use your public interest powers under section 195A of the Act. Your power under section 195A of the Act is sometimes applied to community cases, where there are compelling circumstances identified and no other resolution option available. As requested by your office, the Department is referring this case for the grant of a Tourist visa (subclass 600) for three months.

Tourist visa (subclass 600)

8. As [REDACTED] was refused a Partner (Combined) visa (subclass 820/801), he is currently barred under section 48 of the Act from lodging an onshore visa application. Should [REDACTED] be granted a substantive temporary visa, such as a Visitor visa (subclass 600), he would be able to lodge a further Partner (Combined) visa (subclass 820/801) application, which would be assessed through regular departmental processes. The Department notes that [REDACTED] would be required to pay the visa application charge of \$6865.

9. As the holder of a Visitor visa (subclass 600), [REDACTED] would not be eligible for subsidised healthcare through Medicare or the Pharmaceutical Benefits Scheme and would not be eligible for any Centrelink assistance.

Sensitive: Personal

10. If you agree to intervene under section 195A of the Act to grant [redacted] a Visitor visa (subclass 600), please sign the decision documents at **Attachment A**. Your decision comes into effect at the time you sign the Decision Instrument, and the Statement to Parliament fulfils your statutory obligation under section 195A(6) of the Act to notify Parliament of visas granted under section 195A of the Act.

Decline to intervene

11. If you are not inclined to intervene in [redacted] case under section 195A of the Act, he will continue to be managed in the community through the grant of Bridging E visas (subclass 050) on departure grounds, while the Department liaises with him to facilitate his removal from Australia.

Consultation – internal/external

12. Permanent Visa and Citizenship Programme Branch, your office

Consultation – Secretary/ Commissioner

13. This submission did not involve consultation with the Department’s Secretary or Deputy Secretaries, or the Australian Border Force Commissioner or Deputy Commissioners.

Client service implications

14. There are minimal client service implications.

Sensitivities

[redacted]

Financial/systems/legislation/deregulation implications

16. There are negligible financial/systems/legislation implications for the Department.

Attachments

Attachment A Immigration history – [redacted]

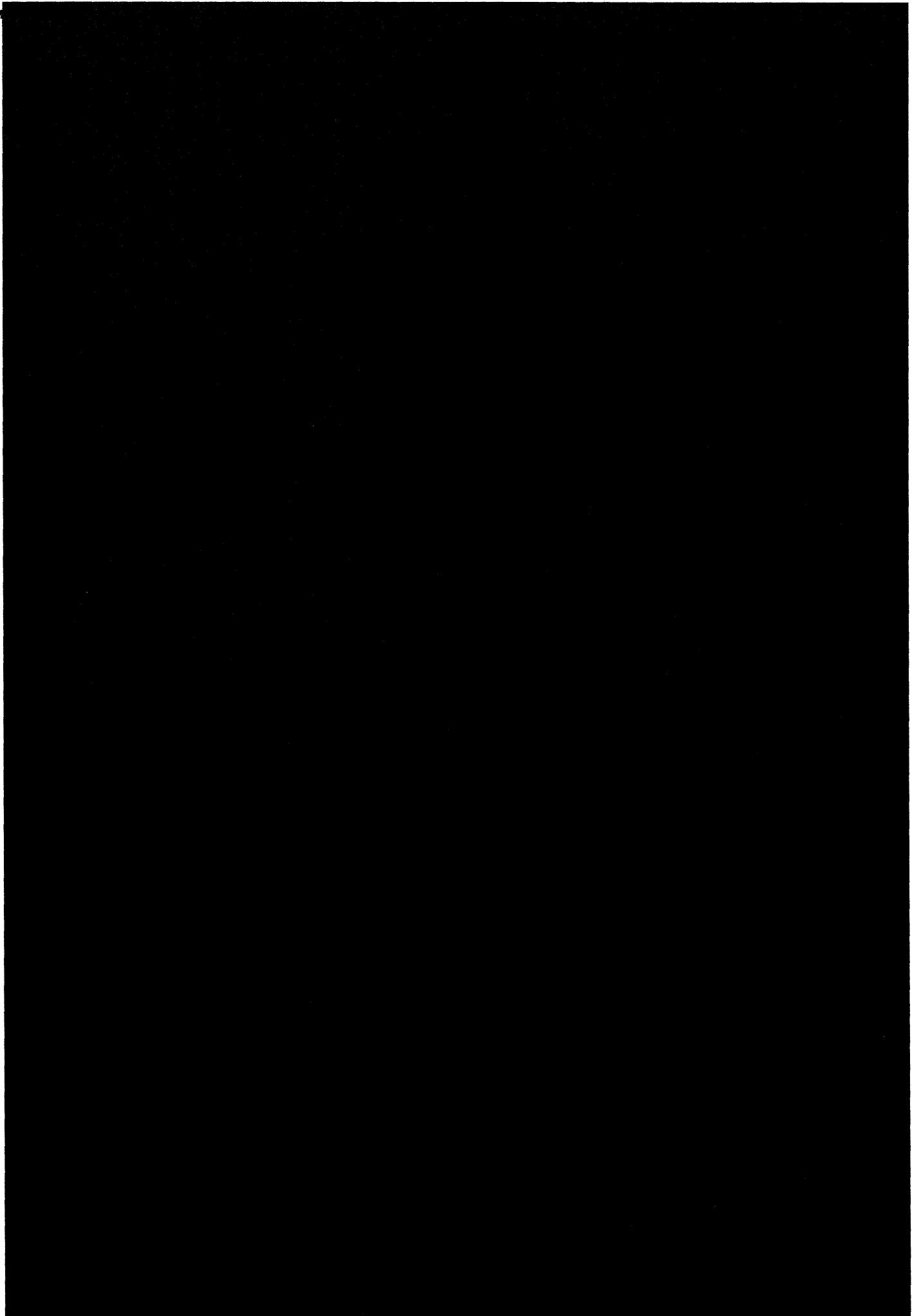
Attachment B Decision Instrument and Statement to Parliament

<p>Authorising Officer</p> <p>Cleared by:</p> <p>Chris De Ruyter A/g Assistant Secretary Caseload Assurance Branch</p> <p>_____ Ph: [redacted]</p>

Contact Officer: Victoria Macleod, Director, Complex Case Resolution Section, Ph: [redacted]

Sensitive: Personal

CC First Assistant Secretary, Community Protection Division
Assistant Secretary, Caseload Assurance Branch
Assistant Secretary, Permanent Visa and Citizenship Programme
Director, Family Migration Programme Management
Director, Partner Migration



Document 2

EXERCISE OF MINISTERIAL DISCRETION UNDER SECTION 195A OF THE *MIGRATION ACT 1958*

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to this person's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant this person a Visitor visa (subclass 600) for three months.



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

15/09 2015

EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958*

- DECISION INSTRUMENT -

Name:
Date of Birth:
Client ID:



1. The above person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant this person a Visitor visa (subclass 600) for three months.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) for three months in respect of this person.

A handwritten signature in black ink, appearing to read 'Peter Dutton'.

THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

15/09/2015

Sensitive: Personal



Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS15-024566

To Minister for Immigration and Border Protection

Subject Ministerial intervention under section 195A of the *Migration Act 1958* in relation to [REDACTED]

Timing For the attention of the Departmental Liaison Officer

Recommendation


That you:

- 1. intervene under section 195A of the *Migration Act 1958* to grant [REDACTED] a Visitor visa (subclass 600) for a period of eight months;

intervene / decline to intervene

- if agreed, please sign the decision documentation at Attachment A.

Minister for Immigration and Border Protection

Signature: 

Date: 02/10/2015

Received
- 2 OCT 2015
Minister for Immigration and Border Protection

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

[Redacted]

[Redacted]

[Redacted]

4. On the basis of this assessment, your delegate refused to waive the 8503 condition applied to [Redacted] visa on [Redacted]. While it is open to you to grant a further Visitor visa (subclass 600) to [Redacted] without condition 8503 imposed, having last entered Australia on a visa that was subject to 8503 condition, [Redacted] would remain affected by 8503 until she departs Australia. While the condition is able to be waived if compassionate or compelling circumstances develop, if you (through your delegate) refused the waiver [Redacted] the Department does not envisage that there has been a change in circumstances that would allow the condition to be waived.
5. As requested by your office, the Department is referring [Redacted] case to you for your consideration under section 195A of the *Migration Act 1958* (the Act). This would allow [Redacted] to remain in Australia until after the birth of her child after which she could seek a further waiver of condition 8503 on the basis of changed circumstances.

Sensitive: Personal

Ministerial intervention under section 195A

6. Your power under section 195A of the Act is sometimes applied to community cases, where there are compassionate or compelling circumstances identified and no other resolution option available. This process requires that any visas held by the client be cancelled and they be detained by the Department under section 189 of the Act, in order to enliven your intervention power under section 195A. The Department will arrange for [REDACTED] to be administratively detained on [REDACTED]

Visitor visa

7. If you are inclined to intervene in [REDACTED] case under section 195A of the Act, the Department considers a Visitor visa (subclass 600) for eight months may be appropriate. This visa would allow [REDACTED] to remain in Australia [REDACTED]
8. As the holder of a Visitor (subclass 600) visa, [REDACTED] would not be eligible for Government assistance and she would be expected to pay for all her living and medical expenses.
9. If you are inclined to consider intervening in [REDACTED] case under section 195A, to grant her a Visitor (subclass 600) visa, please sign the decision documents at **Attachment A**.

Consultation – internal/external

10. Not applicable.

Consultation – Secretary/Commissioner

11. The Secretary and Commissioner were not consulted on the approach in the submission.

Client service implications

12. Summarise client service implications here.

Sensitivities

13. Not applicable.

Financial/systems/legislation/deregulation implications


14. Not applicable.

Sensitive: Personal

Attachments

Attachment A Section 195A decision documents

Attachment B [REDACTED]

Authorising Officer
Cleared by:  Peter Richards Assistant Secretary Caseload Assurance Branch Date: 2/10/15 Ph: [REDACTED]

Contact Officer Christopher De Ruyter, Director, Complex Case Resolution Section, Ph: [REDACTED]

CC FAS, Community Protection Division
Regional Director VIC/TAS
Director Case Mgt & Stat Res Vic/Tas

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to this person's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant this person a Visitor (subclass 600) visa.



THE HONOURABLE PETER DUTTON
Minister for Immigration and Border Protection

05/19 2015

EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958*

- DECISION INSTRUMENT -

Name:
Date of Birth:
Client ID:

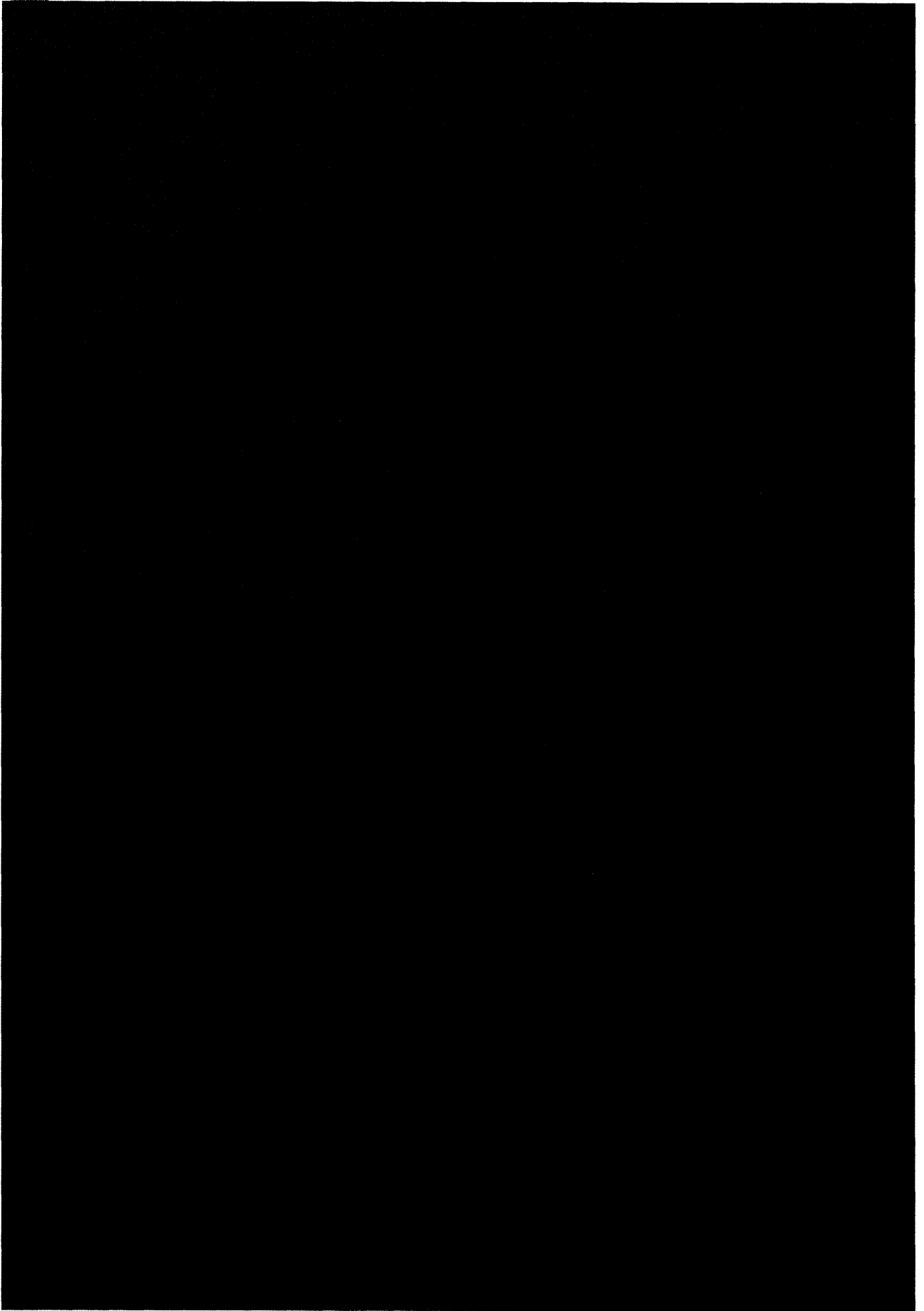


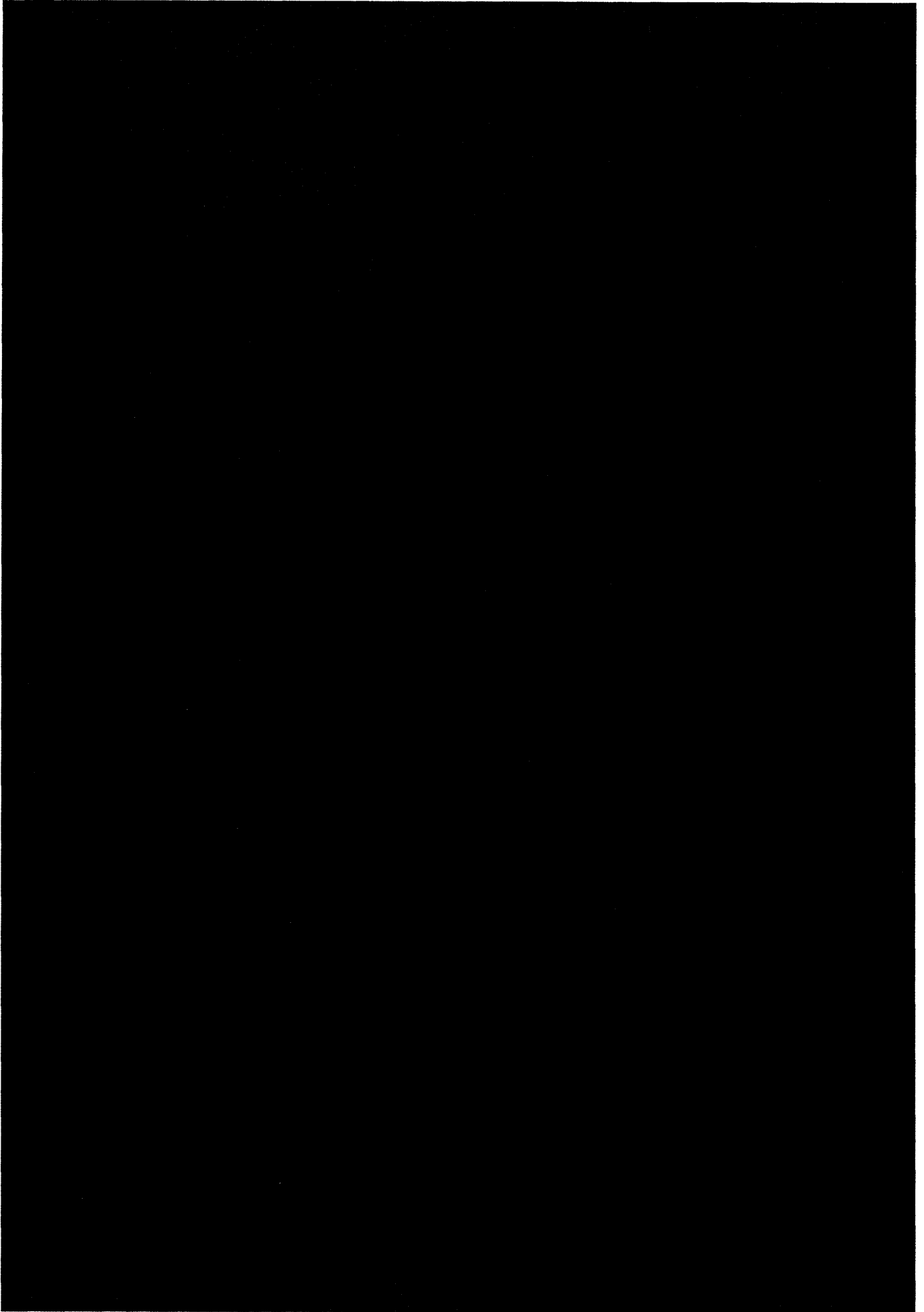
1. The above person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant this person a Visitor (subclass 600) visa.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor (subclass 600) visa in favour of this person.

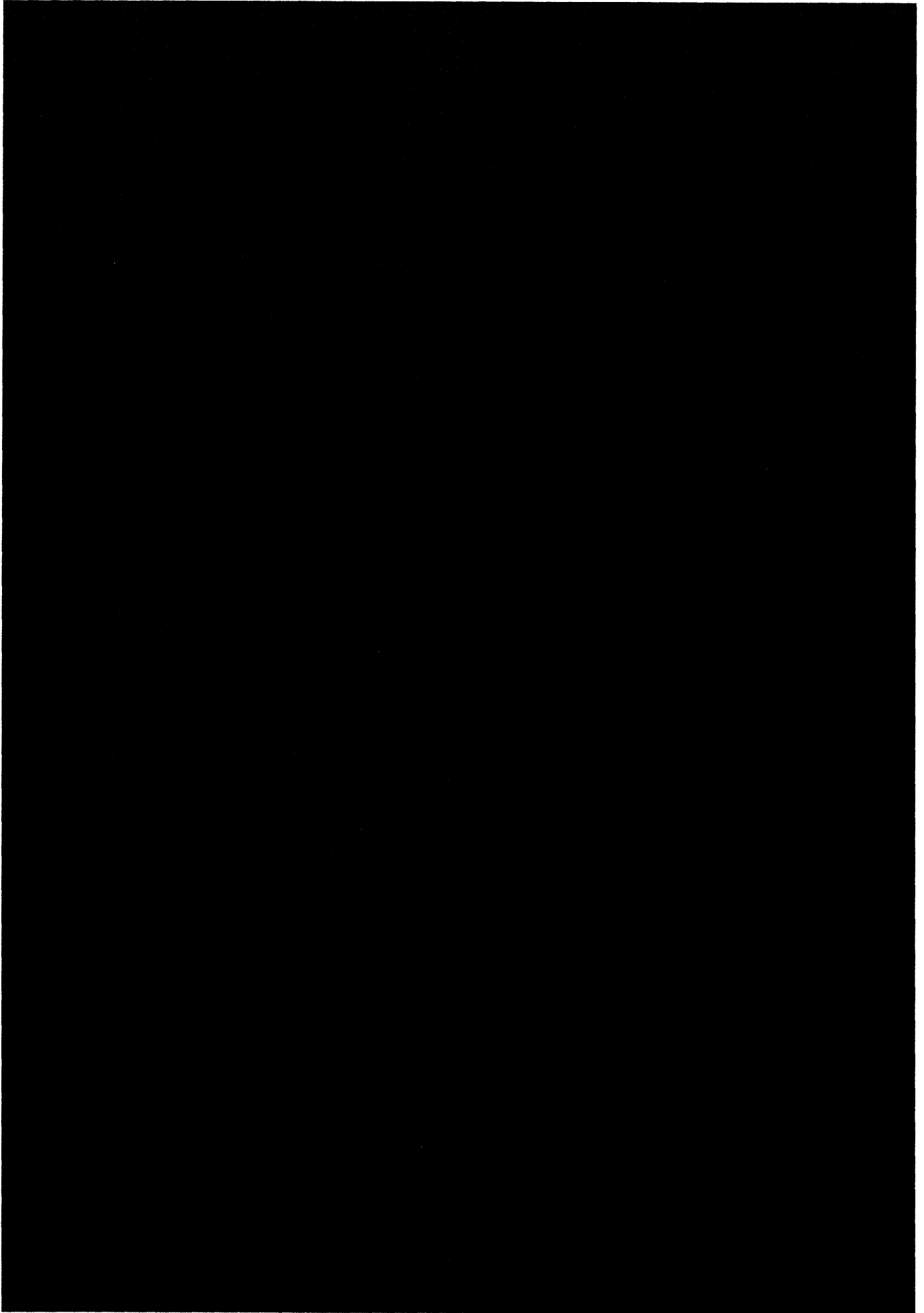
A handwritten signature in black ink, appearing to read 'Peter Dutton'.

THE HONOURABLE PETER DUTTON
Minister for Immigration and Border Protection

06 / 10 / 2015







Sensitive: Personal



Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS15-027915

To Minister for Immigration and Border Protection

Subject Ministerial intervention under section 195A of the *Migration Act 1958* in relation to [REDACTED]
(DOB: [REDACTED])

Timing

Recommendation

That you:

1. agree to intervene under section 195A of the *Migration Act 1958* to grant [REDACTED] a Visitor visa (subclass 600) for a period of three months;

- indicate whether you wish to [REDACTED]

- if agreed, please sign the decision documentations at **Attachment A**.

Intervene ~~decline to~~
~~intervene~~

[REDACTED]

Minister for Immigration and Border Protection

Signature.....
[Handwritten Signature]

Date:...../...../2015
01/11

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. [redacted] year old [redacted] national, arrived in Australia at [redacted] on [redacted], as the holder of an eVisitor visa (subclass 651) valid for a stay period of three months. [redacted]
[redacted]
[redacted]
2. On [redacted] entry to Australia in [redacted], as the holder of an eVisitor visa (subclass 651), [redacted] was [redacted]
[redacted]
3. Upon arrival in [redacted], a Border Entry Officer established that [redacted] returned to Australia holding a tourist visa [redacted]. As such [redacted] visa was cancelled under section 116(1)(g) of the Migration Act 1953 (the Act). A copy of the cancellation decision record is at Attachment B. It is noted that in response to why [redacted] visa should not be cancelled [redacted]
[redacted]
4. Following the cancellation of her visa [redacted] was refused immigration clearance and detained under section 189 of the Act. As a person refused immigration clearance, the Department cannot grant [redacted] a further visa onshore.
5. The Department notes [redacted] have been [redacted]
[redacted] There may be some [redacted]
[redacted] (discussed below at paragraph 16).
6. Your office has requested that [redacted] case be referred to you for consideration under section 195A of the Act.

Sensitive: Personal

Option for future management

7. Your non-compellable power under section 195A is enlivened in [REDACTED] case as [REDACTED] is in immigration detention.

Ministerial intervention under section 195A

8. If you are inclined to intervene in [REDACTED] case under section 195A of the Act, the Department considers the grant of a Visitor visa (subclass 600), for a period of three months will facilitate this. However, there are [REDACTED]
9. It is open to you to [REDACTED]. Should you wish to [REDACTED], the Department will advise [REDACTED]. The ABF also notes [REDACTED]. On [REDACTED] also advised ABF officers of [REDACTED] on this occasion.
10. If you agree to intervene, please sign the decision documentation at **Attachment A**.

Decline to intervene

11. Should you not agree to intervene in [REDACTED] case, [REDACTED] is liable to be removed from Australia.

Consultation – Internal/external

12. Your office, Detention and Compliance Operations and Query? Brisbane is not involved in this. Should this be ABF Regional Command Central

Consultation – Secretary/CEO

13. This submission did not involve consultation with the Department's Secretary or Deputy Secretaries, or the Australian Border Force Commissioner or Deputy Commissioners.

Client service implications

14. There are minimal client service implications.

Sensitivities

15. N/A

Financial/systems/legislation/deregulation implications

16. Where the Department seeks to [REDACTED]

Sensitive: Personal

Attachments

Attachment A Section 195A decision documentation

Attachment B Cancellation decision record

Authorising Officer
Cleared by: Peter Richards Assistant Secretary Caseload Assurance Branch Date: Ph: [REDACTED]

Contact Officer Christopher De Ruyter, Director, Complex Case Resolution Section, Ph: [REDACTED]

CC FAS, CPD
Manager, Qld Airports



Australian
BORDER FORCE

NOTICE OF INTENTION TO CONSIDER CANCELLATION
S116(1)(g) Reg. 2.43(1)(ka)

ATTACHMENT (A)

Family Name: [REDACTED]
Given Names: [REDACTED]
Date of Birth: [REDACTED]
Attachment A – Part A, Question 8. Form 1111

You have arrived at [REDACTED] as the holder of a tourism visitor visa.

You have stated during interview with an Australian Border Officer (ABF) that your main goal is to [REDACTED]. You have contacted the [REDACTED]
[REDACTED]

You will be residing with [REDACTED] for 3 months at [REDACTED]
[REDACTED]

Messages on your mobile phone between you and [REDACTED], state that [REDACTED]
[REDACTED] for [REDACTED] on the [REDACTED]
[REDACTED] will organise a car for you. You responded to this message advising that you would love to [REDACTED] on the above mentioned dates.
During formal interview, you have stated that in return for [REDACTED]
[REDACTED]

On your [REDACTED]
[REDACTED]
[REDACTED]

Based on the above information, it appears that, in the case of a holder of a Subclass [REDACTED] (eVisitor) visa – that, despite the grant of the visa, the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to stay in, or visit, Australia temporarily for the tourism or business purposes for which the visa was granted.

Visa holder's signature to verify that notice has been received

[REDACTED]

[REDACTED]



Australian Government
Department of Immigration
and Border Protection

Notice of intention to consider cancellation
under section 116 of the *Migration Act 1958*
(For use in immigration clearance)

Form
1111

All parts to be completed by an officer of the department.
Please use a pen, and write neatly in English using BLOCK LETTERS.
Tick where applicable

Office use only
ICSE Client ID

Part A – Notice of intention to consider cancelling a visa

1 Full name
Family name
Given names

2 Sex Male Female Indeterminate / Intersex / Unspecified

3 Date of birth

4 Nationality

5 Country of birth

6 Relationship status
Married Separated Never married or been in a de facto relationship
Engaged Divorced Not specified
De facto Widowed

7 Details of previous visa cancellations

8 Possible grounds for cancellation
(include disclosable adverse information given by third parties)
It has come to my attention, as a delegate of the Minister for Immigration and Border Protection, that there appear to be grounds for cancellation of your
subclass visa granted on
under section 116 of the *Migration Act 1958* because:

Refer to Attachment A

Department of Immigration and Border Protection

Part A – Notice of intention to consider cancelling a visa (continued)

Based on the information above, there appear to be grounds for cancelling your visa under:

- s116(1)(a)
- s116(1)(aa)
- s116(1)(b) because it appears that you have breached condition [redacted]
(Refer to reverse of pages 4, 5, 6 and 7 for details of condition)
- s116(1)(c)
- s116(1)(d) because a ground appears to exist at [redacted]
(Enter relevant ground here – s101, s102, s103, s104 or s105)
- s116(1)(e)
- s116(1)(f)
- s116(1)(fa) (i) (ii)
- s116(1)(g) because a ground appears to exist at Reg 2.43(1) (ka) [redacted]
- other [redacted]

Please refer to reverse of pages 1, 2 and 3 for reference to the relevant legislation.

Where the Minister can cancel a visa under subsection 116(1) of the Act, the Minister must do so if there exist prescribed circumstances in which the visa must be cancelled (see subsection 116(3) of the Act and the 'prescribed circumstances' in subregulation 2.43(2) of the Migration Regulations 1994) – refer to reverse of page 3.

9 Opportunity to comment

The Migration Act 1958 gives you the opportunity to comment on the intention to consider cancellation of your visa and to give reasons why your visa should not be cancelled. Your comments could include:

- why grounds for cancellation do not exist; or
- why your visa should not be cancelled.

You are invited to provide your comments at interview.

Interview will be held on [redacted]

Beginning at [redacted]

At the following location [redacted]

If you choose not to comment, the delegate may make his/her decision based on the information available to them.

If your visa is cancelled you may be refused immigration clearance. You may also be detained and removed from Australia as an unlawful non-citizen under s189 of the Migration Act 1958. The visas of any dependants may also be cancelled.

If your visa is cancelled, you may become subject to an exclusion period. If you are subject to an exclusion period as a result of a visa cancellation, you may be prevented from being granted various types of visas for a period of up to 3 years. You may also be prevented from making a valid application for certain classes of visa while in Australia.

If a decision is made not to cancel your visa you will be immigration cleared and allowed to enter Australia.

Except in the case of consideration of cancellation of a visa under Reg 2.43(2), factors the delegate may take into consideration in making a decision whether to cancel your visa include (but are not limited to) the following:

- the purpose of your travel to Australia;

- extent of compliance with the conditions of your visa;
- the degree of hardship which may be caused to you or your family (Note: As per the Convention on the Rights of the Child, the best interests of any child in Australia under 18 years of age will be considered);
- the circumstances in which the ground for cancellation arose;
- your behaviour in relation to the department, now and on any previous occasion.

10 Disclosure of information

Note: The Privacy Act protects information you give in this interview. For more information, see the reverse of page 3.

11 Delegate's details

Signature of officer [redacted]

Name [redacted]

Position number 60031170

Date [redacted] Time [redacted]

12 Visa holder's signature to acknowledge that this notice has been received

Refusal to acknowledge receipt of this notice will not prevent the delegate from making a decision on whether to cancel your visa.

Signature of visa holder [redacted]

Date [redacted] Time [redacted]

13 Interpreter details

Signature of interpreter [redacted]

Date [redacted] Time [redacted]

TIS number Not Used

Cancellation of visa under section 116 of the Act

- (b) the sponsor has been cancelled or suspended under section 149(1) of the Act;
- (c) the visa was granted on the basis of the following information:
- (i) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 401 (Temporary Work (Long Stay Activity)) visa, or
 - (ii) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 402 (Temporary Work (General)) visa, or
 - (iii) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 416 (Special Project) visa, or
 - (iv) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 423 (Media and Film Staff) visa, or
 - (v) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 427 (Domestic Worker (Temporary) - Executive) visa, or
 - (vi) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 428 (Religious Worker) visa, or
 - (vii) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 442 (Domestic Worker) visa, or
 - (viii) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 438 (Superyacht Crew) visa, or
 - (ix) the grounds in subregulation (1A) are met, or
- (d) in the case of the holder of:
- (i) a subclass 600 (Visitor) visa that is not in the Business Visitor category;
 - (ii) a subclass 676 (Tourist) visa; or
 - (iii) a subclass 679 (Sponsored Family Visitor) visa, that the holder, at the time of the grant of the visa, or has ceased to have, at the time of the grant of the visa, or has ceased to have, an intention only to visit or remain in Australia as a visitor temporarily for the purpose of visiting an Australian citizen, or Australian permanent resident, who is a parent, spouse, de facto partner, child, brother or sister of the visa holder or for another purpose other than a purpose related to business or medical treatment;
- (4) in the case of the holder of a subclass 676 (Electronic Travel Authority (Visitor) visa) - that, despite the grant of the visa, the Minister is satisfied that:
- (a) the holder did not have, at the time of the grant of the visa, an intention only to visit Australia temporarily for tourism purposes;
 - (b) in the case of a holder of a subclass 651 (Visitor) visa - that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to stay in, or visit, Australia temporarily for the tourism or business purposes for which the visa was granted;
 - (c) in the case of the holder of subclass 457 (Business (Long Stay) visa that was granted on the basis that the applicant met the requirements of subregulation 457.223(4) - that, despite the grant of the visa, the Minister is satisfied that:
- (i) the holder did not have a genuine intention to perform the occupation mentioned in paragraph 457.223(4)(a) at the time of grant of the visa; or
 - (ii) the holder has ceased to have a genuine intention to perform that occupation; or
 - (iii) the position associated with the nominated occupation is not genuine;
- (5) in the case of the holder of a subclass 457 (Business (Long Stay) visa who is a primary sponsored person in relation to a person who is, or was, a standard business sponsor or party to a labour agreement (the sponsor) that:
- (i) the sponsor has not complied, or is not complying, with the undertaking given by the business sponsor in accordance with approved form 1067, 1196 or 1196 (interact); or
 - (ii) the sponsor has given false or misleading information to Immigration or the Migration Review Tribunal; or
 - (iii) the sponsor has failed to satisfy a sponsorship obligation; or

- (6) the sponsor has been cancelled or suspended under section 149(1) of the Act;
- (7) the visa was granted on the basis of the following information:
- (a) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 411 (Exchange) visa; or
 - (b) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 419 (Working Academic) visa; or
 - (c) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 420 (Entertainment) visa; or
 - (d) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 421 (Sport) visa; or
 - (e) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 423 (Media and Film Staff) visa; or
 - (f) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 427 (Domestic Worker (Temporary) - Executive) visa; or
 - (g) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 428 (Religious Worker) visa; or
 - (h) the visa holder is, or was at the time of the grant of the visa, a holder of a subclass 457 (Business (Long Stay) visa; or
- (8) who is a secondary sponsored person in relation to a person who is, or was, an approved sponsor, or that the person who is, or was, a temporary partner of the primary sponsored person to whom the secondary sponsored person is related has not satisfied the sponsorship obligation in the class of sponsorship in which the primary sponsored person is included;
- (9) in the case of a holder of:
- (i) a subclass 401 (Temporary Work (Long Stay Activity)) visa, or
 - (ii) a subclass 421 (Domestic Worker (Temporary) - Executive) visa, or
 - (iii) a subclass 428 (Religious Worker) visa; or
 - (iv) a subclass 438 (Superyacht Crew) visa, who is a primary sponsored person in relation to a person who is, or was, an approved sponsor, or that the person who is, or was, an approved sponsor, has paid the reform travel costs of the holder in accordance with the sponsorship obligation mentioned in regulation 2.80 or 2.80A;
 - (10) that the Minister reasonably suspects that the holder of the visa has committed an offence under section 232A, 232, 233A, 234, or 236 of the Act;
 - (11) that:
 - (i) a certificate is in force under paragraph 271(1)(f) of the Act, stating that a computer programme was not functioning correctly; and
 - (ii) both of the following apply:
 - (A) the visa was granted at the time, or during the period, that is specified in the certificate;
 - (B) the grant of the visa is an outcome from the operation of that programme, under an arrangement made under subsection 495A(1) of the Act, that is specified in the certificate; - (12) that the Minister reasonably suspects that the visa has been obtained as a result of the fraudulent conduct of any person;
 - (13) in the case of the holder of a temporary visa (other than a subclass 050 (Bridging (General) visa, a subclass 051 (Bridging (Protection) Visa (Applicant)) visa or a subclass 444 (Special Category) visa) - that the Minister is satisfied that the holder has been convicted of an offence against a law of the Commonwealth, a State or Territory (whether or not the holder held the visa at the time of the conviction and regardless of the penalty imposed (if any)).

Continued on reverse of page 3 ►

Department of Immigration and Border Protection

Decision

Office use only

ICSE Client ID [REDACTED]

Part B – Record of decision whether to cancel visa

1 Full name
 Family name [REDACTED]
 Given names [REDACTED]

2 Date of birth [REDACTED]

3 Current visa details
 subclass [REDACTED] visa granted on [REDACTED]

4 Visa holder's response
 The visa holder received the notice of intention to consider cancelling the visa at: (insert time and date from Item 12 Part A)
 [REDACTED]

The visa holder:
 DID NOT RESPOND to the notice of intention to consider cancelling the visa ► Go to Question 6
 RESPONDED to the notice of intention to consider cancelling the visa ► Give details at Question 5 and/or Question 8

5 Time interview commenced
 (This should be a reasonable period after the time at Question 4)

[REDACTED] Day Month Year

Grounds for cancellation
 Provide a summary of why the visa holder considers the GROUNDS for cancellation DO or DO NOT exist

The visa holder considers that grounds for cancellation do not exist as [REDACTED] is doing [REDACTED] for [REDACTED] and is not being [REDACTED], rather [REDACTED] is [REDACTED]

Cancellation of visa under section 116 of

Important information about privacy

Privacy Act 1988 (Cth) and Privacy Principles

www.immi.gov.au/affairs

- (1A) ...
- (1B) ...
- (1C) ...
- (1D) ...
- (1E) ...
- (1F) ...
- (1G) ...
- (1H) ...
- (1I) ...
- (1J) ...
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- (1L) ...
- (1M) ...
- (1N) ...
- (1O) ...
- (1P) ...
- (1Q) ...
- (1R) ...
- (1S) ...
- (1T) ...
- (1U) ...
- (1V) ...
- (1W) ...
- (1X) ...
- (1Y) ...
- (1Z) ...
- (2) ...
- (3) In this regulation:
 - [BUSINESS SPONSOR omitted by SLI 2009, 202 with effect from 14/09/2009 - LEGEND note]
 - relevant visa means a visa of any of the following subclasses:

(aa) Subclass 050;	(ff) Subclass 447;
(ab) Subclass 200;	(fg) Subclass 449;
(ac) Subclass 201;	(fh) Subclass 451;
(ad) Subclass 202;	(gi) Subclass 785;
(ae) Subclass 203;	(gj) Subclass 786;
(af) Subclass 204;	(hk) Subclass 788;

- (1) The APP entity must ...
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- (100) The APP entity must ...

Department of Immigration and Border Protection

Part B – Record of decision whether to cancel visa (continued)

6 Assessment

I am satisfied that there are:

GROUNDS

OR

NO GROUNDS

for cancellation of the visa holder's visa under:

s116(1)(a)

s116(1)(aa)

s116(1)(b) because I am satisfied that you have breached condition [redacted]

(Refer to reverse of pages 4, 5, 6 and 7 for details of condition)

s116(1)(c)

s116(1)(d) because I am satisfied a ground exists at [redacted]

(Enter relevant ground here – s101, s102, s103, s104 or s105)

s116(1)(e)

s116(1)(f)

s116(1)(fa) (i) (ii)

s116(1)(g) because I am satisfied a ground exists at

Reg 2.43(1) (ka) [redacted]

other [redacted]

Please refer to reverse of pages 1, 2 and 3 for reference to the relevant legislation.

Where the Minister can cancel a visa under subsection 116(1) of the Act, the Minister must do so if there exist prescribed circumstances in which the visa must be cancelled (see subsection 116(3) of the Act and the 'prescribed circumstances' in subregulation 2.43(2) of the Migration Regulations 1994) – refer to reverse of page 3.

7

Details of the evidence and findings about whether the delegate is satisfied GROUNDS for cancellation DO or DO NOT EXIST

The visa holder has arrived at [redacted] on a tourist visa.

[redacted] has stated during interview that her main goal is to do [redacted], and has an interview with the [redacted]

The visa holder will reside with [redacted] for 3 months [redacted]

Messages found on the visa holders mobile phone between [redacted] and [redacted] indicate that [redacted] will [redacted]

A Notice of intention to consider cancellation was issued to the visa holder on [redacted] stating the above information. In response to the notice, the visa holder stated that grounds do not exist as [redacted] is here to undertake [redacted] and will [redacted] for [redacted]

Based on the information obtained during formal interview, the evidence, and the visa holders response, I consider that grounds do exist for cancellation as I am satisfied in the case of a holder of a Subclass [redacted] (eVisitor) visa – that, despite the grant of the visa, the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to stay in, or visit, Australia temporarily for the tourism or business purposes for which the visa was granted.

Visa conditions

8103

8104

- (4) ...
- (5) ...
- (6) in this clause **fortnight** means the period of 14 days commencing on a Monday.

8105 (1A) The holder must not engage in any work in Australia before the holder's course of study commences.

- (1) Subject to subclause (2), the holder must not engage in work in Australia for more than 40 hours a fortnight during any fortnight when the holder's course of study or training is in session.
- (2) Subclause (1) does not apply:
 - (a) if the holder is enrolled in a course of study or training whose course particulars were entered in the Commonwealth Register of Institutions and Courses for Overseas Students; and
 - (b) if the holder is a Subclass 401 (Research) visa holder and the holder has commenced the research project or research or doctoral degree.
- (3) in this clause **fortnight** means the period of 14 days commencing on a Monday.

8106 The holder must engage in work in Australia only if the work is relevant to the conduct of the business or performance of the tasks specified in the visa application.

8107 (1) If the visa is a visa mentioned in subclause (3) or (4), and was granted on the basis that the holder will:

- (a) cease to be employed by the employer in relation to which the visa was granted; or
- (b) work in a position or occupation inconsistent with the position or occupation in relation to which the visa was granted; or
- (c) engage in work for another person or on the holder's own account while undertaking the employment in relation to which the visa was granted.
- (2) If the visa is not a visa mentioned in subclause (3) or (4), and subclause (1) does not apply, the holder must not:
 - (a) cease to undertake the activity in relation to which the visa was granted; or
 - (b) engage in an activity inconsistent with the activity in relation to which the visa was granted; or
 - (c) engage in work for another person or on the holder's own account inconsistent with the activity in relation to which the visa was granted.

(3) If the visa is a Subclass 457 (Business (Long Stay)) visa that was granted on the basis that the holder met the requirements of Subclause 457.223 (2) or 457.223 (4):

- (a) the holder must:
 - (i) work only in the occupation listed in the most recently approved nomination for the holder; and
 - (ii) unless the circumstances in subclause (3A) apply – work only for:
 - (A) the standard business sponsor, former standard business sponsor, or party to a labour agreement or former party to a labour agreement (the sponsor) who nominated the holder in the most recently approved nomination; or

9. If the visa is a Subclass 401 (Research) visa or a Subclass 402 (Occupational) visa, the holder must not:

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- (4) ...
- (5) ...
- (6) in this clause **fortnight** means the period of 14 days commencing on a Monday.

8108 The holder must not engage in any work in Australia before the holder's course of study commences.

8109 Subject to subclause (2), the holder must not engage in work in Australia for more than 40 hours a fortnight during any fortnight when the holder's course of study or training is in session.

8110 Subclause (1) does not apply:

- (a) if the holder is enrolled in a course of study or training whose course particulars were entered in the Commonwealth Register of Institutions and Courses for Overseas Students; and
- (b) if the holder is a Subclass 401 (Research) visa holder and the holder has commenced the research project or research or doctoral degree.

8111 in this clause **fortnight** means the period of 14 days commencing on a Monday.

8112 The holder must engage in work in Australia only if the work is relevant to the conduct of the business or performance of the tasks specified in the visa application.

8113 If the visa is a visa mentioned in subclause (3) or (4), and was granted on the basis that the holder will:

- (a) cease to be employed by the employer in relation to which the visa was granted; or
- (b) work in a position or occupation inconsistent with the position or occupation in relation to which the visa was granted; or
- (c) engage in work for another person or on the holder's own account while undertaking the employment in relation to which the visa was granted.
- (2) If the visa is not a visa mentioned in subclause (3) or (4), and subclause (1) does not apply, the holder must not:
 - (a) cease to undertake the activity in relation to which the visa was granted; or
 - (b) engage in an activity inconsistent with the activity in relation to which the visa was granted; or
 - (c) engage in work for another person or on the holder's own account inconsistent with the activity in relation to which the visa was granted.

(3) If the visa is a Subclass 457 (Business (Long Stay)) visa that was granted on the basis that the holder met the requirements of Subclause 457.223 (2) or 457.223 (4):

- (a) the holder must:
 - (i) work only in the occupation listed in the most recently approved nomination for the holder; and
 - (ii) unless the circumstances in subclause (3A) apply – work only for:
 - (A) the standard business sponsor, former standard business sponsor, or party to a labour agreement or former party to a labour agreement (the sponsor) who nominated the holder in the most recently approved nomination; or

Department of Immigration and Border Protection

Part B – Record of decision whether to cancel visa (continued)

8 Reasons the visa should not be cancelled

Provide a summary of the reasons the visa holder gave why their visa should not be cancelled

The visa stated [redacted] never had the intention to work or get paid under a tourist visa. [redacted] came here to be involved in [redacted] [redacted] will be staying with [redacted] [redacted] [redacted] has come to see [redacted] friends and family who are pregnant, and wanted to be here for the births. [redacted] is aware of the visa conditions and its not in [redacted] intentions not to respect it. [redacted] has enough financial resources to live in Australia for 3 months without working. [redacted] will probably do tourist activities in [redacted] in the [redacted] [redacted] wants to be involved in [redacted].

Extent of compliance with visa conditions

This factor is not relevant as the visa holder is not being considered for cancellation for a breach of visa conditions under s116 (1) (b).

9 Delegate's assessment of the reasons the visa should not be cancelled. (This question does not need to be completed if decided at Question 6 that no grounds for cancellation exist.)

Note: Not applicable to mandatory cancellation under Reg 2.43(2). Go to Question 11

These factors include, but are not limited to, the following. The delegate should consider any relevant factor.

Purpose of travel to and stay in Australia

The visa holder stated that [redacted] purpose to and stay in Australia is to undertake [redacted] [redacted] will also be [redacted] [redacted] will also see [redacted] friends who are pregnant and go visit the whitsundays. While [redacted] may undertake some tourism activities, [redacted] [redacted]

I have taken into consideration that the visa holder does hold a savings account with enough money to support herself for 3 months in Australia. [redacted] [redacted] [redacted]

I therefore give little weight in favour of the visa holder for this consideration.

The degree of hardship which may be caused to the visa holder, their family members and others, if the visa is cancelled. (Where applicable, the best interests of a child in Australia under 18 years must be considered in accordance with Australia's obligations under the Convention on the Rights of the Child.)

The visa holder has not raised any hardships that may arise from the visa cancellation. However I have acknowledged that cancellation may result in financial, psychological, emotional or other hardship for the visa holder. Therefore I apply a little weight in favour of the visa holder for this consideration.

Visa conditions (continued)

	<p>8205 The holder must be at least 11 years of age when the visa is granted.</p>
	<p>8206 The holder must not be a person who is, or has been, a member of a criminal organisation.</p>
	<p>8207 The holder must not be a person who is, or has been, a member of a terrorist organisation.</p>
	<p>8208 The holder must not be a person who is, or has been, a member of a criminal organisation.</p>
	<p>8209 The holder must not be a person who is, or has been, a member of a terrorist organisation.</p>
	<p>8210 The holder must not be a person who is, or has been, a member of a criminal organisation.</p>
	<p>8211 The holder must not be a person who is, or has been, a member of a terrorist organisation.</p>
	<p>8212 The holder must not be a person who is, or has been, a member of a criminal organisation.</p>
	<p>8213 The holder must not be a person who is, or has been, a member of a terrorist organisation.</p>
	<p>8214 The holder must not be a person who is, or has been, a member of a criminal organisation.</p>
	<p>8215 The holder must not be a person who is, or has been, a member of a terrorist organisation.</p>
	<p>8216 The holder must not be a person who is, or has been, a member of a criminal organisation.</p>
	<p>8217 The holder must not be a person who is, or has been, a member of a terrorist organisation.</p>
	<p>8218 The holder must not be a person who is, or has been, a member of a criminal organisation.</p>
	<p>8219 The holder must not be a person who is, or has been, a member of a terrorist organisation.</p>
	<p>8220 The holder must not be a person who is, or has been, a member of a criminal organisation.</p>
	<p>8221 The holder must not be a person who is, or has been, a member of a terrorist organisation.</p>
	<p>8222 The holder must not be a person who is, or has been, a member of a criminal organisation.</p>
	<p>8223 The holder must not be a person who is, or has been, a member of a terrorist organisation.</p>

Department of Immigration and Border Protection

Part B – Record of decision whether to cancel visa (continued)

Client circumstances in which the ground for cancellation arose

The visa holder has not made any relevant claims regarding the circumstances in which the grounds for cancellation arose. I am therefore unable to apply any weight in favor of the visa holder.

10 Other relevant reasons (if applicable)

I have considered the legal consequences of a decision to cancel the visa including detention under s 189, removal under s 198, exclusion period under PIC 4013 and being barred for applying for visas under s 48 of the act as well as any other decision bars or legal consequences. I apply a little weight in the visa holder's favour for this consideration.

Visa holder's behaviour in relation to the department, now and on any previous occasion

The visa holder has been co-operative and compliant throughout the interview process. I apply some weight in the visa holders favour for this consideration.

11 Decision

After weighing up all of the information available to me, I am satisfied that the grounds for cancelling the visa outweigh the reasons for not cancelling. I have therefore decided to cancel the visa.

OR

After weighing up all of the information available to me, I am satisfied that the reasons not to cancel the visa outweigh the grounds for cancellation. I have therefore decided not to cancel the visa.

OR

After weighing up all of the information available to me, I am not satisfied that there is a ground for cancellation. I have therefore decided not to cancel the visa.

12 Delegate's details

Signature of officer



Name

Position number 60031170

Day Month Year

Date

[Redacted date]

Time

[Redacted time]

Visa conditions (continued)

- 8522 The holder must not have been granted a visa in Australia, or in any other country, that allows the holder to enter Australia, and the holder must not have been granted a visa in any other country that allows the holder to enter Australia, within the period specified in the instrument in writing.
- 8523 The holder must not be a member of the Communist Party of Australia.
- 8524 The holder must not be a member of the Communist Party of Australia, or of any other political organisation, and must not be a member of any political organisation that is prohibited under the Crimes Act 1914, section 15, or of any other political organisation that is prohibited under the Crimes Act 1914, section 15, or of any other political organisation that is prohibited under the Crimes Act 1914, section 15, or of any other political organisation that is prohibited under the Crimes Act 1914, section 15.
- 8525 The holder must leave Australia by a specified means of transport on a specified day or within a specified period.
- 8526 The holder must notify the Secretary in writing, not earlier than 7 days before the day the visa ceases to be in effect, and not later than that day, of the holder's place of residence in Australia by assigning the notification to the Central Office of Immigration in the Australian Capital Territory.
- 8527 The holder must be free from tuberculosis at the time of travel to and from the overseas country.
- 8528 The holder must, after entering Australia:
 - (a) undergo a medical examination carried out by:
 - (i) a Commonwealth Medical Officer, or
 - (ii) a medical practitioner approved by the Minister, or
 - (iii) a medical practitioner approved by an organisation approved by the Minister; and
 - (b) undergo a chest x-ray examination conducted by a medical officer:
 - (i) who is under 11 years of age and is not a person in respect of whom a Commonwealth Medical Officer has requested such an examination, or
 - (ii) who is a person:
 - (A) who is confirmed by a Clinical or Health Medical Officer to be pregnant; and
 - (B) who has been examined for tuberculosis by a chest clinic officer employed by a health authority of a state or territory; and
 - (C) who has signed an undertaking to place herself under the professional supervision of a health authority in a state or territory and to undergo any necessary treatment; and
 - (D) whom the Minister is satisfied should not be required to undergo a chest x-ray examination at this time.
- 8530 The holder must not deviate from the organised tour referred to in clause 600.252 of Schedule 2.
- 8531 The holder must not remain in Australia after the end of the period of stay permitted by the visa.
- 8532 The holder must not be a member of the Communist Party of Australia.
- 8533 The holder must not be a member of the Communist Party of Australia, or of any other political organisation, and must not be a member of any political organisation that is prohibited under the Crimes Act 1914, section 15, or of any other political organisation that is prohibited under the Crimes Act 1914, section 15, or of any other political organisation that is prohibited under the Crimes Act 1914, section 15, or of any other political organisation that is prohibited under the Crimes Act 1914, section 15.
- 8534 The holder will not be entitled to be granted a substantive visa, other than:
 - (a) a protection visa; or
 - (b) a student visa the application for which must be made on form 157P or 157P Internet; or
 - (c) a subclass 497 Graduate – Health visa; or
 - (d) a subclass 497 Graduate – Health visa.
- 8535 The holder will not be entitled to be granted a substantive visa, other than:
 - (a) a protection visa; or
 - (b) a student visa the application for which must be made on form 157P or 157P Internet; or
 - (c) a Student Health Grant (Class 10 visa that is granted to an applicant who satisfies the criteria in classes 570.220, 570.228, 570.230, 570.229, 574.228, 574.229, 574.229 or 580.229 of Schedule 2) while the holder remains in Australia.
- 8536 The holder must not discontinue or deviate from the professional or commercial course in relation to which the visa was granted.
- 8537 (1) While the holder is a student (within the meaning of Part 580 of Schedule 2) in relation to the holder's visa in Australia, the holder must reside in Australia.

(2) While the holder is in Australia, the holder must:
 - (a) stay with the nominating student (within the meaning of Part 580 of Schedule 2) in relation to the holder's visa;
 - (b) provide appropriate accommodation and support for the nominating student; and
 - (c) provide for the general welfare of the nominating student.
- 8538 If the holder leaves Australia without the nominating student (within the meaning of Part 580 of Schedule 2) in relation to the holder, the holder must first give to the Minister evidence that:
 - (a) there are compelling or compassionate reasons for doing so; and
 - (b) the holder has made alternative arrangements for the accommodation, support and general welfare of the nominating student until the holder's return to Australia; and
 - (c) if the nominating student was not turned 18, the alternative arrangements are approved by the education provider for the course to which the nominating student's visa relates.
- 8539 While the holder is in Australia, the holder must live, study and work only in an area specified by the Minister in an instrument in writing for item 6A1001 of Schedule 6A, as in force:
 - (a) when the visa was granted; or
 - (b) if the holder has held more than 1 visa that is subject to this condition – when the first of those visas was granted.

Department of Immigration and Border Protection

Notification of decision

Part C – Notification of decision to cancel visa under s116 of the Migration Act 1958

1 Full name
Family name
[REDACTED]
Given names
[REDACTED]

2 On [REDACTED] you were notified of an intention to consider cancelling your subclass [REDACTED] visa granted on [REDACTED] under section 116 of the Migration Act 1958.

3 You:
DID NOT RESPOND to the notice of intention to consider cancelling the visa
RESPONDED to the notice of intention to consider cancelling the visa (Refer to Item 5 and Item: 8, Part B for details of your response) Your comments have been taken into account in making this decision.

4 I am satisfied that there are grounds for visa cancellation under:
 s116(1)(a)
 s116(1)(aa)
 s116(1)(b) because I am satisfied that you have breached condition [REDACTED] (Refer to reverse of pages 4, 5, 6 and 7 for details of condition)
 s116(1)(c)
 s116(1)(d) because I am satisfied a ground exists at [REDACTED] (Enter relevant ground here – s101, s102, s103, s104 or s105)
 s116(1)(e)
 s116(1)(f)
 s116(1)(fa) (i) (ii)
 s116(1)(g) because I am satisfied a ground exists at Reg 2.43(1) (ka) [REDACTED]
 other [REDACTED]

Please refer to reverse of pages 1, 2 and 3 for reference to the relevant legislation.

Where the Minister can cancel a visa under subsection 116(1) of the Act, the Minister must do so if there exist prescribed circumstances in which the visa must be cancelled (see subsection 116(3) of the Act and the 'prescribed circumstances' in subregulation 2.43(2) of the Migration Regulations 1994) – refer to reverse of page 3.

After weighing up all of the information available to me I was satisfied that the grounds for cancelling your visa outweighed the reasons for not cancelling.

A copy of the department's decision record is attached.

5 Your visa (and the visa of any dependants) has been cancelled on
Day Month Year
[REDACTED]

As your visa has been cancelled you may be refused immigration clearance. You may also be detained and removed from Australia as an unlawful non-citizen under s189 of the Migration Act 1958.

Where your visa is evidenced in your passport, it will be stamped 'NOOPERATIVE' due to the cancellation. Note: The decision to cancel is not merits-reviewable under the Migration Act 1958.

Other relevant agencies will be advised that your visa has been cancelled.

6 Delegate's details
Signature of officer [REDACTED]
Name [REDACTED]
Position number 60031170
Date [REDACTED] Time [REDACTED]

7 Visa holder's signature to verify that Part B (Record of decision whether to cancel visa) and Part C (Notification of decision to cancel visa under s116) has been received
Signature of visa holder Refused to sign
Date [REDACTED] Time [REDACTED]

8 Interpreter details
Signature of interpreter [REDACTED]
Date [REDACTED] Time [REDACTED]
TIS number NOT USED

The information recorded on this form may be used as a basis for recording the electronic report of the cancellation.

Section 8551

8548

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8551 (1)

(2)

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8554 (1)

(2)

8555

8548 (1) The holder must not acquire any of the following goods:

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8562 (1)

(2)

8563 (1)

(2)

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(2) The holder must not acquire any of the following goods:

(3) The holder must not acquire any of the following goods:

(4) The holder must not acquire any of the following goods:

(5) The holder must not acquire any of the following goods:

(6) The holder must not acquire any of the following goods:

(7) The holder must not acquire any of the following goods:

(8) The holder must not acquire any of the following goods:

(9) The holder must not acquire any of the following goods:

(10) The holder must not acquire any of the following goods:

(11) The holder must not acquire any of the following goods:

(12) The holder must not acquire any of the following goods:

(13) The holder must not acquire any of the following goods:

(14) The holder must not acquire any of the following goods:

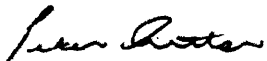
(15) The holder must not acquire any of the following goods:

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE MIGRATION ACT 1958**

- DECISION INSTRUMENT -

Name: [REDACTED]
Date of birth: [REDACTED]
Client ID: [REDACTED]

1. The above person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant this person a Visitor visa (subclass 600) for a period of three months.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) for a period of three months in favour of this person.



HON PETER DUTTON MP
Minister for Immigration and Border Protection

01/11/2015

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to this person's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant this person a Visitor visa (subclass 600) for a period of three months.



HON PETER DUTTON MP
Minister for Immigration and Border Protection

01/11/2015

Document 4

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE MIGRATION ACT 1958**

- DECISION INSTRUMENT -

Name: [REDACTED]
Date of birth: [REDACTED]
Client ID: [REDACTED]

1. The above person is in immigration detention under section 189 of the Migration Act 1958 (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant this person a Visitor visa (subclass 600) for a period of three months.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) for a period of three months in favour of this person.

HON PETER DUTTON MP
Minister for Immigration and Border Protection

/ / 2015

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Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Reg. Number

msib-001061

To Minister for Immigration and Border Protection

Subject Case ready for a decision under section 195A -
[REDACTED]

Purpose To obtain your decision in relation to the attached case requesting the exercise of your public interest power under section 195A in the case of
[REDACTED]

Timing Not Applicable

Recommendation

[REDACTED]

That you:

<p>Intervene under section 195A and grant a Visitor (subclass 600) visa valid for six months</p> <p>If you intervene, please sign the decision instrument and statement for tabling in the Parliament at <u>Attachment B</u>.</p>	<p><input checked="" type="radio"/> Intervene / <input type="radio"/> Not intervene</p>
---	---

<p>THE HON PETER DUTTON MP Minister for Immigration and Border Protection</p> <p>Signature: <i>Peter Dutton</i></p> <p>Date: 24/03/2016</p>

Received
17 MAR 2016
Minister for Immigration
and Border Protection

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Minister's Comments

1. On 1 December 2015 you began consideration of the case of [REDACTED] under section 195A, indicating a decision to begin considering the grant of a Visitor (subclass 600) visa.
2. Your section 195A power is non-compellable and allows you to grant a visa to a person in immigration detention, if you think it is in the public interest to do so. Your power under section 195A is sometimes applied to community cases where there are compassionate or compelling circumstances identified and no other resolution option is available.
3. This process requires that any visas held by the client be cancelled and they be administratively detained by the department under section 189 of the Act, in order to enliven your intervention power under section 195A.
4. If you are inclined to intervene under section 195A, the department would administratively detain [REDACTED] temporarily in order to enliven your section 195A detention power. The department would liaise closely with your office and [REDACTED] regarding these arrangements. Documents for your signature indicating your decision are at Attachment B.
5. As indicated in the earlier submission, [REDACTED] lodged a [REDACTED] visa application on 10 August 2015. This application has since been refused on 29 January 2016 and the case is currently pending at the Administrative Appeals Tribunal [REDACTED] as she lodged a review of the decision on 15 February 2016.
6. A copy of the earlier submission under section 195A and documentation for your signature indicating your decision are attached. The department will notify [REDACTED] of your decision.

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Attachments

Attachment A Copy of the earlier submission relating to [REDACTED]

Attachments A1-A4 Copy of attachments to the earlier submission relating to [REDACTED]

Attachment B Documents for your signature should you decide to exercise your power under section 195A in the case of [REDACTED]

Authorising Officer
[REDACTED] [REDACTED] Director Ministerial Intervention (National) Caseload Assurance Branch 15/03/2016 Ph: [REDACTED]

Contact Officer: [REDACTED] Acting Assistant Director, NSW Ministerial Intervention, Ph: [REDACTED]

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Australian Government
Department of Immigration and Border Protection

COPY

Submission

For decision

PDMS Ref. Number

MS15-024440

To Minister for Immigration and Border Protection

Subject Possible Ministerial intervention under section 195A of the Migration Act 1958 in relation to [REDACTED]

Timing Not applicable

Recommendation [REDACTED]

RECEIVED
03 DEC 2015
NSW MINISTERIAL INTERVENTION

That you choose one of the following options

<p>A. Indicate whether you are inclined to consider intervening under section 195A of the Act to grant a Visitor (Subclass 600) visa</p> <p>If you are inclined to consider, the Department will refer a further submission for your decision.</p>	<p>Consider/Not consider</p>
--	------------------------------

OR

<p>B. Not exercise your power under section 195A</p>	<p>Not intervene</p>
--	----------------------

<p>THE HON PETER DUTTON MP Minister for Immigration and Border Protection</p> <p>Signature: </p>	<p>Date: 01/12/2015</p>
--	-------------------------

Received
- 6 OCT 2015
Minister for Immigration and Border Protection

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Minister's Comments

Key Issues

1. On 21 June 2013 a former Minister intervened in the case of [REDACTED] to grant a Visitor (Subclass 600) visa valid for stay until 21 December 2013.
2. [REDACTED] was advised that as the holder of a (substituted) Subclass 600 visa, she may be eligible to apply for a Parent visa onshore, and may be eligible for waiver provisions with respect to health, the age requirement and balance of family, where applicable.
3. A copy of the submission signed by the previous minister is at Attachment C.
4. On 17 December 2013, shortly before the expiry of her Subclass 600 visa, [REDACTED] lodged an application form for a Parent (Subclass 804) visa, sponsored by her [REDACTED]. However the additional documents required, including a Visa Application Charge (VAC) of \$3 500 were not submitted to the Department and the application was deemed invalid.
5. Because [REDACTED] Subclass 600 visa had expired on 22 December 2013, she was barred by section 48 from applying for a further visa onshore. The grant of a Subclass 600 visa by the former minister also meant that the section 351 power had been exhausted.
6. On 12 August 2015 the Department initiated a ministerial intervention request pursuant to section 195A of the Act, after the office of the former Assistant Minister indicated possible consideration of this case with a view to granting a further Subclass 600 visa to [REDACTED] to enable her to apply for Parent visa onshore.
7. If you agree to intervene in [REDACTED] case under section 195A of the Act, the Department will cancel her current Bridging General (Subclass 050) visa (BVE) in order for her to be administratively placed into immigration detention and enliven your power under section 195A, in accordance with the legislative requirements. The Department will liaise closely with your office and [REDACTED] regarding these arrangements.
8. The MOC has advised [REDACTED]

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9. On 4 July 2014 the MOC confirmed [REDACTED]
10. Since the expiry of [REDACTED] Substituted Subclass 600 visa on 22 December 2013, she has been unlawful in the community for a cumulative period of approximately 12 months.
11. On 10 August 2015 [REDACTED] applied for a [REDACTED] visa [REDACTED]. This is currently being processed and the Department does not rule out that [REDACTED] has applied for a [REDACTED] visa in order to prolong her stay.
12. A copy of the request for ministerial intervention made by [REDACTED] as the authorised contact for [REDACTED] is at Attachment D.
13. A letter of support dated 13 July 2015 provided by Mr Ed Husic MP, member for Chifley and the response, is at Attachment E. Mr Husic also provided a letter of support for [REDACTED] in relation to her previous ministerial intervention request.

Background

Immigration history

14. History is at Attachment A.

Update of events

15. Details of [REDACTED] immigration history and her circumstances, prior to the grant of her Subclass 600 visa on 21 June 2013, have been comprehensively addressed in the previous submission (Attachment C).
16. On 22 December 2013 [REDACTED] Subclass 600 visa expired and she became unlawful. She remained unlawful until 24 February 2014 when she voluntarily approached the Department and was advised that the ministerial intervention power had been exhausted and she was also barred by section 48 from applying for a further Parent visa.
17. A person in Australia who has had an application for a visa refused or had a visa cancelled since their arrival in Australia, and who does not hold a substantive visa, is subject to Section 48 of the Migration Act 1958 which prevents the person from applying for another substantive visa while they remain in Australia unless the visa is one of the prescribed classes listed in Reg 2.12 of the Migration Regulations 1994. Parent visas are not included in the prescribed classes listed in Reg 2.12.
18. [REDACTED] was granted a Bridging (General)(Subclass 050) visa (BVE) on departure grounds. She advised that she could not afford to seek further advice from a migration agent.
19. Between 25 March 2014 and 4 June 2014, while holding a series of BVEs, [REDACTED] lodged four applications for [REDACTED] visas. [REDACTED]

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20. All of the [redacted] visa applications were deemed invalid as she did not [redacted] as is required to make a valid [redacted] visa application.
21. On 19 August 2014 [redacted] BVE expired and she became unlawful. She remained unlawful until 22 June 2015 when she voluntarily approached the Department after being contacted by the NSW Compliance Field team and advised to present to the Department and regularise her immigration status. She was granted a BVE and instructed to present a fully paid ticket to depart Australia on 6 July 2015.
22. On 29 June 2015 [redacted] applied for a Subclass 804 visa. Her application was deemed invalid on 2 July 2015 due to the section 48 bar.
23. On 1 July 2015 [redacted] made a request for ministerial intervention, with [redacted] as her authorised contact. [redacted] reiterated claims made in the previous ministerial intervention request and confirmed that [redacted] continued to receive a [redacted] and that [redacted] was financially able to pay for any additional medical and other expenses incurred by [redacted]. As stated earlier the grant of a Subclass 600 visa by the former minister meant that the section 351 power had been exhausted, however on 12 August 2015 the Department initiated a ministerial intervention request pursuant to section 195A of the Act, after consultation with your office.
24. On 10 August 2015 [redacted] again applied for a [redacted] visa [redacted]
25. The [redacted] visa application is currently being processed and if refused, [redacted] would be eligible to seek merits review and potentially ministerial intervention under section 417 of the Act, which may serve to prolong her stay in Australia. The Department also does not rule out that [redacted] has applied for a [redacted] visa in order to prolong her stay.

Support for request

26. The letter of support provided by Mr Ed Husic MP dated 13 July 2015 reiterates [redacted] claims as to why [redacted] should be able to remain in Australia.
27. A medical report/letter of support has also been provided by from [redacted] General Medical Practitioner (GP) dated 1 July 2015 in relation [redacted]
28. [redacted]
29. A petition signed by approximately 47 members of the community on 26 June 2015 has also been provided.

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Family disposition

30. [REDACTED] claims that her three siblings in the [REDACTED] are not in a position to care for [REDACTED]. One is employed, one travels overseas for work and the other sibling owns a motor home and travels around for most of the year.
31. As well as [REDACTED] has [REDACTED] residing in Australia.
32. A detailed discussion of Australia's obligations as provided for in the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CROC) was comprehensively assessed in the previous submission.

Health

33. On 4 July 2014 the Medical Officer of the Commonwealth (MOC) confirmed [REDACTED]
34. The MOC confirmed that while [REDACTED] was [REDACTED]
35. As stated [REDACTED] can travel with an [REDACTED]. All of the relevant services she requires are available in the [REDACTED] and suitable living arrangements should be made in advance with [REDACTED] placed in contact with local community support services.

Visa options

36. You may wish to indicate if you would like to grant any of the following:
- Temporary – Visitor (Subclass 600) visa allowing her to apply for a Parent visa
37. A detailed explanation of the relevant characteristics of this visa is at Attachment B.
38. As you have indicated you may consider the grant of a further Subclass 600 visa to [REDACTED] the option to grant a [REDACTED] visa or a permanent visa has not been provided.

Offshore visa options

39. There is no offshore visa option considered viable at this time. [REDACTED] would not satisfy the balance of family requirements for the grant of a Parent visa offshore. An application for an Aged Dependant Relative (Subclass 838) visa was previously refused and affirmed by the Migration Review Tribunal on the basis that [REDACTED] was the recipient of [REDACTED] and therefore not wholly or substantially reliant on [REDACTED] for financial support.

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Removal/departure arrangements

- 40. [REDACTED] has a [REDACTED] valid until 14 August 2024.
- 41. If her request is unsuccessful, Status Resolution officers will engage with her to facilitate voluntary departure, including referral to assisted voluntary return services as appropriate.
- 42. If she refuses to cooperate we will seek to remove her in accordance with detention policy ensuring the period of detention is as short as possible, noting that any potential detention and/or removal may impact on her [REDACTED] particularly [REDACTED] [REDACTED] with whom she resides.
- 43. Fitness to travel would be routinely assessed prior to any removal.

Attachments

- Attachment A** Case details
- Attachment B** Details of relevant visas subclass
- Attachment C** Copy of submission signed by the previous Minister
- Attachment D** Copy of ministerial intervention request
- Attachment E** Letter of support from Mr Ed Husic MP.

Authorising Officer
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>Director Ministerial Intervention (National) Caseload Assurance Branch 28/09/2015 Ph: [REDACTED]</p>

Contact Officer: [REDACTED] Assistant Director, NSW Ministerial Intervention, Ph: [REDACTED]

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Attachment A

CASE DETAILS

Name	[REDACTED]	DOB	[REDACTED]
Country of Citizenship	[REDACTED]	PRID	[REDACTED]
		CID	[REDACTED]
Length of time in Australia	More than 7 years since last arrival. Her last arrival was on 16/11/2007 on an Electronic Travel Authority (Subclass 976) (ETA)		
Family onshore	[REDACTED]		
Family offshore	[REDACTED]		
Health	[REDACTED]		
Currently lawful	Yes		
Support for request	Mr Ed Husic MP; [REDACTED] General Medical Practitioner; [REDACTED] a petition signed by approximately 47 members of the Australian community		

RELEVANT IMMIGRATION HISTORY

07/12/1992 to 12/11/2007	Travelled to Australia on a number of occasions as the holder of various Tourist and Visitor visas and ETAs
16/11/2007	Arrived in Australia on an ETA
16/11/2007	Applied for an Aged Dependant Relative (Subclass 838) visa
16/06/2010	Subclass 838 visa refused
01/08/2012	Migration Review Tribunal affirmed Subclass 838 refusal decision
21/06/2013	A former Minister intervened under section 351 to grant a Visitor (Subclass 600) visa valid for stay until 21/12/2013
22/12/2013	Subclass 600 visa expired and she became unlawful
24/02/2014	Voluntarily approached the Department. Bridging (General)(Subclass 050) visa (BVE) granted. She advised the Department that her application for an Aged Parent (Subclass 804) visa had been returned and deemed invalid
25/03/2014 to 04/06/2014	Applied for [REDACTED] visas on four occasions. All applications were deemed invalid due to [REDACTED] application forms
19/08/2014	BVE expired and she became unlawful
22/06/2015	Approached the Department after being contacted by NSW Compliance Field Team. BVE granted
29/06/2015	Applied for a Subclass 804 visa which was deemed invalid on 02/07/2015 due to section 48 bar
01/07/2015	Section 351 request made
10/08/2015	Applied for a [REDACTED]
12/08/2015	Department initiated section 195A request
17/09/2015	s351 submission sent to former Assistant Minister
24/09/2015	s351 submission returned to the Department

Visitor (Subclass 600) visa (to apply for Parent visa)

The grant of a Subclass 600 would give the client lawful status in Australia and allow them to apply for a Parent visa sponsored by their [REDACTED] adult child. The client will then be required to pay the prescribed fee and meet the amended criteria for the grant of a Parent visa.

The features of this visa are:

- The visa holder would have lawful status and be eligible to apply while in Australia for the following permanent visa subclasses:
 - Aged Parent (Subclass 804) visa – this is a capped and queued Subclass. The base application charge for this visa is \$3520 with an additional applicant (adult) charge of \$1760 and a second Visa Application Charge of \$2065 for each applicant. The current average processing time is approximately 30 years.
 - Contributory Aged Parent (Temporary) (Subclass 884) visa – this visa attracts Visa Application Charge of \$3520 (and additional applicant charge of \$1760) and a second Visa Application Charge of \$29 130. A person who is initially granted a Subclass 884 visa and later applies for a Subclass 864 visa will have to pay a Base Application Charge of \$325 (and additional applicant charge of \$165) and a second instalment of \$ 19 420 with respect to the Subclass 864 visa application.
 - Contributory Aged Parent (Permanent) (Subclass 864) visa – this visa attracts a Visa Application Charge of \$3520 (and additional applicant charge of \$1760) and a second Visa Application Charge of \$43 600 for each applicant. The current average processing time for this visa is between 12 and 24 months.
- The visa holder can apply for the above parent visas and benefit from concessions (where applicable) in relation to the age requirement, balance of family, payment of debts to the Commonwealth and be eligible for health waiver consideration.
- If the client applies for the above visa subclasses in Australia, they would be granted permission to work but would not be eligible for Medicare.
- If a permanent visa is granted, they would not be eligible for Centrelink benefits for 10 years.

Compared to granting the permanent visa, this visa would ensure further checks would be undertaken at the time of lodging the subsequent application and determine whether the client meets all the requirements relating to the visa class. This may be seen as a more appropriate option as the direct grant of the permanent visa may be seen as advantaging those who apply through the normal channels.

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Australian Government
Department of Immigration
and Citizenship

RECEIVED BY THE
MINISTER FOR
IMMIGRATION
AND CITIZENSHIP
14 JUN 2013

Submission

For decision

ExecCorro Reg. Number

To Minister 28 JUN 2013 AF2013/02121
Bo 2013

Subject Possible Ministerial Intervention (MI) - Section 351
[REDACTED]

Purpose To seek your decision on whether you wish to consider the exercise of your public interest power under section 351 of the Migration Act 1958 (the Act) in the case of [REDACTED]

Urgency N/A

Key Issues

[REDACTED] years of age and is a national of the [REDACTED]. She travelled to Australia on an Electronic Travel Authority (ETA) – Visitor (Subclass 976) on 16 November 2007 to stay with her daughter, [REDACTED].

Upon her arrival in Australia, [REDACTED] lodged an application for an Aged Dependent Relative (Subclass 838) visa sponsored by [REDACTED]. The delegate accepted that [REDACTED] was reliant on her daughter for physical and emotional support, however was not satisfied that she was financially dependent on [REDACTED] for a reasonable period of time to meet her basic needs. Her application was refused on 16 June 2010 and the decision was affirmed by the MRT on 1 August 2012.

[REDACTED] is seeking to remain in Australia with her [REDACTED] daughter who is willing to provide her with suitable care and financial support. [REDACTED]

Background

Immigration history

[REDACTED] first travelled to Australia in December 1992 and has made several trips to Australia since then as a holder of various Visitor visas and ETAs. She previously lived in [REDACTED].

On 22 May 2006 she was granted a Tourist (Subclass 676) visa offshore and arrived in Australia on 28 May 2006 and lodged an application for an Aged Parent (Subclass 804) visa on 8 June 2007. Her application was deemed invalid on 12 June 2007 as her Subclass 676 visa carried a no further stay (8503) condition.

On 28 September 2006 her application for the wavier of the 8503 condition was refused by the delegate and she departed Australia on 17 May 2007.

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On 13 November 2007 she was granted an ETA offshore and arrived in Australia on 16 November 2007 and lodged an application for an Aged Dependent Relative (Subclass 838) visa on the same day. In support of her application she provided evidence of her relationship with her daughter [REDACTED] her settlement in Australia and further documents indicating that she received [REDACTED]

On 16 June 2010 the delegate refused the grant of a Subclass 838 visa to [REDACTED]. The delegate referred to various documents which indicated that she was in [REDACTED]. The delegate accepted that [REDACTED] was settled in Australia and was reliant on her daughter for physical and emotional support but was not satisfied that she meets the regulatory definition of "dependent". (Regulation 1.05A refers to a person [the first person] who "is, and has been for a substantial period immediately before [the time of assessment], wholly or substantially reliant on the other person for financial support to meet the first person's basic needs for food, clothing and shelter").

On 1 August 2012 the MRT affirmed the decision. The Tribunal found that although [REDACTED] daughter provided her with accommodation and contributed towards her medical expenses, [REDACTED] was financially independent and was not wholly or substantially reliant on her daughter for financial support.

Health

In support of her request for Ministerial Intervention, [REDACTED] provides a medical report dated 23 August 2012 from her General Practitioner, [REDACTED] who states that [REDACTED]

[REDACTED] also provides a letter dated 17 August 2012 from [REDACTED]

The Department notes that [REDACTED] previously met the health requirement for the grant of a Subclass 838 visa on 6 December 2007.

Health Status Assessment

Under arrangements put in place at the request of a former Minister to obtain objective advice regarding medical claims submitted by clients seeking Ministerial intervention, the Department referred [REDACTED] matter to a Medical Officer of the Commonwealth (MOC) for an updated opinion.

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On 15 May 2013, the MOC provided the following assessment based on [REDACTED] medical reports:

[REDACTED]

In terms of [REDACTED] ability to return to the [REDACTED] the MOC noted [REDACTED]

[REDACTED]

In relation to treatment available in the [REDACTED] the MOC advised that all health services are available there.

Family disposition

[REDACTED]

[REDACTED]

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Australia's International obligations

International Covenant on Civil and Political Rights (ICCPR)

██████████ case has been assessed by the Department in relation to articles 17 and 23 of the ICCPR.

Article 17 of the ICCPR states that 'no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence'. Article 23 of the ICCPR notes that 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the State'.

Australia takes its international obligations seriously. However Articles 17 and 23 of the ICCPR do not provide a person with absolute rights to enter or remain in a country of which they are not a national.

Interference with family unity is permissible where it is not arbitrary and where it is lawful at domestic law. In this context, "arbitrary" means that any interference with family must have a legitimate purpose within the framework of the ICCPR in its entirety (which includes reasons of public order, national security, public health or morals or the rights and freedoms of others). Such an interference must be predictable in the sense of the rule of law (it must not be capricious) and it must be reasonable (or proportional) in relation to the purpose to be achieved.

States Parties to the ICCPR may lawfully require non-citizens within their territory to leave. The appropriateness of measures to maintain family unity can be balanced against other rights and interests, including the integrity of the migration program and the protection of the Australian community.

██████████ arrived in Australia an Electronic Travel Authority in 2007, knowing that she did not have permission to remain permanently. The Department considers that ██████████ decision to visit Australia and her current circumstances are not outside of her control. As such, a requirement for her to depart is a lawful and predictable outcome and not an arbitrary interference with the family.

The Convention on the Rights of the Child (the CROC)

Australia also has obligations under the CROC to not arbitrarily interfere with the family and to treat the best interests of the child as a primary consideration. In the following, the Department draws these obligations to your attention and assesses the effect your decision to intervene or not to intervene may have on the family as a whole, when deciding whether the circumstances of this case involve unique or exceptional circumstances and whether to exercise your public interest powers.



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While no evidence is provided that [REDACTED] departure from Australia would raise concerns in relation to Australia's obligations under the CROC, the Department acknowledges that great-grandparents and great-grandchildren often share a special bond and that [REDACTED] departure from Australia may cause the family some hardship. However this situation is not unique and is one faced by many families who have extended family members, including great-grandparents, who live overseas.

There is no indication that [REDACTED] great-grandchildren would receive inadequate care or would suffer irreparable harm or ongoing hardship as a result of her departure from Australia. Likewise, there is no evidence that the children will be denied the right to know [REDACTED] or that the family would be unable to visit her in the [REDACTED] or maintain contact through other means such as the telephone or other electronic means.

Letters of Support and integration

[REDACTED] submits a letter of support dated 20 September 2012, from Mr Ed Husic MP, Member for Chifley. Mr Husic requests consideration of [REDACTED] circumstances given her 'age and inability to return to the [REDACTED]'. A copy of the letter is attached at Attachment E.

A letter of support dated 17 August 2012 has also been provided from [REDACTED]

[REDACTED] advises that for the past five years, [REDACTED] has been a committee member. [REDACTED]

The [REDACTED] has also written that [REDACTED] has been a member for several years. This is a non-denominational group which meets for social activities.

A petition with 93 signatories has been provided, addressed to the Honourable Speaker and Members of the House of Representatives Assemblies in Parliament. The petition asks for [REDACTED] to be allowed to stay in Australia 'on the grounds of "compassion" as she has no other home and would not be a financial burden to the country.'

Financial support

[REDACTED]

Her daughter, [REDACTED]

[REDACTED]

[REDACTED] has provided evidence that she paid for [REDACTED] in 2009.

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Visa options

Temporary visa option

If you begin to consider under section 351, the most appropriate visa to grant is a Visitor (Subclass 600) visa valid for six months. This would give [REDACTED] lawful status in Australia and allow her to apply for a Parent visa on her own merits with her daughter as sponsor.

As the holder of a Visitor (Subclass 600) visa granted through Ministerial intervention, [REDACTED] would receive concessions in relation to the age requirement, the health requirement and balance of family criteria.

Grant of a Visitor (Subclass 600) visa may be seen as a more appropriate option as the direct grant of the permanent visa may be seen as advantaging her over those who apply through the normal channels.

Should you decide to intervene and grant a Subclass 600 visa, [REDACTED] would be eligible to apply for the following permanent visa Subclasses:

- Parent (Subclass 804) visa – this is a capped and queued Subclass. The current average processing time is approximately 15 years.
- Contributory Aged Parent (Subclass 864) visa – this visa attracts a Visa Application Charge (VAC) of \$2960 and a second VAC of \$40 015. The current average processing time for this visa is approximately one year.

If [REDACTED] applied for either of the above visa Subclasses in Australia, she would be granted an associated Bridging A visa, however she would not be eligible for Medicare. If the permanent visa was granted, she would not be eligible for Centrelink benefits for 10 years.

Permanent visa option

However, if you wish to grant a permanent visa in this case, the Department has also provided you with an option to grant a Former Resident (Subclass 151) visa.

This is a permanent visa generally intended for persons who were previously permanent residents of Australia but who subsequently lost their permanent residence as they had not maintained their permanent resident status.

This visa Subclass is typically also used where a Minister wishes to consider the grant of permanent residence through the exercise of the relevant public interest powers and there is a specific allocation of Subclass 151 places in the annual migration planning to this end.

This would enable [REDACTED] to live in Australia permanently with immediate access to Medicare. The full range of welfare support would not be available to her for two years after the grant of permanent residence. Holders of this visa are able to sponsor family members.

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Health and character checks

Given her advanced age, the Department recommends that health and character checks are not required for [REDACTED] for the purposes of the permanent visa option. A recent MOC opinion [REDACTED]

[REDACTED] has provided a clear Australian Federal Police check dated December 2007, together with clear offshore penal clearances for the [REDACTED] dated January 2008 and April 2007 respectively.

Departmental records indicate that [REDACTED] has also signed an Australian Values Statement (AVS) indicating that she will respect the Australian way of life and abide by Australian laws on 17 December 2007.

Departmental policy indicates that in cases where clients are frail, elderly or incapacitated it may be appropriate to apply discretion in requesting these checks again as the provision of relevant checks would have little significance.

Offshore visa options

[REDACTED] does not meet the Balance of Family Test. She could not, therefore, meet the requirements for an offshore Parent visa.

Removal/departure arrangements

[REDACTED] has a travel document valid until 3 October 2013.

On 10 September 2012 she was counselled by a departmental officer regarding her departure responsibilities if her request is not successful. Should you decide not to intervene her details will be referred to Compliance for further action. Compliance will engage with her to facilitate voluntary departure including referral to assisted voluntary return services as appropriate.

If she refuses to cooperate Compliance will seek to detain and remove her in accordance with detention policy ensuring the period of detention is as short as possible.

[REDACTED]

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Preferred option

The Department considers that intervention under section 351 of the Act, to grant a Subclass 600 visa as a pathway to permanent residence, may be appropriate in this case.

[REDACTED] and has resided in Australia for over five years. [REDACTED] continues to depend in some respects on her [REDACTED] and has a close relationship with her. She also has [REDACTED]

[REDACTED]

As the power under section 351 of the Act is discretionary and non-compellable you are not obliged to exercise or consider exercising your intervention power.

The request for you to exercise your public interest power under section 351 made by [REDACTED] is at Attachment D.

The Department will notify [REDACTED] and her representative of your decision.

Attachments

- Attachment A Case details
- Attachment B Document for your signature if you decide to exercise your power under section 351 of the Act and grant a Visitor (Subclass 600) visa
- Attachment C Document for your signature if you decide to exercise your power under section 351 of the Act and grant a Former Resident (Subclass 151) visa
- Attachment D Copy of Ministerial intervention request
- Attachment E Copy of letter of support from Mr Ed Husic MP.

For Official Use Only

Recommendation

[Redacted]

That you choose one of the following options:

<p>(A) Exercise your power under section 351 of the Act to grant a Visitor (Subclass 600) visa with work rights for six months</p> <p>If you intervene please sign the Statement to Parliament at <u>Attachment B</u>.</p>	<p>Grant Subclass 600 Visitor visa</p>
--	--

OR

<p>(B) Exercise your power under section 351 of the Act to grant a Former Resident (Subclass 151) visa</p> <p>If yes please sign the Statement to Parliament at <u>Attachment C</u></p>	<p>Grant Subclass 151 visa</p>
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OR

<p>(C) Not exercise your power under section 351</p>	<p>Not intervene</p>
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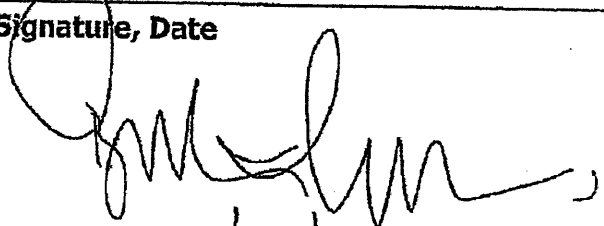
Authorising Officer	
<p>[Redacted Signature]</p> <p>[Redacted Name]</p> <p>Director Ministerial Intervention (NSW & VIC) 07/06/2013 Ph: [Redacted]</p>	

Contact Officer: [Redacted] Manager, NSW Ministerial Intervention, Ph: [Redacted]

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Case of

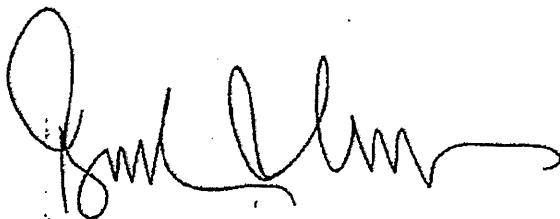


Minister
Signature, Date  21/6/13
Minister's Comments

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 351 OF THE *MIGRATION ACT 1958***

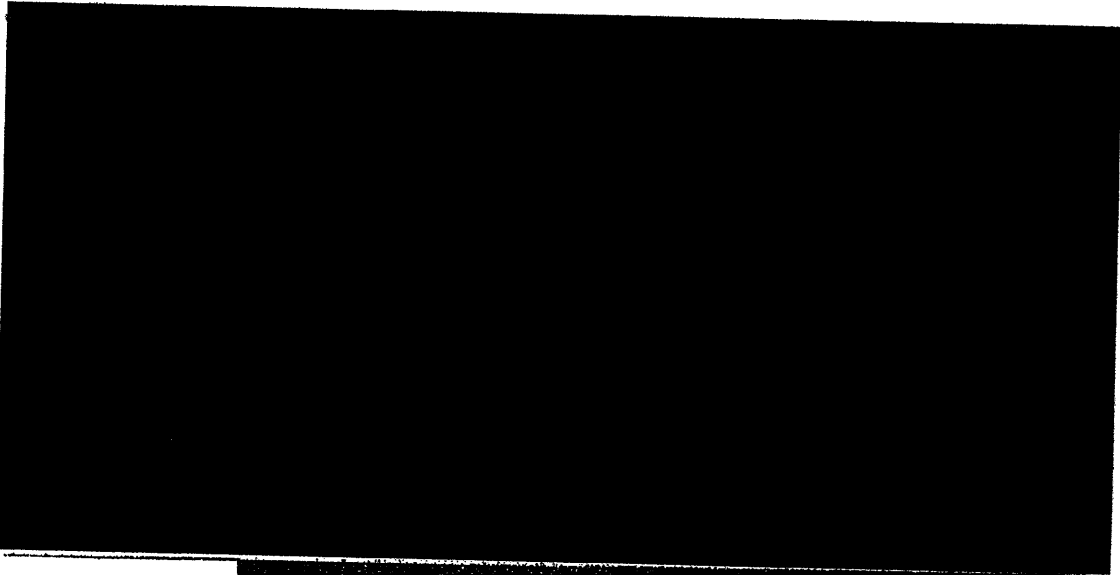
- STATEMENT TO PARLIAMENT -

1. Exercising my power under subsection 351(1) of the *Migration Act 1958* (The Act), I have substituted a decision of the Migration Review Tribunal (MRT) to affirm a decision to refuse the grant of an Aged Dependent Relative (Subclass 838) visa to the subject of that decision, with a decision to grant her a Visitor (Subclass 600) visa.
2. The application was refused because the applicant was unable to satisfy the criteria for the grant of the visa.
3. Having regard to this person's particular circumstances and personal characteristics, I think it would be in the public interest to allow her to remain in Australia.
4. I took the view that in the circumstances of this case it was in the public interest to grant a Subclass 600 visa because it is a reflection of Australia as a compassionate and humane society to allow the person to remain temporarily in Australia.
5. Accordingly, it is appropriate in this case that I exercise my power under section 351(1) of the Act.

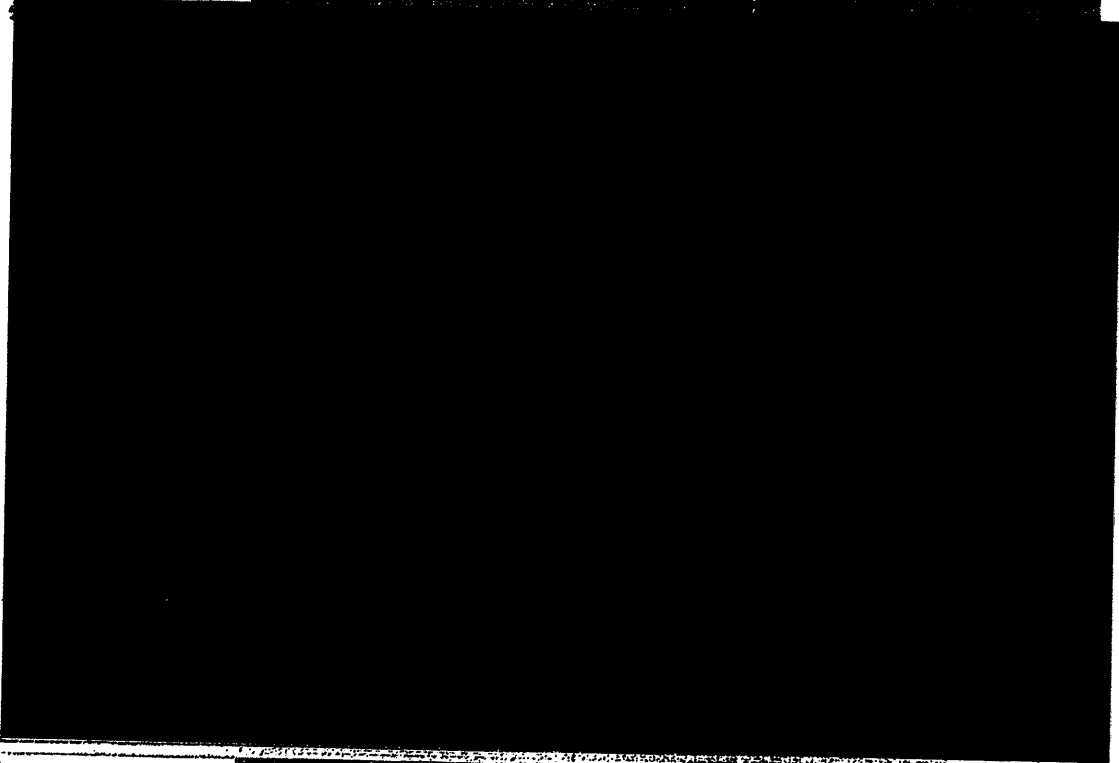


Minister for Immigration and Citizenship

21/6/13



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Ed Husic MP

FEDERAL MEMBER FOR CHIFLEY

The Hon Peter Dutton MP
Minister for Immigration and Border Protection
Parliament House
CANBERRA ACT 2600

Dept of Immigration & Border Protection	
<input type="checkbox"/> Priority A - 7 days	<input type="checkbox"/> Reply by Min. Inami.
<input type="checkbox"/> Priority B - 14 days	<input type="checkbox"/> Reply by Asst Min.
<input type="checkbox"/> Priority C - 28 days	<input type="checkbox"/> Reply by CoS
<input type="checkbox"/> Priority D - Intervention	<input type="checkbox"/> Reply by Sen. Adviser
<input type="checkbox"/> Info/No Resp	
<input type="checkbox"/> Non Portfolio	
RECEIVED 16 JUL 2015	
Action Area	Reply by Dept
NSW Parra	<input type="checkbox"/> FAS
	<input type="checkbox"/> AS
	<input type="checkbox"/> EL 2
	<input type="checkbox"/> State/Territory

Our ref: NS15/2186

Dear Minister,

I am writing on behalf of my constituent, [REDACTED]
[REDACTED] regarding the migration status of her mother.

[REDACTED] visited Australia several times since her daughter's arrival. Her last visit was in November 2007 and following her arrival she lodged an onshore Other Family (Residence) (Class BU), subclass 838 Aged Dependent Relative visa.

I understand that this visa was refused because the department deemed that she did not meet the criteria. The case officer believed that she was not dependent on her daughter because she financially supported herself with her [REDACTED]. However, [REDACTED] has advised my office that she is responsible for all her mother's affairs. She also advised that in 2009 [REDACTED]

In the department's refusal record the case officer accepted that [REDACTED] is well settled in Australia and that she is physically unable to relocate to [REDACTED]. The officer was also satisfied that she is substantially reliant on her daughter for emotional and physical support. However, she did not believe that [REDACTED] was heavily reliant on her daughter financially.

A subsequent application to the MRT was also refused and following an appeal to the then Minister for Immigration a six month tourist visa was granted.

./2

Standing up for us

Office: Shop 6, 15 Cleeve Close, Mt Druitt 2770 Mail: PO Box 269, Mt Druitt NSW 2770



-2-

I understand that [REDACTED] submitted only part of the parent visa application and by the time she went to lodge the outstanding requirements her mother's visa had expired.

In June 2015, [REDACTED] regulated her status with the Department and was given a Bridging Visa E (BVE) for approximately two weeks. At the conclusion of the BVE [REDACTED] was instructed to attend the Department with a valid ticket to depart.

As I am sure you can appreciate, this greatly upset and distressed both [REDACTED] and [REDACTED]. I believe the family and members of the community are genuinely concerned about [REDACTED] wellbeing if she was forced to return to a country she hasn't live in for so long.

[REDACTED] has never been a financial burden to the Commonwealth and she continues to financially support herself and [REDACTED] continues to provide her mother with her emotional and physical needs.

I understand that [REDACTED] has submitted a request for you to exercise your discretion under *Section 351 of the Migration Act 1958*. I also believe that she has substantiated her concerns that her mother would have [REDACTED]

While I appreciate the volume of requests you receive and the stringent guidelines in place, I would ask that consideration be given to [REDACTED] age, her ability to financially support herself and the support network she has here in Australia when assessing this request.

Thank you for your consideration and I look forward to hearing from you at your earliest convenience.

Yours sincerely,



The Hon Ed Husic MP
Federal Member for Chifley

13 JUL 2015



Senator the Hon Michaelia Cash
Assistant Minister for Immigration and Border Protection

Reference: MC15-189835

The Hon Ed Husic MP
Member for Chifley
PO Box 259
MT DRUITT NSW 2770

Dear Mr Husic

A handwritten signature in black ink that reads "Ed".

Ministerial intervention request

Thank you for your representation of 13 July 2015 on behalf of [REDACTED] concerning her mother, [REDACTED] and her request for Ministerial intervention under Section 351 of the *Migration Act 1958* (the Act).

Section 351 of the Act provides the Minister for Immigration and Border Protection with the power to substitute a decision of the Migration Review Tribunal with a more favourable decision if the Minister thinks it is in the public interest to do so. This is a non-compellable power and the Minister is not obliged to consider an intervention request. A large number of requests for Ministerial intervention are received and the Department of Immigration and Border Protection has been provided with guidelines regarding which cases should be referred for Ministerial consideration.

I can confirm that [REDACTED] request for Ministerial intervention has been received by the department. Please be assured that your support for [REDACTED] will be considered when a decision is made on this request.

Yours sincerely

A handwritten signature in black ink that reads "Michaelia Cash".

Senator the Hon Michaelia Cash

8/7/2015

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- DECISION INSTRUMENT -

Name:
Date of Birth:
Client Id:



1. The above person is in immigration detention under section 189 of the Act and I have considered her case under section 195A of the Act.
2. I have determined that it is in the public interest to grant her a Visitor (subclass 600) visa.
3. I therefore exercise my power under subsection 195A of the *Migration Act 1958* to grant Visitor (subclass 600) visa in favour of this person.

A handwritten signature in black ink, appearing to read 'Peter Dutton'.

THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

24/03/16

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* ("the Act"), I have decided to grant a visa under this section.

1. This person is detained under s189 of the Act as an unlawful non-citizen.
2. Having regard to this person's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with an ongoing need, it is in the interests of Australia as a humane and generous society to grant this person a Visitor (subclass 600) visa.



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

24/03/16

Sensitive: Personal



Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number MS18-001705

To **Minister for Home Affairs**
Minister for Immigration and Border Protection

Subject **Ministerial intervention under section 195A of the *Migration Act 1958* in relation to [REDACTED]**

Timing Not applicable


Recommendations

That you:

- 1. intervene under section 195A of the *Migration Act 1958* to grant [REDACTED] a Visitor visa (subclass 600) for a period of 18 months, with permission to work;
- if agreed, please sign the section 195A decision documents at **Attachment A**

intervene / **decline to intervene**

Minister for Home Affairs
Minister for Immigration and Border Protection

Signature..... 

Date...../...../2018 **10/05**

RECEIVED

09 MAY 2018

Minister for Home Affairs

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On [redacted] your office requested a submission for you to consider intervening under section 195A of the *Migration Act 1958* (the Act) to grant [redacted] a Visitor visa (subclass 600) for [redacted] with associated work rights and multiple entries permitted.
2. [redacted] a [redacted] year-old [redacted] of the [redacted] was granted a Temporary Work (Skilled – Offshore) visa (subclass 457) on [redacted] as a dependant on [redacted] application. [redacted] travelled to Australia on the Temporary Work visa on [redacted]. Since that time, [redacted] has remained in Australia with [redacted] family.
3. On [redacted] the Department was notified that [redacted] was to be removed from [redacted] visa as a dependant due to [redacted]. The matter was forwarded to the General Cancellations Network the same day for cancellation consideration of [redacted] visa. [redacted] has advised that [redacted] needs to travel to the [redacted] in the coming weeks and is worried that [redacted] visa may be cancelled while [redacted] is offshore, leaving [redacted] unable to return and see her [redacted] children or attend work in Australia.

Background

Immigration history

4. [redacted] initially arrived in Australia as the holder of an Electronic Travel Authority (Visitor) (subclass 976) (ETA) on [redacted] and departed on [redacted]. [redacted] then entered Australia as a dependant applicant on [redacted] on [redacted] along with their [redacted] children. The family departed Australia at the conclusion of [redacted] on [redacted].
5. Due to the [redacted] between [redacted] visa is subject to cancellation as the circumstance, which allowed for the grant of the Temporary Work visa, no longer exists. The Department commenced [redacted] visa cancellation process on [redacted] under section 116. If [redacted] travels overseas, [redacted] visa may be cancelled without prior notice at any time.

Sensitive: Personal

6. An immigration summary is available at Attachment B.

Identity

7. [REDACTED] entered Australia on her [REDACTED] passport and was immigration cleared. In this regard, [REDACTED] identity has been established in accordance with *Identity, Biometrics and Immigration Status Instructions*.

Links in Australia

8. [REDACTED] and their [REDACTED] children reside in Australia. The children are included as dependants on [REDACTED].
9. In [REDACTED] a joint application for [REDACTED] was filed with the Federal Circuit Court of Australia and is due to be heard on [REDACTED]. [REDACTED] anticipate that the filing will be granted.
10. [REDACTED] has provided further information regarding her circumstances in a letter which is at Attachment C.

Options for management

Ministerial intervention under section 195A

11. Your power under section 195A of the Act is sometimes applied to community cases, where there are compelling circumstances. Your section 195A power is non-compellable which means you are under no obligation to exercise or to consider exercising your power. You may consider it in the public interest to grant [REDACTED] a visa using your power under section 195A of the Act.
12. If you agree to intervene in [REDACTED] case under section 195A, the Department will place [REDACTED] into administrative immigration detention to enliven your power under section 195A of the Act. The Department will liaise closely with your office and [REDACTED] regarding these arrangements.

Visitor visa (subclass 600)

13. Should you intervene under section 195A of the Act to grant [REDACTED] a visitor visa, [REDACTED] will be permitted to reside lawfully in the community for 18 months, which will give [REDACTED] the time to consult with a registered migration agent and discuss other immigration options.
14. If you intervene to grant [REDACTED] a visitor visa, [REDACTED] will not be subject to the condition 8101 (the holder must not engage in work in Australia).
15. As the holder of a visitor visa, [REDACTED] will not be eligible for subsidised healthcare through Medicare and would not be eligible for any Centrelink assistance, however [REDACTED] may be entitled to healthcare through reciprocal medical arrangements [REDACTED].
16. If you agree to intervene under section 195A of the Act to grant [REDACTED] a Visitor visa (subclass 600) for a period of 18 months, with associated work rights and multiple entries permitted, please sign the decision documentation at Attachment A.

Sensitive: Personal

Decline to intervene

- 17. Should you decline to intervene in [redacted] case, she will remain lawful in Australia on [redacted] current Temporary Work visa until the resolution of the cancellation process. If [redacted] visa is cancelled, [redacted] will be required to either lodge a new visa application or return to the UK.
- 18. If [redacted] travels offshore during her cancellation process [redacted] visa may be subject to cancellation without prior notification.

Consultation – internal/external

- 19. Skilled and Family Visa Program Branch, Office of the Hon Peter Dutton MP, Employer Sponsored Network Support Section, Queensland Community Status Resolution.

Consultation – Secretary

- 20. The Department’s Secretary was not consulted regarding this submission.

Client service implications

- 21. There are minimal client service implications.

Sensitivities

- 22. N/A

Financial/systems/legislation/deregulation/media implications

- 23. There are negligible financial, systems, legislative or media implications for the Department

Attachments

Attachment A Section 195A decision documents

Attachment B Immigration history

Attachment C Letter from [redacted]

<p>Authorising Officer</p> <p>Cleared by:</p> <p>Sally Pfeiffer A/g Assistant Secretary Status Resolution Branch</p> <p>Date: [redacted] Ph: (02) [redacted]</p>

Contact Officer Adam Tonkin, A/g Director, Complex Case Resolution Section, Ph: [redacted]

CC FAS Immigration Integrity & Community Protection
QLD Community Status Resolution
Senior Director, Skilled & Family Visa Program Branch

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- DECISION INSTRUMENT -

Name:
Date of birth:
Client ID:



1. The above named person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered her case under section 195A of the Act.
2. I have determined that it is in the public interest to grant the above named person a Visitor visa (subclass 600) for a period of 18 months.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) for a period of 18 months in favour of the above named person.

A handwritten signature in black ink, appearing to read 'Peter Dutton'.

**THE HON PETER DUTTON MP
Minister for Home Affairs
Minister for Immigration and Border Protection**

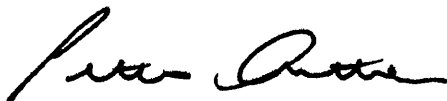
10 /05/ 2018

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to all the circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant this person a Visitor visa (subclass 600) for a period of 18 months.



THE HON PETER DUTTON MP
Minister for Home Affairs
Minister for Immigration and Border Protection

10/05/2018

CASE SUMMARY -

Name	[REDACTED]
Date(s) of Birth	
Alias	
Gender	
ICSE IDs	
Date Arrived in Australia	
Date Detained	

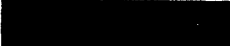

IMMIGRATION HISTORY:

Date	Event
[REDACTED]	Arrived in Australia as the holder of an Electronic Travel Authority (Visitor) (subclass 976) (ETA).
[REDACTED]	Departed Australia.
[REDACTED]	Granted [REDACTED] visa [REDACTED] as dependant on partner's application.
[REDACTED]	Arrived in Australia on [REDACTED]
[REDACTED]	Departed Australia.
[REDACTED]	Granted a [REDACTED] as dependant on partner's application.
[REDACTED]	Arrived in Australia on [REDACTED] visa.
[REDACTED]	Department notified that [REDACTED] to be removed from partner's visa as a dependant due [REDACTED]
[REDACTED]	Referred to Cancellations for consideration.
09/05/2018	Referred to Complex Case Resolution Section (CCRS) for referral to the Minister under section 195A of the Migration Act 1958.



**The Hon Peter Dutton MP,
Minister for Immigration and Border Protection
Member for Dickson
PO Box 6022
Parliament House
CANBERRA ACT 2600**

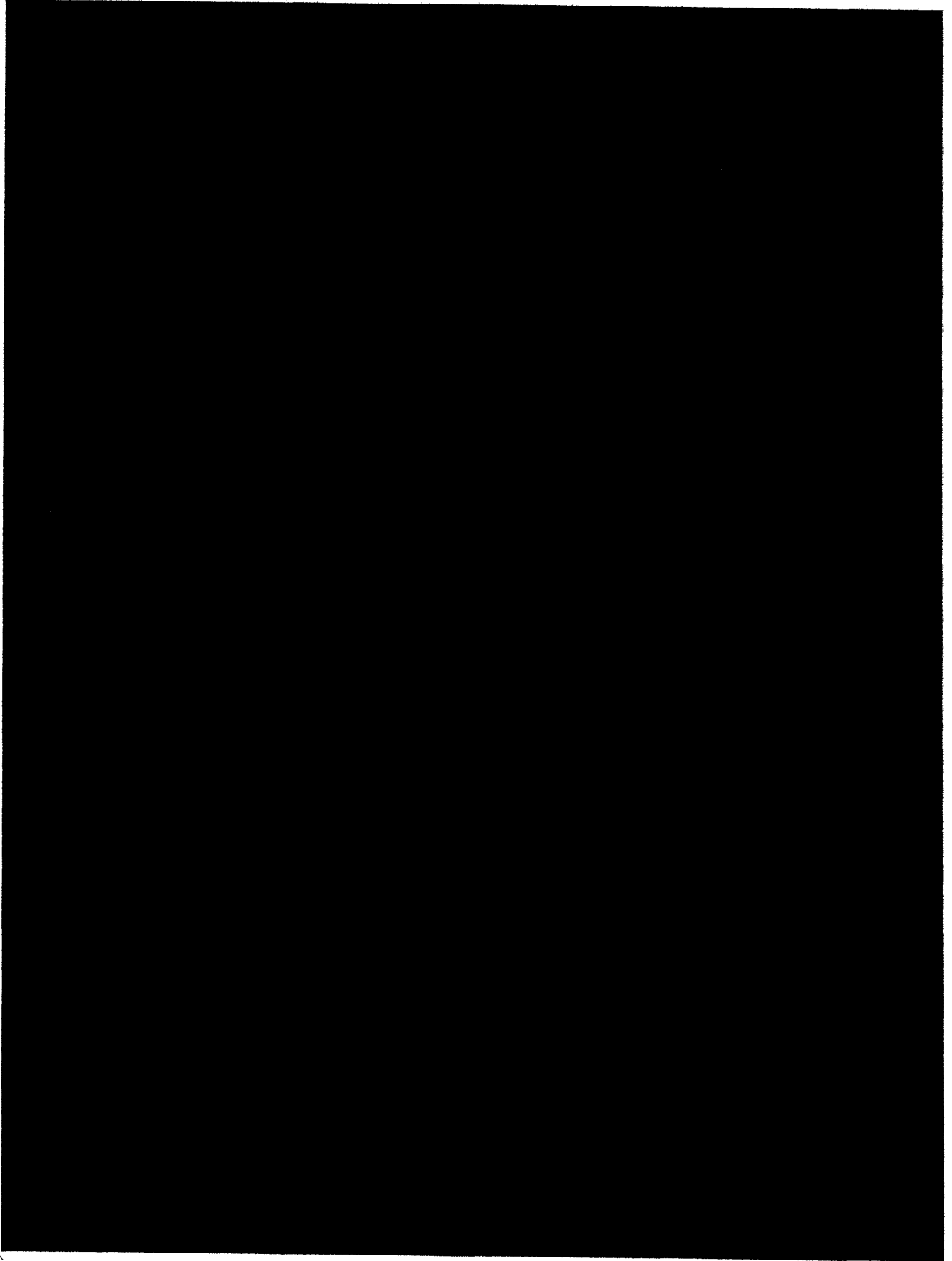
Dear Minister,

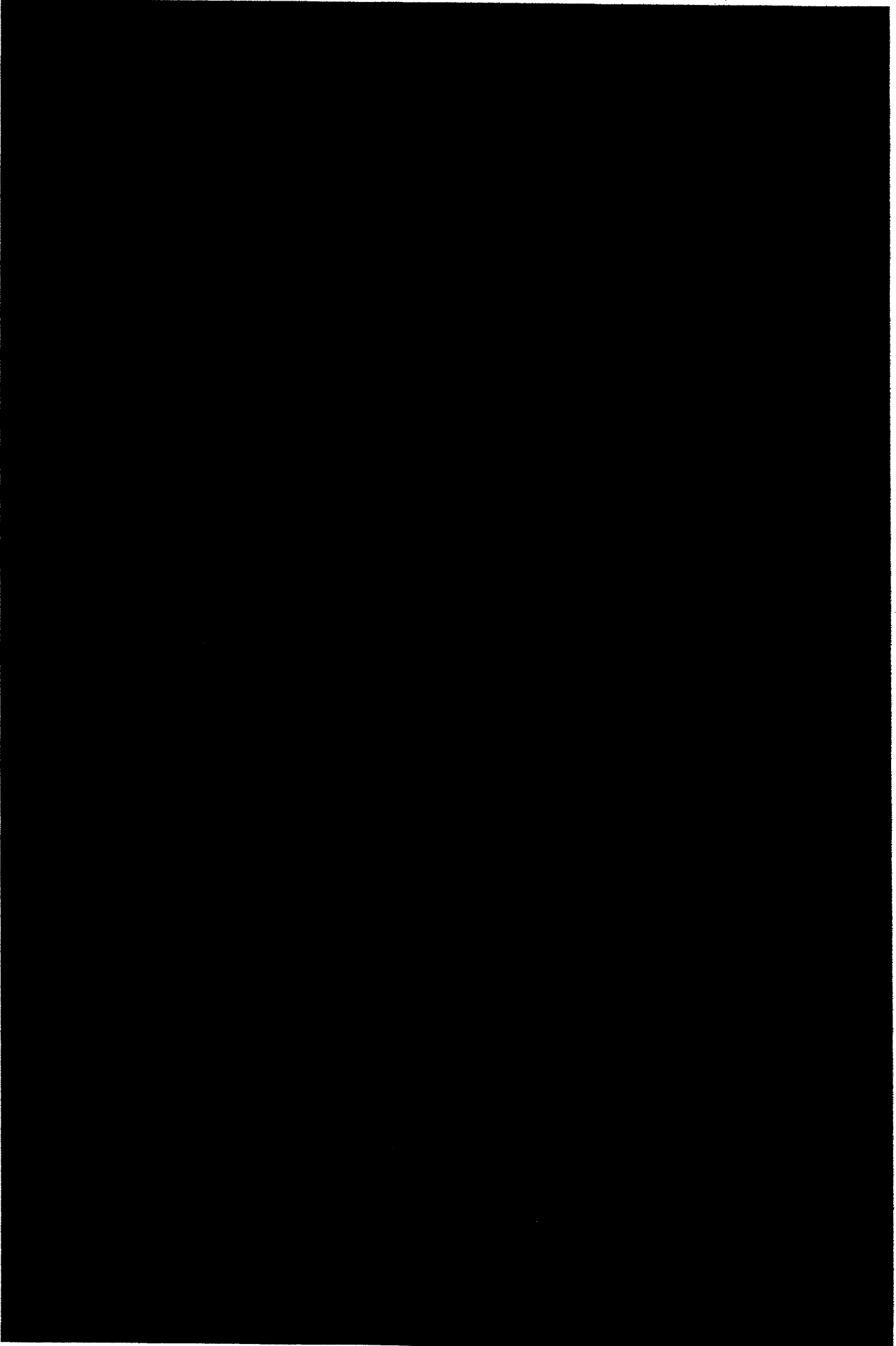
I have recently been in touch with Bert van Manen, and through him with Alan Tudge, regarding my immigration situation. At the moment, I am, through no fault of my own and for reasons explained in the attached documents, facing the prospect of having to leave Australia while 


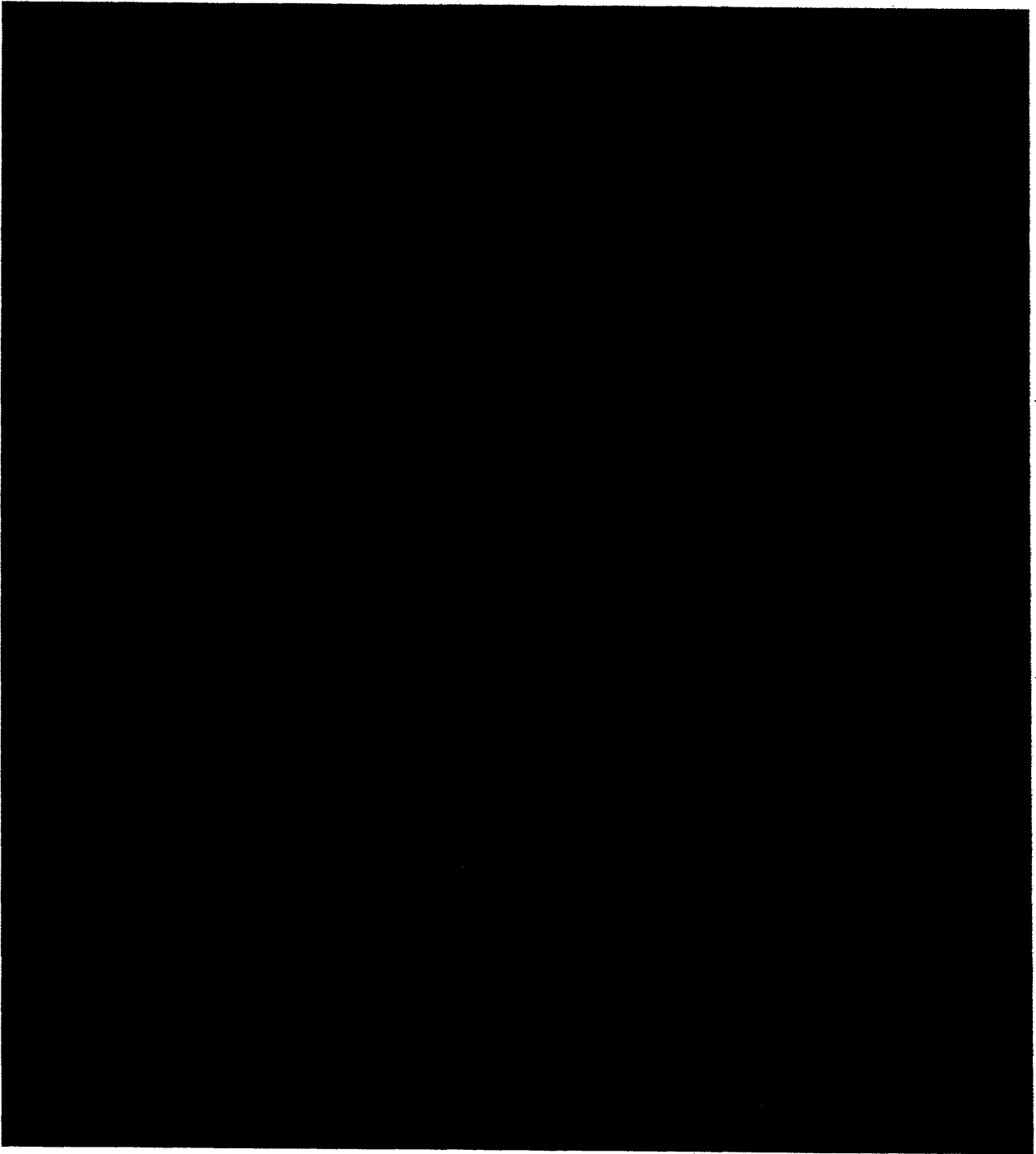
I would be extremely grateful if you would look over the details below and advise me if you can see any possible resolution.

Yours faithfully,









(Response received from Alan Tudge, via Bert van Manen's office, April 16th 2018)

From: [REDACTED]

Sent: Monday, 16 April 2018 1:09 PM

To: [REDACTED]

Subject: [REDACTED]

Good afternoon,

Alan Tudge MP, the Minister for Citizenship and Multicultural Affairs has been in contact with Bert to pass on the following information and options for [REDACTED]

Skilled visa options

- [REDACTED] may be eligible for the Temporary Skill Shortage (TSS) visa (subclass 482) – Short-term (S) stream, noting [REDACTED] is on the Short-term Skilled Occupation List (STSOL).
- To be eligible for the TSS (S) visa, [REDACTED] would need to seek an employer to sponsor [REDACTED] as an overseas skilled worker on a temporary basis (maximum of two years) and:
 - have been nominated for a position by an approved sponsor and that nomination approved
 - meet any required skills and qualifications requirements including completing any skills assessments required
 - meet other requirements such as genuine temporary entrant (GTE), English language, health and character
 - if in Australia, hold a substantive visa, a subclass 010 (Bridging A) visa, a subclass 020 (Bridging B) visa or a Subclass 030 (Bridging C) visa
- Further information on the TSS visa is available on the Department of Home Affairs' website at: <https://www.homeaffairs.gov.au/trav/visa-1/482->

Family visa options

- In future, [REDACTED] may be eligible for a permanent (Contributory) Parent visa if and when [REDACTED] children obtain permanent visas for Australia themselves. [REDACTED] children do not have to be adults for that, however all Parent visa options require a child to sponsor the Parent visa application and provide an Assurance of Support. Alternatively, [REDACTED] can be sponsored by a relative or partner of the child or by a community organisation in some circumstances.
- There are two types of Parent visas, Non-Contributory and Contributory with the visa application charge for the latter category being considerably higher in return for more places available and a faster processing time of approximately 38 months as opposed to 30 years.
- Should [REDACTED] apply for a (Contributory) Parent visa, [REDACTED] will not be eligible for a Bridging Visa A in association with the application, as the Parent visas do not qualify for that. [REDACTED] will need to hold another visa that would allow [REDACTED] to remain lawfully in Australia while awaiting the visa decision.

- Further information on Parent visas is available on the Department's at: <https://www.homeaffairs.gov.au/trav/visa-1/143-> or <https://www.homeaffairs.gov.au/trav/visa-1/103->

Temporary visa options

- Visitor visas are not intended to facilitate work or ongoing residence in Australia. For [REDACTED] to be granted a Visitor visa to facilitate [REDACTED] ongoing stay, [REDACTED] would first need to show GTE intentions in Australia.
- Policy indicates that visitors must genuinely intend only to visit Australia temporarily, not work unlawfully, not engage in studies for more than 3 months, have means and access to support themselves and leave before their visa ceases.
- However, should the Visitor visa be granted, condition 8101 No Work will be applied which will preclude [REDACTED] from working. It is open to [REDACTED] to apply for a waiver to condition 8101.
- While there is an ongoing need for [REDACTED] to remain in Australia to be with [REDACTED] children, there is not a clear Visitor visa option that would facilitate an extended ongoing stay with work rights.

If you have any further questions, please feel free to pass those along to Bert.

Regards,

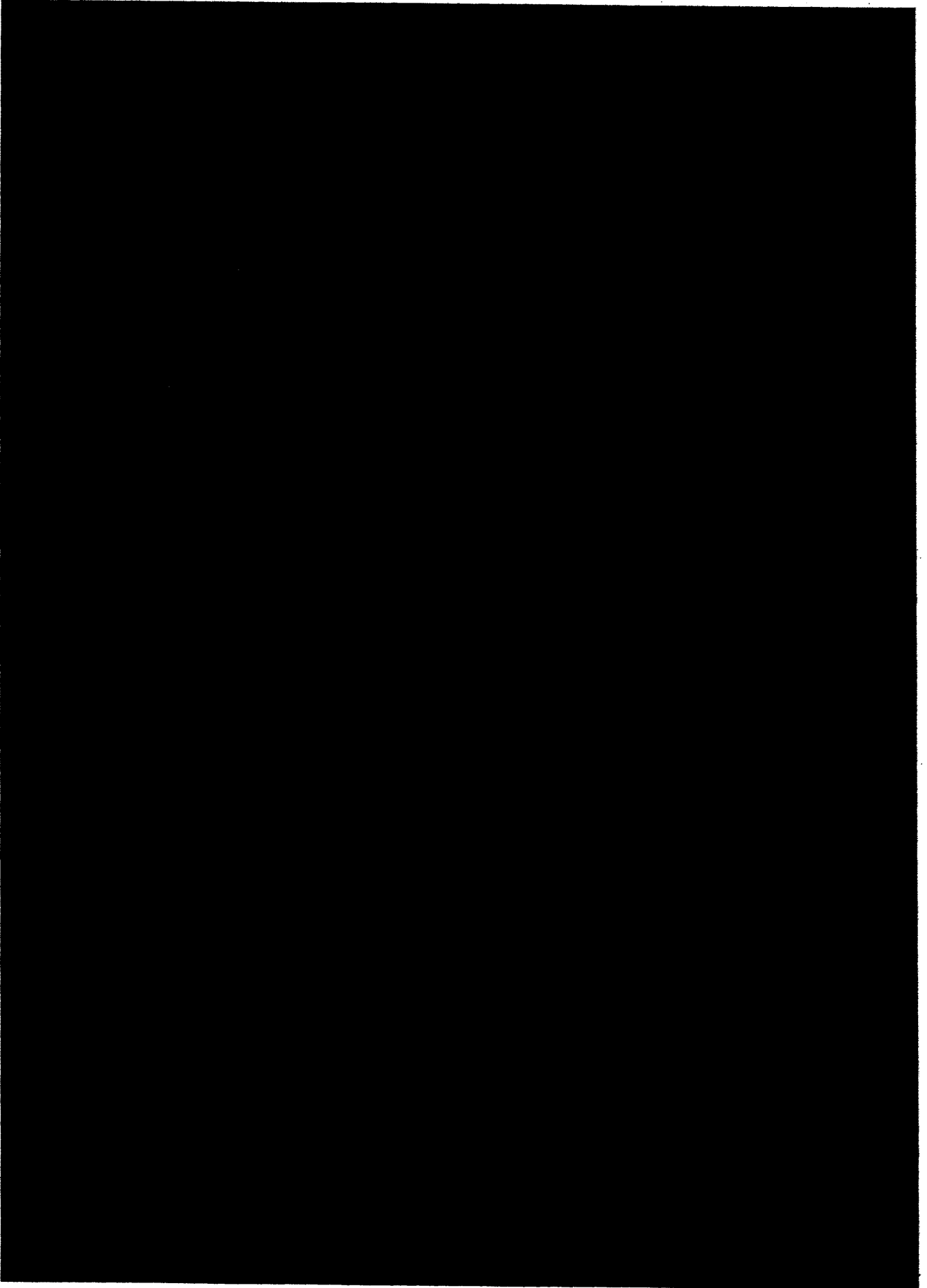
[REDACTED]
Electorate Officer

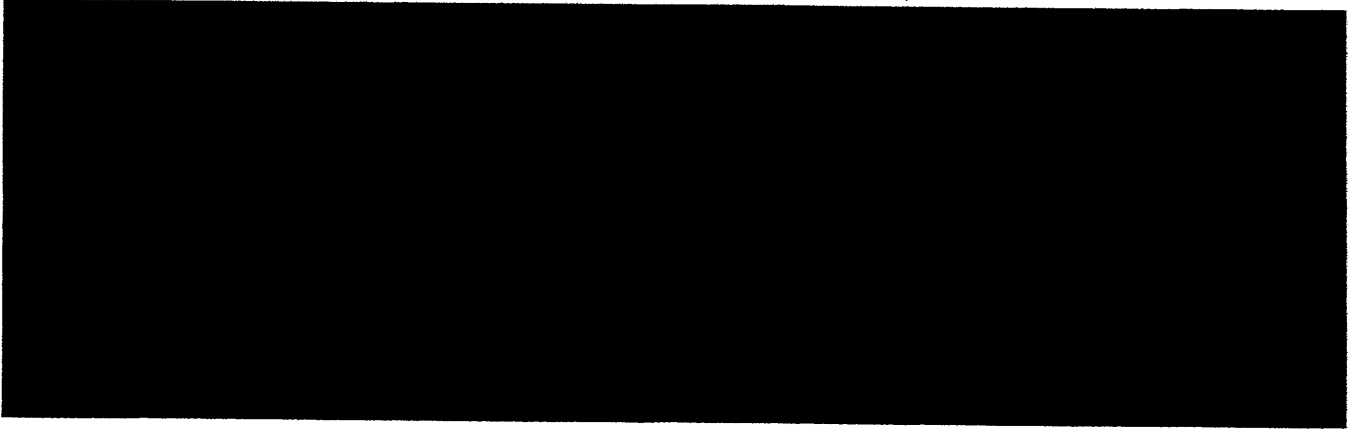
Office of Bert van Manen MP | Federal Member for Forde | Liberal National Party

Beenleigh, QLD

P: 07 3807 6340 | E [REDACTED]

[REDACTED]







Australian Government
Department of Immigration and Border Protection

Submission
For decision

PDMS-Reg.-Number MS16-001908

To **Minister for Immigration**

Subject **Case ready for a decision under section 351 –**

Received

03 JUN 2016

Minister for Immigration
and Border Protection

Purpose

and

Case ready for a decision under section 195A –

To obtain your decision in relation to the attached case requesting the exercise of your public interest power under sections 351 and 195A of the *Migration Act 1958* (the Act).

Timing Not Applicable

Recommendation

That you intervene under section 351 and substitute for the former Migration Review Tribunal decision, a decision to grant a Visitor (subclass 600) visa valid for six months with work rights

If you intervene, please sign the Statement to Parliament at Attachment B.

intervene / Not intervene

AND

That you intervene under section 195A and grant a Visitor (subclass 600) visa valid for six months with work rights

If agreed, please sign the decision instrument and statement for tabling in the Parliament at Attachment C.

Agree / Not Agree

THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

Signature



Date: 17.06.2016

Minister's Comments

1. On 19 May 2016, you began consideration of the case of [REDACTED] under section 351, and [REDACTED] under section 195A, indicating a decision to begin considering grant of a Visitor (subclass 600) visa.
2. Section 351 enables you to substitute a more favourable decision for a decision of the former Migration Review Tribunal if you consider it to be in the public interest. When substituting a more favourable decision, you are not bound by certain provisions of the Act and may decide to exercise the public interest power and grant a visa other than that for which the clients originally applied.
3. Your section 195A power is non-compellable and allows you to grant a visa to a person in immigration detention, if you think it is in the public interest to do so. Your power under section 195A is sometimes applied to community cases where there are compassionate or compelling circumstances identified and no other resolution option is available.
4. This process requires that any visas held by the client be cancelled and they be administratively detained by the department under section 189 of the Act, in order to enliven your intervention power under section 195A.
5. If you are inclined to intervene under section 195A, the department would administratively detain [REDACTED] temporarily in order to enliven your section 195A detention power. The department would liaise closely with your office and [REDACTED] family regarding these arrangements. Documents for your signature indicating your decision under section 195A are at Attachment C.

~~Document 7~~
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- 6. A copy of the earlier submission under sections 351 and 195A and documentation for your signature indicating your decision are attached.
- 7. The department will notify [redacted] and her representative of your decision.

Attachments

- Attachment A** Copy of the earlier submission relating to [redacted]
- Attachments A1-A5** Copy of attachments to the earlier submission relating to [redacted]
- Attachment B** Document for your signature should you decide to exercise your power under section 351 in the case of [redacted]
- Attachment C** Documents for your signature should you decide to exercise your power under section 195A in the case of [redacted]

Authorising Officer
<div style="background-color: black; width: 150px; height: 50px; margin-bottom: 10px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <p>Director Ministerial Intervention (National) Caseload Assurance Branch 27/05/2016 Ph: [redacted]</p>

Contact Officer: [redacted] Acting Assistant Director, NSW Ministerial Intervention, Ph: [redacted]

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 351 OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

1. Exercising my power under subsection 351(1) of the *Migration Act 1958* (The Act), I have substituted a decision of the former Migration Review Tribunal to affirm a decision to refuse the grant of visas to the subjects of that decision, with a decision to grant them a Visitor (subclass 600) visa.
2. The application was refused because the applicants were unable to satisfy the criteria for the grant of the visa.
3. Having regard to these persons' particular circumstances and personal characteristics, I think it would be in the public interest to allow them to remain in Australia.
4. I took the view that in the circumstances of this case it was in the public interest to grant a Visitor (subclass 600) visa because it is a reflection of Australia as a compassionate and humane society to allow the persons to remain temporarily in Australia.
5. Accordingly, it is appropriate in this case that I exercise my power under section 351(1) of the Act.



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

17/06/16

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* ("the Act"), I have decided to grant a visa under this section.

1. This person is detained under s189 of the Act as an unlawful non-citizen.
2. Having regard to this person's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with an ongoing need, it is in the interests of Australia as a humane and generous society to grant this person a Visitor (subclass 600) visa.



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

17/06/16

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- DECISION INSTRUMENT -

Name:
Date of Birth:
Client Id:



1. The above person is in immigration detention under section 189 of the Act and I have considered her case under section 195A of the Act.
2. I have determined that it is in the public interest to grant her a Visitor (subclass 600) visa.
3. I therefore exercise my power under subsection 195A of the *Migration Act 1958* to grant Visitor (subclass 600) visa in favour of this person.

A handwritten signature in black ink, appearing to read 'Peter Dutton', written over the typed name.

THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

17/06/16



Australian Government
Department of Immigration and Border Protection

COPY

Submission
For decision

Doc. Reg. Number

MS16-001769

To Minister for Immigration and Border Protection

Subject Possible Ministerial Intervention - Section 351



Purpose To seek your decision on whether you wish to consider the exercise of your public interest power under section 351 of the *Migration Act 1958* (the Act) in the case of



Timing No deadline

RECEIVED
23 MAY 2016
NOW MINISTERIAL INTERVENTION

Recommendation

Section 351 -



That you choose one of the following options

<p>A. Indicate whether you are inclined to consider under section 351 of the Act to grant a Visitor (Subclass 600) visa valid for six months with work rights</p> <p>If you are inclined to consider, the department will refer a further submission for your decision.</p>	<p><input checked="" type="radio"/> Consider / <input type="radio"/> Not consider grant of Subclass 600 visa</p>
---	--

OR

<p>B. Begin considering the exercise of your power under section 351 of the Act to grant a Former Resident (Subclass 151) visa subject to health and character checks and the provision of a signed Australian Values Statement.</p>	<p>Begin considering</p>
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OR

<p>C. Not exercise your power under section 351</p>	<p>Not intervene</p>
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Received
17 MAY 2016
Minister for Immigration and Border Protection

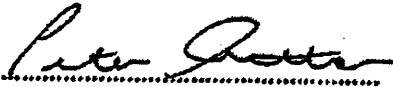
Recommendation

Section 195A - [REDACTED]

That you choose one of the following options

<p>A. Indicate whether you are inclined to consider intervening under section 195A of the Act to grant a Visitor (Subclass 600) visa for six months.</p> <p>If you are inclined to consider the department will refer a further submission for your decision.</p> <p>OR</p> <p>B. Indicate whether you are inclined to consider intervening under section 195A of the Act to grant a Former Resident (Subclass 151) visa subject to completion of health checks.</p> <p>If you are inclined to consider, the department will refer a further submission for your decision.</p> <p>OR</p> <p>C. Not exercise your power under section 195A</p>	<p><u>Consider/</u>Not consider grant of Subclass 600 visa</p> <p>Consider/Not consider grant of Subclass 151 visa</p> <p>Not intervene</p>
---	---

THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

Signature: 

Date: 19/05/16

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Minister's Comments

The case was presented to you on a schedule and on 2 March 2016 you requested a submission. A copy of signed Schedule N2015/228 is at Attachment D.

Key issues

1. [REDACTED] have resided in Australia for over eight years.
[REDACTED]
2. [REDACTED] was refused a Skilled Independent (Subclass 885) visa for the skilled occupation of [REDACTED] on 1 November 2013 as she did not provide evidence of meeting [REDACTED]
3. She provided the Tribunal with [REDACTED]. At the Tribunal review, [REDACTED] conceded that she did not have a satisfactory [REDACTED] that was conducted in the two-year period prior to the lodgement of her Subclass 885 visa application on 29 June 2012.
4. The Tribunal considered information in respect to the alleged fraudulent behaviour of [REDACTED] former agent [REDACTED] but concluded that the primary issue was whether she met the [REDACTED] for the grant of the Subclass 885 visa. The Tribunal affirmed the department's decision as [REDACTED]
5. Departmental records indicate that in August 2014, the matter in relation to potential migration fraud was referred to the Office of the Migration Agents Registration Authority (OMARA) for investigation. Following its investigation into two separate complaints made against [REDACTED] the OMARA made a decision to cancel [REDACTED] registration for a period of [REDACTED]
6. The OMARA found that [REDACTED]. Her application was not lodged until 29 June 2012 which had resulted in a negative impact on the assessment of her visa application [REDACTED]

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7. The OMARA further found that [REDACTED] [REDACTED] The OMARA deemed that a cancellation of [REDACTED] registration was appropriate given the serious impact that [REDACTED] conduct had on [REDACTED] clients and considered that [REDACTED] pattern of conduct demonstrated a lack of integrity and consumer protection.
8. In her request, [REDACTED] reiterates that her family's future in Australia should not be jeopardised due to the negligent and falsified actions of a single individual, her former migration agent. She contends that had her Subclass 885 visa application been lodged in a timely manner by her migration agent, she may have met the relevant visa requirements.
9. In Australia, [REDACTED] and obtained a positive skills' assessment as a [REDACTED] from Trades Recognition Australia (TRA) in 2009. [REDACTED] is on the Consolidated Sponsored Occupation List (CSOL)
10. However, the TRA assessment has now expired. Further, [REDACTED] is currently not working in her nominated occupation and has been caring for her three young children on a full-time basis since July 2012.
11. [REDACTED] dated 10 May 2014 reports an [REDACTED] She therefore appears to meet the [REDACTED] requirement for a Temporary Work (Skilled) (Subclass 457) visa. However, there is no evidence that [REDACTED] has an employer who is willing to sponsor her on a Subclass 457 visa.
12. [REDACTED] was awarded [REDACTED] in September 2015. He is currently employed [REDACTED] and has provided evidence of [REDACTED] work experience in this field. The occupation of [REDACTED] is listed on the Skilled Occupation List (SOL) and the CSOL and his employer, [REDACTED] is an approved standard business sponsor for the purpose of a Subclass 457 visa, valid until 2017.
13. [REDACTED] qualifications and experience appear to satisfy the skills requirements for the occupation of [REDACTED] however, he has not provided evidence of an IELTS test which demonstrates that he meets the current English language requirement for a Subclass 457 visa.
14. The [REDACTED] is not the subject of a Tribunal decision and therefore she cannot be considered under your section 351 powers. Her case is being presented to you for consideration under section 195A in order to resolve her immigration status together with her parents.
15. A copy of the request for Ministerial Intervention initiated by her authorised representative (now former), [REDACTED] is at Attachment E.

Background

Immigration history

16. A detailed immigration history is at Attachment A.

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Qualifications, skills and employment – [REDACTED]

17. On 16 September 2015 [REDACTED] was awarded a [REDACTED]. He has been employed as [REDACTED] with [REDACTED] since 2011. His recruitment consultant and manager have written in support of his skills and work ethic.
18. In a letter dated 4 March 2016 [REDACTED] states that [REDACTED] has been "outstanding whilst performing his duties...he is positive, trusting and hardworking values have helped him integrate seamlessly into his local community and gain the trust and respect of his colleagues."
19. Although [REDACTED] supports his request to remain in Australia, there is no indication of willingness to formally sponsor him for a skilled visa even though the company is an approved standard business sponsor for the purpose of a Subclass 457 visa until 9 September 2017.

Integration

20. [REDACTED] have resided in Australia for over eight years. [REDACTED]
21. The family have provided letters from friends and fellow church members who attest to their good character, generosity, strong friendships and commitment to work and studies. In addition to employment references, 15 letters of support have also been received from the community.

Family disposition

22. [REDACTED] who last arrived in Australia on 14 January 2015 on a Vocational Education and Training Sector (Subclass 572) visa. On 5 April 2016 he lodged an application for a further Subclass 572 visa to undertake a [REDACTED] and was granted an associated Bridging A (Subclass O10) visa. His application is currently ongoing.
23. The couple have not declared any other family members in Australia.
24. The couple's extended family (parents and siblings) reside in [REDACTED]

Australia's international obligations

25. A detailed discussion of Australia's interpretation of its international obligations towards the family and children as provided for in the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CROC) is at Attachment C.

International Covenant on Civil and Political Rights (ICCPR)

26. Australia has obligations under the ICCPR to not arbitrarily interfere with the family. Australia takes its international obligations seriously, however, the ICCPR does not provide a person with absolute rights to enter or remain in a country of which they are not a national. States Parties to the ICCPR may lawfully require non-citizens within their territory to leave.

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27. [REDACTED] do not have permission to remain permanently in Australia and have been unsuccessful in obtaining a visa.
28. They are nationals of [REDACTED] and hold valid passports which permit them to return to their country of citizenship. [REDACTED] In cases where all concerned parties are neither Australian citizens nor permanent residents of Australia, they are able to depart Australia as a family unit thereby preserving their family unity.
29. There is no evidence to indicate any potential breach of the ICCPR provisions with respect to family unity in this case, should you decline to intervene.

Convention on the Rights of the Child (CROC)

30. In relation to Australia's obligations under the CROC, you may wish to consider the following:
31. [REDACTED]
32. Departmental information indicates that the children will have access to health care and education in [REDACTED] although it may not be of the same standard as in Australia but meets the standard of access to basic services that would not place Australia in breach of its obligations under the CROC. The department notes that [REDACTED] is a party to the CROC.
33. In terms of your decision, balancing the issues presented in this case, consideration of the best interests of a child does not automatically lead to a decision to allow the children's parents to remain in Australia.

Visa options

34. You may wish to indicate if you would like to begin considering or grant any of the following:
- Temporary – Visitor (Subclass 600) visa for six months with work rights to apply for a skilled visa (if either has formal sponsorship and can meet IELTS and formal skills criteria); however, there is no guarantee that either would progress on their own merits
 - Permanent – Former Resident (Subclass 151) visa.
35. A detailed explanation of the relevant characteristics of these visas is at Attachment B.
- [REDACTED] - *Ministerial intervention under section 195A*
36. Section 195A of the Act allows you to grant a visa to a person in immigration detention, if you think it is in the public interest to do so. Your section 195A power is non-compellable, meaning that you are under no obligation to exercise or consider exercising your power.
37. Your power under section 195A of the Act is sometimes applied to community cases, where there are compassionate or compelling circumstances identified and no other resolution option available. This process requires that any visas held by the client be cancelled and they be detained by the department under section 189 of the Act, in order to enliven your intervention power under section 195A.

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38. Her case is being presented to you for consideration under section 195A in order to resolve her immigration status together with her parents.

Offshore visa options

39. It is open for [REDACTED] to apply offshore for a Temporary Work (Skilled) (Subclass 457) visa or an Employer Nomination Scheme (Subclass 186) visa should there be a willing sponsor, subject to satisfying the legislative criteria. They could also register with SkillSelect.

40. However, if they apply for a temporary visa, they may be subject to a three year exclusion period if they are the holders of Bridging General (Subclass 050) visas on departure. This could be waived if the delegate is satisfied that compelling circumstances affecting the interests of Australia or compassionate or compelling circumstances affecting the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen justify granting the visa within three years after the departure.

Removal/departure arrangements

41. [REDACTED] valid until 2 April 2018. [REDACTED] valid until 5 September 2016 and 4 June 2018 respectively. [REDACTED] valid until 19 June 2019.

42. If their request is unsuccessful, Status Resolution officers will engage with them to facilitate voluntary departure, including referral to assisted voluntary return services as appropriate. If they refuse to cooperate we will seek to remove them in accordance with detention policy ensuring the period of detention is as short as possible.

43. If they refuse to cooperate, we will seek to remove them in accordance with detention policy noting that children, and where possible their families, will not be detained in an Immigration Detention Centre.

Attachments

Attachment A Case details

Attachment B Details of relevant visas subclasses

Attachment C Australia's international obligations – *International Covenant on Civil and Political Rights* and *Convention on the Rights of the Child*

Attachment D Copy of signed NSW Schedule N2015/228

Attachment E Copy of Ministerial Intervention request.

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Authorising Officer



Director
Ministerial Intervention (National)
Caseload Assurance Branch
12/05/2016
Ph: [Redacted]

Contact Officer: [Redacted] **Assistant Director, NSW Ministerial Intervention, Ph:** [Redacted]

CASE DETAILS

Name	[REDACTED]
Country of Citizenship	
Name	
Name	
Name	
Name	
Length of time in Australia	<p>Over eight years: [REDACTED] first arrived in Australia on 21/01/1996 on a Tourist (Subclass 676) visa. [REDACTED] first arrived on 25/04/2004 on a Working holiday (Subclass 417) visa.</p> <p>Between 1996 and 2006 [REDACTED] visited Australia six times on Visitor and Working holiday visas while [REDACTED] was in Australia three times between 2004 and 2006)</p> <p>[REDACTED] arrived on 14/09/2011 on Subclass 976 visa and made two trips. [REDACTED] was born in Australia and has travelled overseas once.</p>
Currently lawful	Yes
Support for request	17 Letters of support from community members, friends and employers

RELEVANT IMMIGRATION HISTORY

02/11/2011	Granted Subclass 485 visa valid until 02/05/2013; nominated occupation of [REDACTED]
29/06/2012	Applied for a Skilled - Independent (Subclass 885) visa
11/02/2013	[REDACTED]
01/11/2013	Subclass 885 visa refused
26/04/2014	[REDACTED]
19/05/2014	Former Migration Review Tribunal (MRT) affirmed department's decision
10/06/2014	Section 351 request made
25/01/2016	Request referred on a schedule to the Minister
02/03/2016	Minister requested a submission

Temporary visa options

Visitor (Subclass 600) visa (to apply for Skilled visa)

The grant of a Subclass 600 visa would lift the section 48 bar imposed after the last visa refusal. The visa holder can then apply for any of the skilled visas listed below provided they meet the relevant requirements.

- Temporary Work (Skilled) (Subclass 457) visa
- Employer Nomination Scheme (ENS) (Subclass 186) visa

Compared to granting the permanent visa, this visa would ensure further checks would be undertaken at the time of lodging the subsequent application and determine whether the client meets all the requirements relating to the visa class.

Permanent visa options

Former Resident (Subclass 151) visa

This is a permanent visa generally intended for persons who were previously permanent residents of Australia but who subsequently lost their permanent residence as they had not maintained their permanent resident status. This type of visa is typically also used where a Minister wishes to consider the grant of permanent residence through the exercise of the relevant public interest powers and there is a specific allocation of Subclass 151 places in the annual migration planning to this end.

The features of this visa are:

- Enable the clients to live in Australia permanently with immediate access to Medicare.
- The full range of welfare support would not be available to the client/s for two years after the grant of permanent residence.
- Holders of this visa are able to sponsor family members.

You may wish to delay making a decision until the client provides health and character checks and a signed Australian Values Statement stating that they will respect the Australian way of life and abide by Australian laws.

Australia's Obligations - Family Unit and Best Interests of the Child

Family unity considerations under the *International Covenant on Civil and Political Rights* (the ICCPR)

Article 17 of the ICCPR states that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence".

Article 23 of the ICCPR provides that 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the State'.

In this context, to not be "arbitrary", any interference with a family must have a legitimate purpose within the framework of the ICCPR in its entirety. This includes reasons of public order, national security, public health or morals or the rights and freedoms of others. Such interference must be predictable in the sense of the rule of law (it must not be capricious) and it must be reasonable or proportional in relation to the purpose to be achieved.

The Australian Government position is that Articles 17 and 23 of the ICCPR do not provide a person with absolute rights to enter or remain in a country of which they are not a national.

As family unity is not an absolute right under the ICCPR, interference with family unity is permissible where it is not arbitrary and where it is lawful at domestic law. Although the United Nations Human Rights Committee has previously found that Australia violated Articles 17 and 23 in a case with facts similar to those of the current cohort, the Government has maintained that the appropriateness of measures to maintain family unity can be balanced against other rights and interests, including the integrity of the migration program and the protection of the Australian community.

In cases where all concerned parties are neither Australian citizens nor permanent residents of Australia, they are able to depart Australia as a family unit thereby preserving their family unity.

Family unity and best interests of the child considerations under the *Convention on the Rights of the Child* (the CROC)

Article 3(1) of the CROC requires that in all actions concerning children, the best interests of the child shall be a primary consideration.

Article 7 of the CROC states that a child "shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents".

Article 9(1) of the CROC states that a child "shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child". Article 9(4) of the CROC specifically recognises that a child can become separated from a parent through actions such as detention or deportation, and obliges States to provide information about the whereabouts of any absent family member where possible. Article 9(3) obliges States Parties to facilitate contact between separated family members.

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Article 16 of the CROC states that "no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour or reputation".

Article 27 of the CROC states that "States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development".

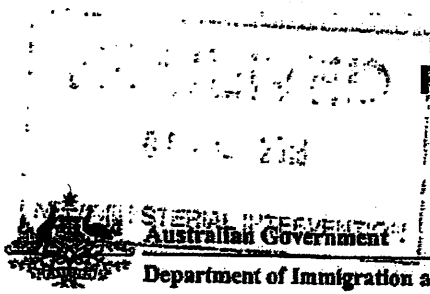
The best interests of the child (as outlined in the above provisions) need only be a, rather than the, primary consideration and may be balanced by countervailing considerations. The Australian Government's view is that the maintenance of the integrity of Australia's migration system, which reflects Australia's sovereign right to enforce its migration laws against unlawful non-citizens, may be such a countervailing consideration. Consideration of the best interests of a child does not automatically lead to a decision to allow the child's family to remain in Australia.

Your decision not to intervene does not necessarily adversely affect a child's nationality or relationship with their parents (Article 7 of the CROC). The child is not an Australian citizen and is a citizen of the same country as its parents and would be able to continue living with the parents as a family unit as the family as a whole is able to depart together. Therefore, your decision not to intervene does not mean that the child will be denied the right to know and be cared for by their parents, nor that they will be separated from their parents.

Article 9(1) of the CROC does not prohibit a State Party from separating a child from his or her parent where the parent is removed. Article 9(4) contemplates that separation may result from the action of a State Party by way of deportation, and obliges State Parties to provide information on the whereabouts of absent family members in this situation. There is no suggestion that Australia would not abide by this obligation as in this case the child is not an Australian citizen and is able to return to their native country along with the parents.

Article 16 of the CROC is the equivalent of Article 17 of the ICCPR.

Any potential breach by the family's home country of the child's human rights under Article 27 does not place an obligation on Australia to stop the child from travelling there if the parents decide that the child should accompany them. Australia's *non-refoulement* obligations are not engaged by voluntary departures and they are not engaged by potential violations of the rights in Article 27 of the CROC or rights relating to entitlements to health and education. Nevertheless, the Department provides information to you about the human rights situation in the family's home country as part of the best interests assessment to allow you to consider all the relevant circumstances of the case.



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Schedule

For decision

PDMS Reg. Number

MS16-000336

To Minister for Immigration and Border Protection

Subject Consideration under section 351 of the Migration Act 1958 – NSW Schedule N2015/228

Purpose To obtain your decision in relation to the attached schedule cases requesting the exercise of your public interest power under section 351 of the *Migration Act 1958* (the Act).

Urgency N/A

Name	Permission Request Identification	Please tick if submission required
[Redacted]		
		✓

I have read the attached Schedule N2015/228 dated 22 January 2016 which has been provided to me by the Department of Immigration and Border Protection concerning the request by the persons named above for the exercise of my power under section 351 of the *Migration Act 1958*. Unless otherwise indicated above, I do not propose to consider the exercise of that power.

I do not wish further requests for the exercise of my public interest power in these cases brought to my attention, unless such further requests raise new substantive issues which, in the opinion of the assessing officer, when considered in combination with the information known previously, brings the case within my Guidelines for the identification of cases where I may consider it to be in the public interest to intervene to substitute a more favourable decision.

Peter Dutton
 THE HON PETER DUTTON MP
 Minister for Immigration and Border Protection
 02 / 03 / 2016
 Section 351 Schedule N2015/228

Received
 29 JAN 2016
 Minister for Immigration and Border Protection

For Official Use Only

For Official Use Only

Minister's Comments – N2015/228

Attached is NSW Schedule N2015/228 summarising requests made for the exercise of your public interest power under section 351 of the Act. This provision enables you to substitute a more favourable decision for a decision of the former Migration Review Tribunal and/or Administrative Appeals Tribunal (Migration Division) if you consider it to be in the public interest.

The department considers that the circumstances of the cases on this schedule are neither unique nor exceptional.

Clients on this schedule who remain engaged with the department have been counselled regarding their departure responsibilities if their request is not successful. Should you decide not to intervene in a case, the department will engage with the clients to facilitate voluntary departure including referral to assisted voluntary return services as appropriate. Clients who are not engaged with the department are referred to Compliance for location action and appropriate progression of their immigration matters.

Where clients refuse to cooperate with a departure requirement, the department may seek to detain and remove the clients in accordance with detention policy ensuring the period of detention is as short as possible. If you decide to decline to consider the exercise of your public interest power, a decision document is attached for your signature.

Section 351 is a personal power and it is open to you to request the department to prepare a submission for your consideration. The department will notify the individuals and their representative of the outcome of your decision.

Attachments

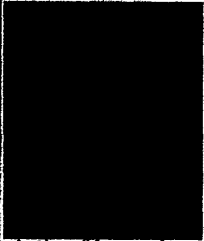

Attachment A NSW Schedule N2015/228

Attachment B Letter of support from Mr David Coleman MP, Member for Banks for
████████████████████

For Official Use Only

Recommendation

That you indicate whether you wish to decline to consider the exercise of your public interest power in these cases.

Authorising Officer
 Acting Director Ministerial Intervention (National) Caseload Assurance Branch 22/01/2016 Ph: 

Contact Officer  Assistant Director, NSW Ministerial Intervention Unit, Ph: 

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[REDACTED]	
Name	[REDACTED]
Country of Citizenship	[REDACTED]
Name	[REDACTED]
Name	[REDACTED]
Name	[REDACTED]
Date of Migration Review Tribunal Decision	[REDACTED]
Length of time in Australia	[REDACTED] arrived on 22/05/2008 on a Vocational Education and Training Sector (Subclass 572) visa and have made four and seven trips respectively. (Between 1996 and 2006 [REDACTED] visited Australia six times on Visitor and Working holiday visas while [REDACTED] was in Australia three times between 2004 and 2006). [REDACTED] arrived on 14/09/2011 on Subclass 976 visa and made two trips. [REDACTED] and has travelled overseas once.
Australian family members	Nil
Lawful	Yes
Support for request	15 Letters of support from community members and friends

KEY IMMIGRATION HISTORY

02/11/2011	Granted Subclass 485 visa valid until 02/05/2013; nominated occupation of [REDACTED]
29/06/2012	Applied for Skilled Independent (Subclass 885) visa
11/02/2013	[REDACTED]
01/11/2013	Skilled Independent visa refused
26/04/2014	[REDACTED]
19/05/2014	Former Migration Review Tribunal (The Tribunal) affirmed refusal decision
10/06/2014	Section 351 request made

KEY ISSUES

- [REDACTED] was refused a Skilled- Independent (Subclass 885) visa, for the skilled occupation of a [REDACTED]
- [REDACTED] provided the Tribunal with [REDACTED] (undertaken on 8 May 2010). At the Tribunal review, [REDACTED] conceded that she did not have satisfactory [REDACTED] that was conducted in the [REDACTED]. The Tribunal considered information in respect to the alleged fraudulent behaviour conducted by [REDACTED] former agent, however, concluded that the primary issue was whether she met the [REDACTED] for the grant of the Subclass 885 visa. The Tribunal affirmed the decision as [REDACTED] did not satisfy the [REDACTED]

For Official Use Only

- [REDACTED] newly appointed representative requested the Tribunal refer her case to the Minister on the grounds that she did not meet the visa requirements due to the negligence and fraudulent actions of her previous representative. The Tribunal decided not to refer the matter.
- [REDACTED] has not worked in her nominated occupation since June 2012.
- Their [REDACTED] is not included in this request as she is not the subject of a Tribunal decision and therefore your powers under Section 351 of the Act are not available to her.

REQUEST SUMMARY

- [REDACTED] through her representative, submits that she has been a victim of migration fraud by her former agent, [REDACTED]. Had her Skilled Independent visa application been lodged correctly she would have met the visa requirements as her [REDACTED] taken in May 2010 [REDACTED] under the relevant regulations.

- Her former agent gave her [REDACTED]

(This information has been referred to the Office of the Migration Agents Registration Authority (OMARA) for investigation; the matter is ongoing.)

- Her family's future in Australia should not be jeopardised due to the [REDACTED] of a single individual, her former migration agent.
- [REDACTED] have resided in Australia for a cumulative period of almost eight years. They have provided letters from friends, fellow church members and work attesting to the family's good character, generosity, strong friendships and commitment to work or studies.

OTHER INFORMATION

Employment, skills, and qualifications

- [REDACTED] completed a [REDACTED] and worked as a [REDACTED] to study in Australia in May 2008.
- In Australia she completed a [REDACTED] and worked as a [REDACTED] from February 2009 to June 2012. In November 2009 she obtained a positive skills' assessment as [REDACTED] from Trades Recognition Australia.
- She is not working currently and has been caring for her three young children on a full time basis since July 2012.

For Official Use Only

- [REDACTED] has been employed with [REDACTED] in Australia since 2011 and works on site as [REDACTED]. His recruitment consultant and manager have written in support of his skills and work ethic.

- He has worked as a [REDACTED]

Allegation of fraudulent migration agent

- [REDACTED] through her representative, submits that she has been a victim of migration fraud. She claims to have instructed her previous representative to lodge her Subclass 885 visa application prior to 8 May 2010 and had he followed her instruction she would have met the requirement of [REDACTED] on the same date.
- Correspondence between [REDACTED] representative and the department indicate that the matter in relation to potential migration fraud was referred to OMARA for further investigation in August 2014 (Currently ongoing). The department is unaware of any formal complaint lodged by [REDACTED] with regard to the suspected fraud.

Family disposition

- [REDACTED] is currently in Australia on a Student visa valid until 20 April 2016.

Australia's International obligations

The Convention on the Rights of the Child (CROC)

- The circumstances of this case may engage Australia's obligations under CROC. Article 3 of the CROC requires that in all government and administrative actions concerning children, the best interests of the child shall be a primary consideration. Australia's obligations under the CROC extend to children under the age of 18 years while they reside in Australia.

- [REDACTED]
- They would have access to a good standard of healthcare and education in [REDACTED]. The department notes that [REDACTED] is also a party to the CROC.

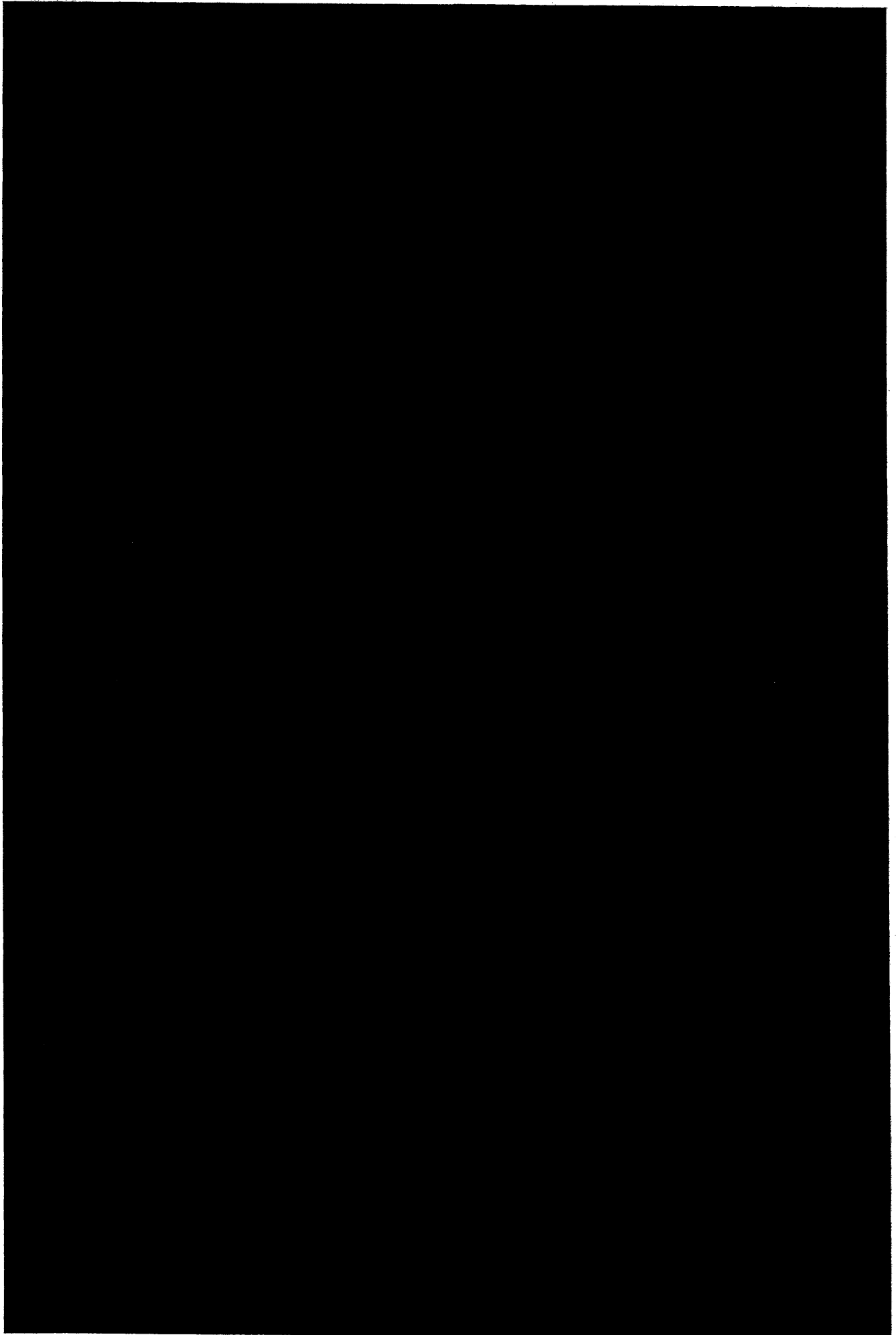
For Official Use Only

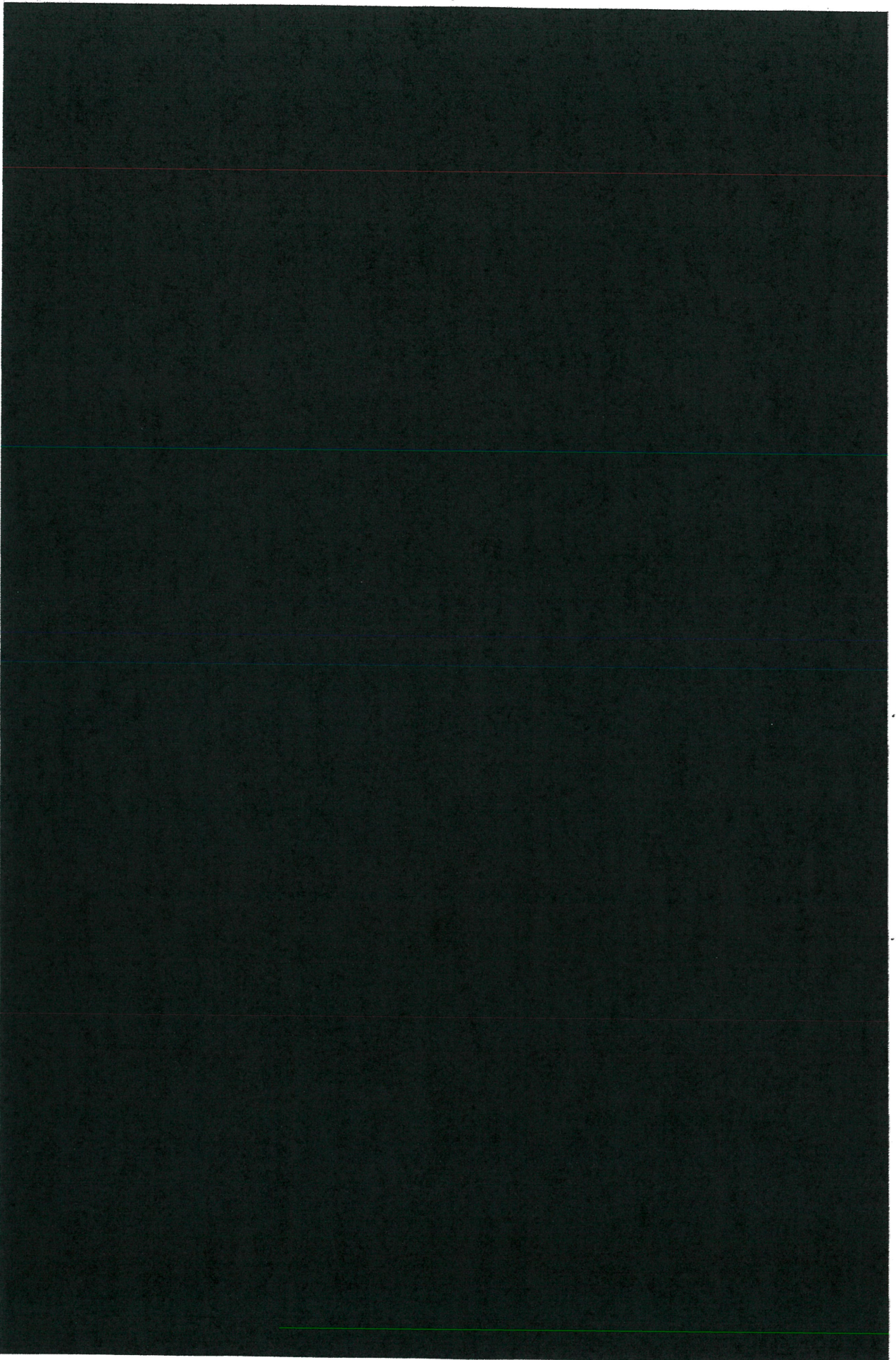
Offshore visa options

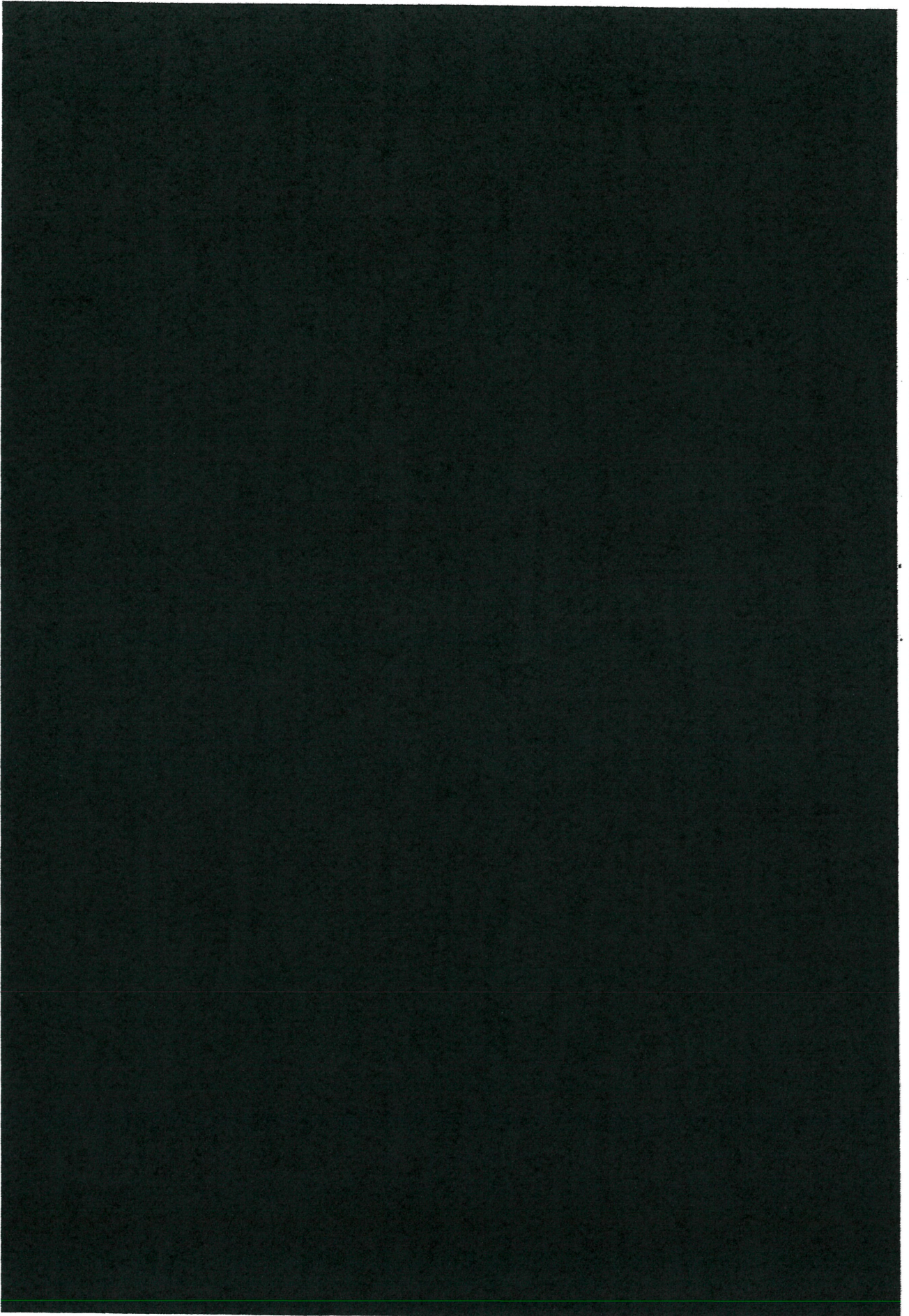
- The occupation of [REDACTED] is on the Consolidated Sponsored Occupations List (CSOL). A person must nominate an occupation on the CSOL if nominated by a State or Territory Government, if applying for a direct entry stream Employer Nomination Scheme visa or a Temporary Work (Skilled) visa (Subclass 457). In all cases, an approved sponsoring employer is a requirement. As this occupation is not on the Skilled Occupations List (SOL), sponsorship by an approved employer is the only option for a skilled visa.
- The occupations of [REDACTED] and [REDACTED] are currently listed on both the CSOL and the SOL. All persons interested in points based skilled migration need to submit an Expression of Interest (EOI) on SkillSelect and receive an invitation in order to lodge a visa application. A person may also be sponsored by an approved employer for a skilled visa.
- The department notes that both [REDACTED] do not have a current positive skills assessment for their respective occupations.

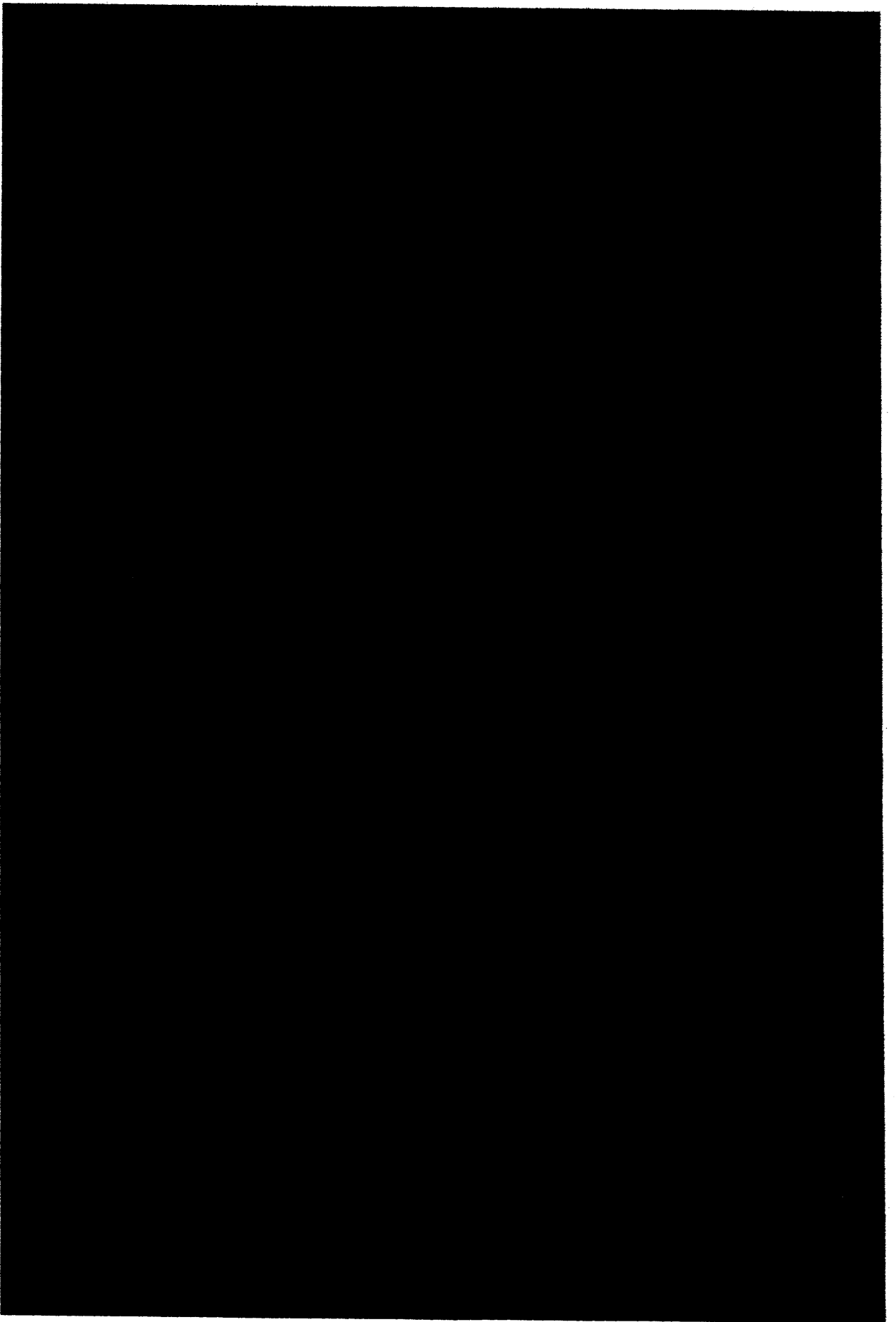
REMOVAL/DEPARTURE

- [REDACTED] and her family have travel documents valid until at least September 2016.

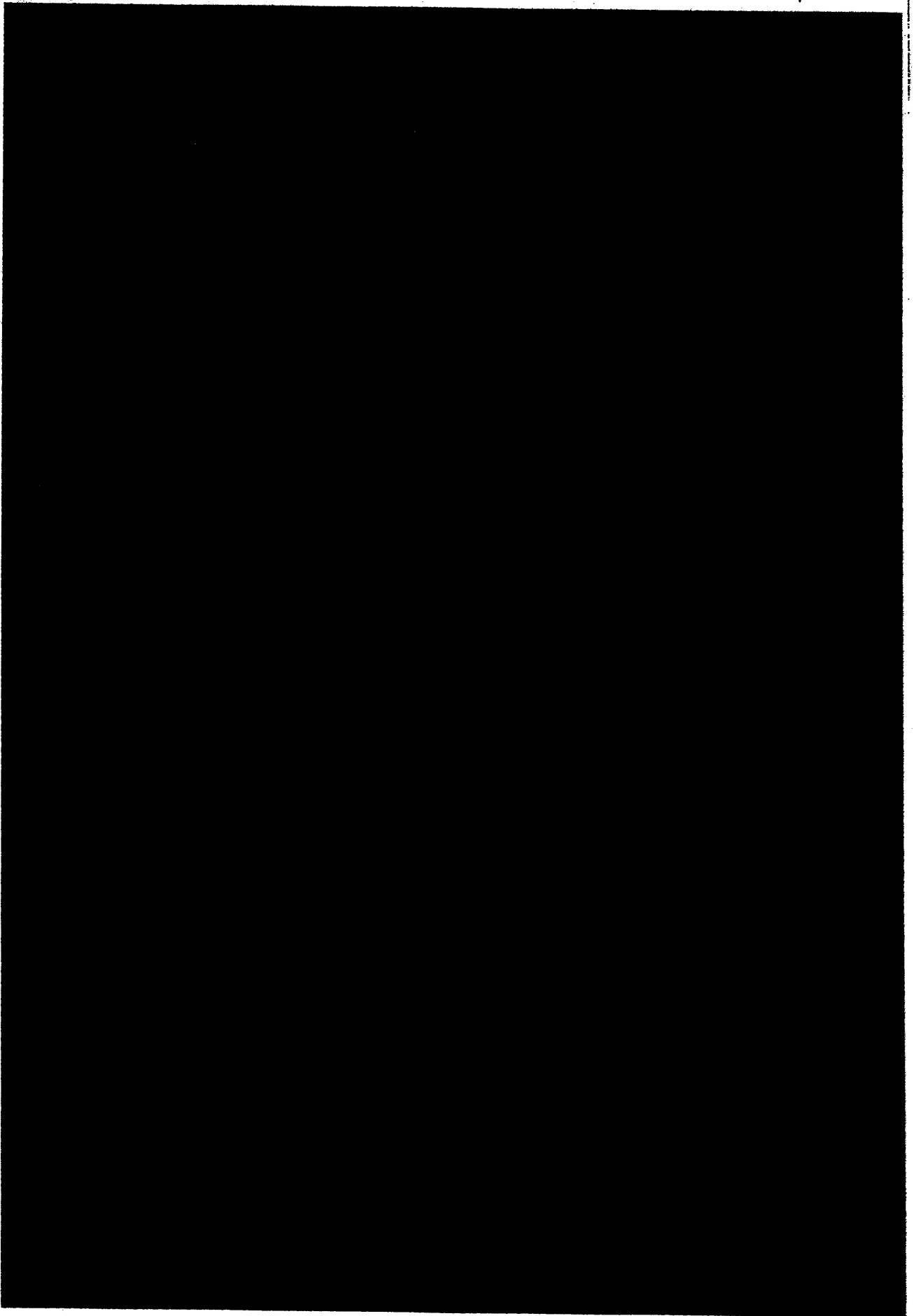


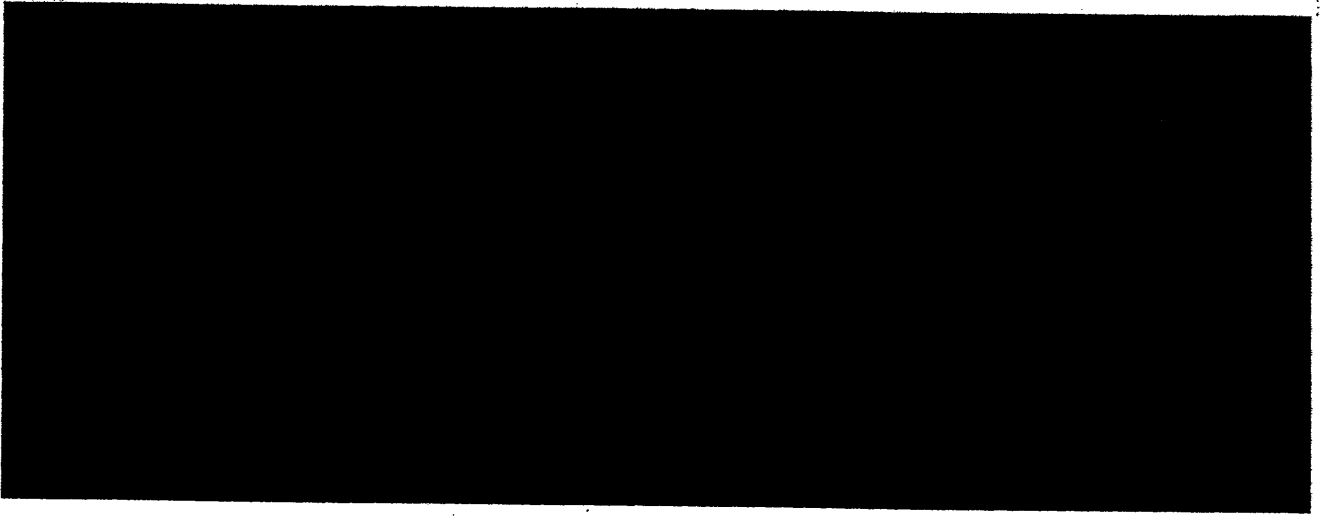






Document 7







Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS16-002714

To Minister for Immigration and Border Protection

Subject 2nd stage submission - Possible Ministerial intervention under section 195A of the *Migration Act 1958* in the case of [REDACTED]

Received
15 AUG 2016
Minister for Immigration
and Border Protection

Timing As arranged with the Departmental Liaison Officer

Recommendation

That you:

1. intervene under section 195A of the *Migration Act 1958* to grant a Visitor visa (subclass 600) to [REDACTED] for a period of six months, to enable her to lodge a valid application for a Carer visa (subclass 836);
 - if agreed, please sign the section 195A decision documentation at **Attachment A**.

intervene / decline to
intervene

Minister for Immigration and Border Protection

Signature:

Date: 23/08/2016

Minister's Comments

Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:
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Key Issues

1. [REDACTED] on [REDACTED] as the holder of a Visitor visa (subclass 600) valid for three months. [REDACTED] has remained lawful in the community through the grant of additional Visitor visas (subclass 600) and Bridging A visas (subclass 010). [REDACTED] current Bridging A visa (subclass 010) expires on [REDACTED]
2. During her stay in Australia, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] so that she could remain in Australia lawfully [REDACTED]
[REDACTED]
3. [REDACTED] current visa was due to expire, and she was concerned she would become unlawful prior to being eligible to lodge her application for a [REDACTED] contacted the Department to seek advice. She was advised to lodge an application for a further Visitor visa (subclass 600), which would be approved, and she could then lodge her [REDACTED] application.
4. The advice that [REDACTED] received from the Department was incorrect and she was refused the grant of a further Visitor visa (subclass 600). As a result of the refusal, [REDACTED] is now barred under section 48 of the *Migration Act 1958* (the Act) from lodging a valid onshore visa application and has no viable immigration pathway.
5. This case is being referred to you under section 195A of the Act, for your consideration of the grant of a Visitor visa (subclass 600), which would allow [REDACTED] to lodge a valid [REDACTED] application, which can be assessed through normal departmental channels.

Background

Immigration history

[REDACTED]
[REDACTED] holding a Visitor visa (subclass 600), and has not departed since. [REDACTED] further Visitor visas, the most recent expiring on [REDACTED]

7. [REDACTED] contacted the Department to request advice in relation to whether she could lodge her [REDACTED] application at that time and advised the Department that she had an appointment with [REDACTED] to assess her [REDACTED] was advised that she was not able to lodge her [REDACTED] application as she was required to have the results of the [REDACTED] prior to lodgement. This information was incorrect, as an applicant can lodge an application once a [REDACTED] has been arranged. [REDACTED] was further advised that she should apply for another Visitor visa while she waited for the [REDACTED] and was provided with website links to the appropriate information and application form.

8. [REDACTED] subsequently applied for a further Visitor visa on [REDACTED] paid the visa application charge (VAC) of \$1040, but was refused on [REDACTED] as she failed to meet the relevant legal requirements of *Regulation 600.215*. *Regulation 600.215* states that if the grant of the visa would result in the applicant being authorised to stay in Australia for a total period exceeding 12 consecutive months, exceptional circumstances must exist. As [REDACTED] had already had [REDACTED] of her Visitor visa, and the assessing officer did not consider [REDACTED] circumstances exceptional, the application was deemed to not meet *Regulation 600.215* and was refused.

9. Upon receiving the refusal notification on [REDACTED] [REDACTED] contacted the Department again and was advised that as the previous application was finalised there was nothing she could do and that she should depart Australia. Later the same day, the Department contacted [REDACTED] to advise that her case had been looked at further, and in order for her to stay in Australia lawfully, she would need to lodge a further visa application, before her current visa expired (the next day). [REDACTED] lodged a further Visitor visa (subclass 600) application and paid the VAC of \$1040. This application was refused on [REDACTED] as it too failed to meet the relevant legal requirements of *Regulation 600.215*.

10. [REDACTED] contacted the Department to ask why this visa had been refused, and was advised she was required to demonstrate compassionate and compelling grounds if she wished to extend her Visitor visa beyond 12 months. The Department acknowledged the circumstances related to [REDACTED] application demonstrated compassionate and compelling grounds and that they were aware of these circumstances. However, as [REDACTED] had failed to provide evidence of the circumstances with her Visitor visa application, she was therefore refused. [REDACTED] was advised of her review rights, and other visa options she might consider such as [REDACTED] visas, but was advised that she is barred under section 48 of the Act from lodging a valid onshore visa application, and would therefore need to apply outside of Australia.

[REDACTED]
[REDACTED] contacted the Department to request our assistance in resolving this matter.

12. It should be noted that the Department has confirmed that [REDACTED] was provided with incorrect or incomplete information on a number of occasions, which resulted in her current immigration status.

Identity, security and character

13. [REDACTED] is identity met and has a [REDACTED]. Departmental systems indicate that there are no security concerns related to [REDACTED]. The Department is unaware of any character concerns in relation to [REDACTED]. It should be noted that [REDACTED] character and security would be assessed as part of a [REDACTED] application, in line with normal Departmental processes.

Ministerial Intervention under section 195A

14. Given [REDACTED] has no viable immigration pathway, you may consider it in the public interest to grant her a visa using your Ministerial intervention power. Your power under section 195A is sometimes applied to community cases, where there are compassionate or compelling circumstances identified and no other resolution options available.

Ministerial intervention under section 195A

Visitor visa (subclass 600)

15. If you are inclined to intervene in [REDACTED] case under section 195A of the Act, the Department considers the grant of a Visitor visa (subclass 600) to be the most appropriate temporary option. This visa would allow [REDACTED] to remain in Australia for six months and will allow her to apply for a [REDACTED] application will be assessed through the normal departmental processes. She will be required to meet the criteria for the grant of the [REDACTED] including any [REDACTED] and pay the VAC of [REDACTED]

16. As the holder of a Visitor visa (subclass 600) [REDACTED] would not be eligible for Government assistance and she would be expected to pay for all her living and medical expenses. The Department recommends that [REDACTED] Visitor visa (subclass 600) be granted with permission to work to allow her to work, should she have the need.

17. If you agree to intervene under section 195A of the Act to grant [REDACTED] a Visitor visa (subclass 600) for a period of six months, please sign the decision documentation at **Attachment A**.

Decline to intervene

18. Should you decline to intervene in [REDACTED] case under section 195A of the Act, she would need to depart Australia. As [REDACTED] would depart Australia as the holder of a Bridging visa, under Public Interest Criterion 4014, she would be excluded from being granted another visa for a period of three years. This would prevent [REDACTED] from returning to Australia during the exclusion period.

Consultation – internal/external

19. Ministerial, Parliamentary and Communication Branch, Permanent Visa & Citizenship Programme Branch

Consultation – Secretary/ Commissioner

20. This submission did not involve consultation with the Department's Secretary or the Commissioner of the Australian Border Force.

Client service implications

21. There are minimal client service implications.

Sensitivities

22. As previously mentioned, [REDACTED] was provided with incorrect and incomplete information on a number of occasions, which resulted to her current immigration status.

Financial/systems/legislation/deregulation implications

23. There are minimal financial/systems/legislation/deregulation implications.

Attachments

Attachment A Section 195A decision documents

Authorising Officer
Cleared by: Dora Chin-Tan Assistant Secretary Caseload Assurance Branch 15/08/2016 Ph: [REDACTED]

Contact Officer: Chris De Ruyter, Director, Complex Case Resolution Section, Ph: [REDACTED]

CC Permanent Visa and Citizenship Programme Branch
Ministerial, Parliamentary and Communication Branch
NSW Client Status Resolution

Document 8

EXERCISE OF MINISTERIAL DISCRETION UNDER SECTION 195A OF THE *MIGRATION ACT 1958*

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to this person's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant this person a Visitor visa (subclass 600) for a period of six months.



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

23 ~~10~~ / 2016

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- DECISION INSTRUMENT -

Name:

Date of birth:

Client ID:



1. The above person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant this person a Visitor visa (subclass 600) for a period of six months.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) for a period of six months in favour of this person.

A handwritten signature in black ink, appearing to read "Peter Dutton".

THE HON PETER DUTTON MP

Minister for Immigration and Border Protection

23/08/2016



Australian Government
Department of Immigration and Border Protection

Submission

For decision
PDMS Ref. Number MS16-003126

To Minister for Immigration and Border Protection

Subject Possible Ministerial intervention under section 195A of the *Migration Act 1958* in the case of [REDACTED]
(DOB: [REDACTED])

Timing *As requested by your office*

Recommendation

That you:

1. intervene under section 195A of the *Migration Act 1958* (the Act) to grant [REDACTED] a Visitor visa (subclass 600) for a period of two years, with permission to work;

intervene / not intervene

- if agreed, please sign the decision documentation at Attachment A.

Minister for Immigration and Border Protection

Signature *[Handwritten Signature]*

Date: 07/10/2016

Received
28 SEP 2016
Minister for Immigration
and Border Protection

Document 9
Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. [REDACTED] year old national of [REDACTED] arrived in Australia as the holder of a Visitor visa (subclass 600) valid until [REDACTED].
2. [REDACTED] the [REDACTED] an approved Long Stay Activity Sponsor, lodged an application to nominate [REDACTED] for a Temporary Work visa (subclass 401) based on a proposal for mixed employment. The nomination application was refused the same day as it did not satisfy the prescribed criteria for approval. A copy of the refusal of nomination decision is at Attachment B.
3. On 17 August 2016, your office requested that [REDACTED] case be referred for your consideration under section 195A of the *Migration Act 1958* (the Act), of a temporary visa option, pending the outcome of health and character checks. [REDACTED] has now met the health and character requirements of a Visitor visa (subclass 600). Copies of the clear [REDACTED] and Australian police certificates are at Attachment C.
4. Should you be inclined to exercise your power under section 195A of the Act in the case of [REDACTED] the grant of a two year Visitor visa (subclass 600) with work rights, would allow him to stay in Australia, and find suitable employment.

Background

Immigration history

5. Details of [REDACTED] immigration history are available at Attachment D.

Health, identity, security and character

6. There is no evidence of health concerns in [REDACTED] case, and he has met the health requirement for the grant of a Visitor visa (subclass 600).

Sensitive: Personal

7. [redacted] identity is established in accordance with *Procedures Advice Manual 3: Identity, Biometrics and Immigration Status – Undocumented Arrivals – Levels of Identity Assurance*.

[redacted] holds a valid [redacted] passport, expiring on [redacted]

8. There is no evidence of any character or security concerns in departmental systems in relation to [redacted]. As a national of [redacted] referral of [redacted] for Public Interest Criterion 4002 security check is not required. It is noted that an Australian Federal Police check in relation to his Visitor visa (subclass 600) application returned a clear result.

Community links

9. [redacted] has strong links to the [redacted] President [redacted] wrote to the Department noting [redacted] support for [redacted]

Ministerial Intervention under section 195A

10. Given [redacted] support from community members, you may consider it in the public interest to grant him a visa using your Ministerial intervention power. Your power under section 195A is sometimes applied to community cases, where there are compassionate or compelling circumstances identified and no other resolution options available.

11. If you agree to intervene under section 195A of the Act, the Department will arrange for [redacted] to be administratively detained, so as to enliven your power under section 195A. The Department will liaise closely with your office and [redacted] regarding these arrangements.

Ministerial intervention under section 195A

Visitor visa (subclass 600)

12. If you are inclined to intervene in [redacted] case under section 195A of the Act, the Department considers the grant of a Visitor visa (subclass 600) for a period of two years, with permission to work, as the most appropriate option.

13. As the holder of a Visitor visa (subclass 600), [redacted] would not be eligible for Government assistance and he would be expected to pay for all his living and medical expenses.

14. If you agree to intervene under section 195A of the Act to grant [redacted] a Visitor visa (subclass 600) for a period of two years, please sign the decision documentation at **Attachment A**.

Decline to intervene

15. Should you decline to intervene in [redacted] case under section 195A of the Act, he will continue to remain lawful until [redacted] when his Visitor visa (subclass 600) ceases. He can lodge another valid visa application onshore or, alternatively, it is open to [redacted] to lodge a valid visa application offshore.

Consultation – internal/external

16. Tasmania Temporary Visa Programme.

Sensitive: Personal

Consultation – Secretary/Commissioner

17. This submission did not involve consultation with the Department’s Secretary or Deputy Secretaries, or the Australian Border Force Commissioner or Deputy Commissioners.

Client service implications

18. There are minimal client service implications.

Sensitivities

19. There are no sensitivities in this case.

Financial/systems/legislation/deregulation implications

20. There are negligible financial, system or legislation implications for the Department.

Attachments

Attachment A Decision documents

Attachment B Notice of refusal of nomination decision

Attachment C Police certificates – [redacted] and Australia

Attachment D Immigration history

<p>Authorising Officer</p> <p>Cleared by:</p> <p>Dora Chin-Tan Assistant Secretary Status Resolution Branch Date: 28/09/2016 Ph [redacted]</p>

Contact Officer Christopher De Ruyter, Director, Complex Case Resolution Section, Ph [redacted]

CC Community Status Resolution and Case Management, Queensland

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to this person's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant this person a Visitor visa (subclass 600) for 2 years.



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

07/10/2016

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- DECISION INSTRUMENT -

Name:
Date of Birth:
Client ID:



1. The above person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant this person a Visitor visa (subclass 600) for 2 years.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) for 2 years in respect of this person.

A handwritten signature in black ink, appearing to read 'Peter Dutton'.

THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

07/19 2016



Australian Government
Department of Immigration
and Border Protection

**NOTICE OF DECISION
NOMINATION REFUSAL NOTICE
FOR SUBCLASS 401 VISA**

Details of Nomination

Name of Sponsor

Sponsorship Application ID

Date of Decision

Nominated Person

Client Name

Client ID

Date of Birth

Proposed Occupation, training or activity

Details of nomination application

Place of Lodgment

Date of Application

Nomination Application ID

File Number

Tasmanian State Office

The Applicant's Claims

[REDACTED] who is an approved Long Stay Activity Sponsor, have applied to nominate [REDACTED] as a [REDACTED]

In the nomination application (question 27), the sponsor stated that the nominee's position would be that of [REDACTED]

Information and evidence considered

I am a delegated decision maker under section 140GB of the *Migration Act 1958*. In reaching my decision, I have considered the following:

- relevant legislation contained in the Migration Act and Migration Regulations 1994
- information contained in the Department's Procedures Advice Manual 3
- documents and information provided by the applicant(s)
- relevant information held on Departmental files.

Reasons

Regulation 2.72J(4) states:

[2.72J] (4) If the person is a long stay activity sponsor who is a sporting organisation, or a sport sponsor:

(a) the Minister is satisfied that:

(i) the identified visa holder or applicant:

- (A) is entered individually or as a member of a team to compete in a sporting event, or sporting events, in Australia, and is not entered as a Taiwanese national claiming to represent Taiwan, China or the Republic of China; or
- (B) has been, or will be, appointed or employed, under a contractual agreement, to assist a participant or team of a kind mentioned in sub-subparagraph (A); or
- (C) has been, or will be, appointed or employed, under a contractual agreement, to assist a sportsperson who:
- (I) is an Australian citizen or an Australian permanent resident; and
 - (II) is known internationally in the field of sport; and
 - (III) has a record of participation in international events; in one or more specified sporting events; and
- (ii) the identified visa holder or applicant is not a player, a coach or an instructor in relation to an Australian sporting team or sporting organisation; or
- (b) the Minister is satisfied that:**
- (i) the person and the identified visa holder or applicant have entered into a formal arrangement that provides for the identified visa holder or applicant to be a player, a coach or an instructor in relation to an Australian sporting team or sporting organisation; and
 - (ii) the formal arrangement specifies the period during which the identified visa holder or applicant will be a player, a coach or an instructor in relation to the Australian team or organisation; and
 - (iii) the arrangement will be of benefit to the sport in Australia; and
 - (iv) the identified visa holder or applicant has an established reputation in the field of sport; and
 - (v) the person has provided a letter of endorsement from the national sporting body responsible for administering the sport in Australia, certifying that:
 - (A) the identified visa holder or applicant has the ability to play, coach or instruct at the Australian national level; and
 - (B) the participation of the identified visa holder or applicant in the sport in Australia would benefit the sport in Australia by raising the standard of competition; or
 - (c) the Minister is satisfied that the identified visa holder or applicant:
 - (i) will act as a judge or adjudicator at one or more sporting events or sporting competitions in Australia; and
 - (ii) has the appropriate experience and skills to perform that role.

In making my decision I have referred to the department's Procedures Advice Manual (PAM3).

PAM3 STATES:

Additional employment

When assessing a nomination for a contracted player, coach or instructor, officers must be mindful that the nominee will not be permitted to undertake additional employment such as bar or grounds work to supplement the income they derive from their sporting activities. Nor are they permitted to undertake employment with another employer who is neither their sponsor nor the employer(s) specified in the nomination. Sportspersons with an international reputation should not require additional employment outside their sport.

The nominee is allowed to play or work only for their sponsoring or employing club and must be able to support themselves and any dependents through their sporting activities for the period of their stay in Australia. However, they may undertake incidental employment for their sponsor or employer provided it is related to the primary purpose of stay, such as coaching juniors, and it is not the main source of income.

Evidence

In support of the nomination application the sponsor, [REDACTED] submitted a copy of the nominee's offer to [REDACTED]. Relevant parts of the offer include:

- ~ ... to offer you a [REDACTED]
- ~ Your tenure will commence on [REDACTED]
- ~ [REDACTED] will assist in securing employment for you while you are [REDACTED]
- ~ [REDACTED] to ensure that you can take care of any expenses that you might incur...

Reasons for decision

Under migration law, the Minister must approve a nomination by a person who is a sponsor if the prescribed criteria are satisfied. The prescribed criteria for approval of a nomination are set out in regulation/s 2.72J(4) of the Regulations.

Assessment against clause 2.72J(4)(b)

Clause 2.72J(4)(b) requires that there must be a formal arrangement, under policy, the agreement should specify the level of remuneration (this may include payments in kind such as accommodation, meals, transport). If the position is a volunteer one, this needs to be specified in the contract, along with details of any type of support the organisation will be providing to the applicant (for example, accommodation, reimbursement of expenses).

Policy states a [REDACTED] will only undertake work for the sponsoring employer, although incidental employment, provided it is related to the primary purpose of stay (for example [REDACTED] may be undertaken.

[REDACTED] has a sponsorship obligation to ensure that the person they are nominating participates only in the occupation, program or activity for which they have been nominated.

Based on the evidence provided, I find that there is a formal arrangement in place. However, the arrangement specifically states [REDACTED] will assist in securing employment for you while you are [REDACTED] (which is not related to the primary purpose of stay).

This is contrary to the policy intention of the [REDACTED], which requires that the [REDACTED] is only permitted to work for the sponsoring [REDACTED] in their proposed [REDACTED]

[REDACTED] claims to be a [REDACTED] with an international reputation and should expect to be remunerated accordingly; therefore he should not require additional employment or be expected to work outside their [REDACTED] therefore Regulation 2.72J(4)(b) is not met.

Decision

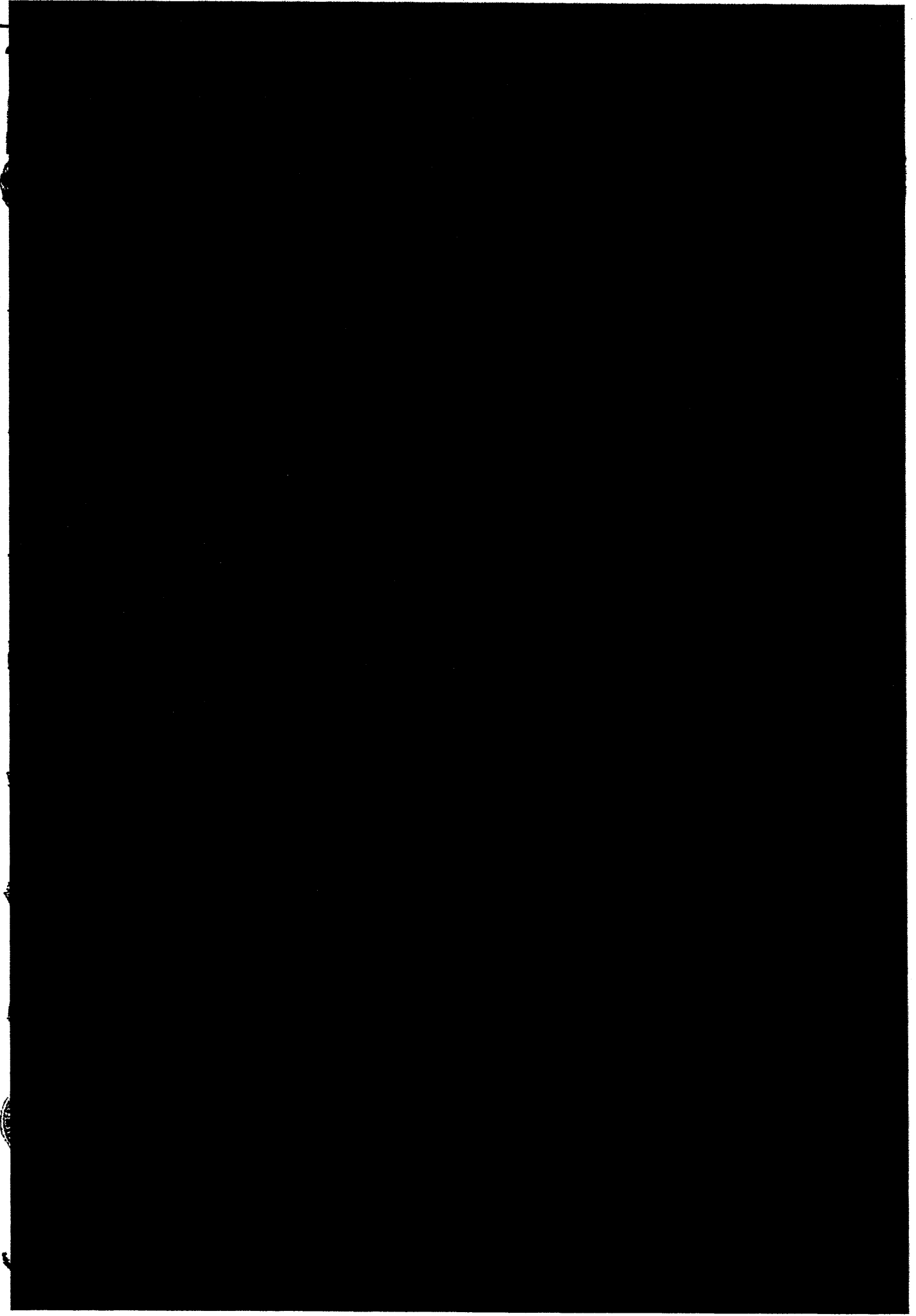
Under sections 140GB(2) a nomination application must satisfy the prescribed criteria in order to be approved. The prescribed criteria are set out in regulation/s2.72J(4).

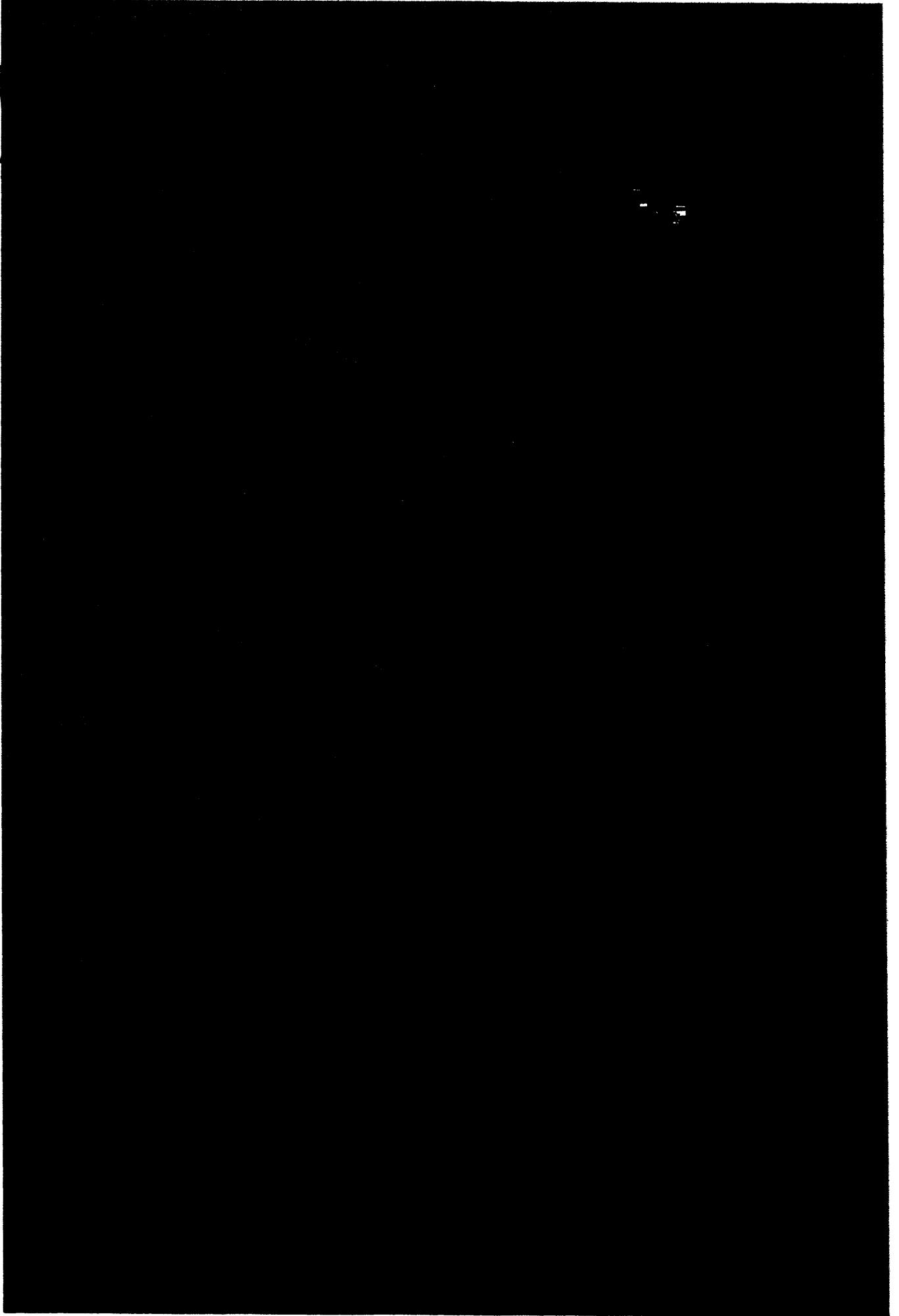
An applicant must meet the criteria of Regulation/s 2.72J(4) for a nomination application to be approved. As the applicant does not satisfy clause 2.72J(4)(b) of the Regulations, I am not satisfied that the applicant meets the prescribed criteria for approval of nomination. I have not assessed the applicant against other criteria.

Therefore, I refuse [REDACTED] application for approval of a nomination.

[REDACTED]
Position Number: 60001086
Department of Immigration and Border Protection

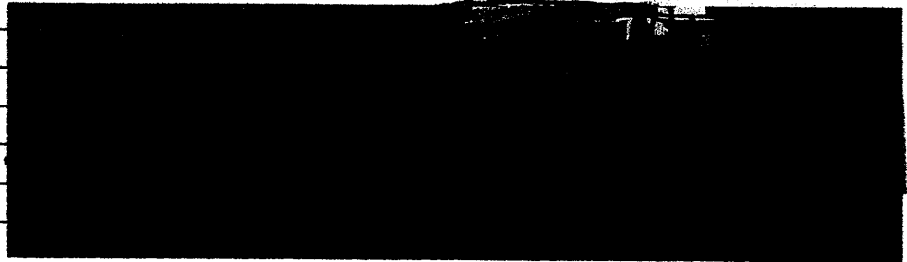
30 July 2016



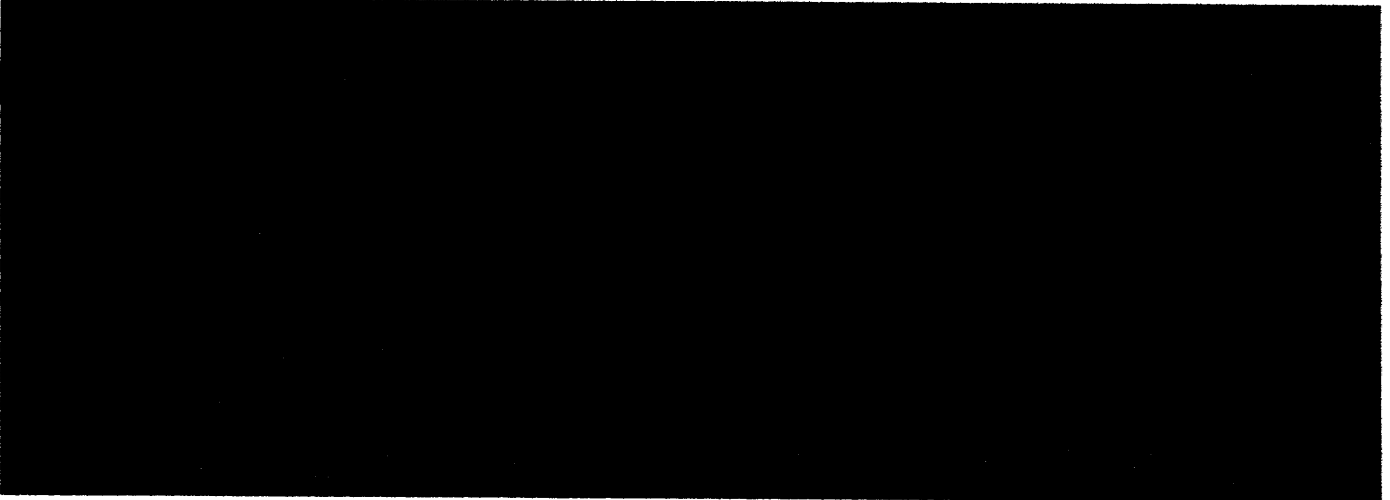


CASE SUMMARY

Name	
Date of Birth	
Gender	
ICSE ID	
Date Arrived in Australia	



IMMIGRATION HISTORY



Sensitive: Personal



Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS16-003328

To Minister for Immigration and Border Protection

Subject Possible Ministerial intervention under section 195A of the *Migration Act 1958* in relation to [REDACTED]

Received
22 SEP 2016
Minister for Immigration
and Border Protection

Timing For the attention of the Departmental Liaison Officer

Recommendation

That you:

- 1. agree to intervene under section 195A of the *Migration Act 1958* to grant [REDACTED] a Visitor visa (subclass 600) for six months, which will allow [REDACTED] to lodge a Remaining Relative visa (subclass 835) application;

intervene / decline to intervene

- if agreed, please sign the section 195A decision documents at Attachment A.

Minister for Immigration and Border Protection

Signature.....*[Handwritten Signature]*.....

Date: 07/10/2016

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 11 August 2016, you indicated you were inclined to consider intervening under section 195A of the *Migration Act 1958* (The Act) to grant [REDACTED] a Visitor visa (subclass 600) for six months, which will allow [REDACTED] to lodge a Remaining Relative visa (subclass 835) application. Submission MS16-001984 at **Attachment B** refers.
2. [REDACTED] a [REDACTED] year old national of [REDACTED] arrived in Australia as the holder of a Tourist visa (subclass 676), which was cancelled upon arrival. [REDACTED] Tourist visa (subclass 676) cancellation decision was overturned by the Full Federal Court, however as [REDACTED] visa had already expired, it was deemed to have no impact on [REDACTED] immigration status.
3. On [REDACTED] [REDACTED] lodged a complaint with the United Nations Committee Against Torture (UNCAT). On [REDACTED] UNCAT issued an Interim Measures Request, requesting [REDACTED] not be removed from Australia while [REDACTED] complaint is being considered.
4. An International Health and Medical Services (IHMS) report, dated [REDACTED] [REDACTED] advises that [REDACTED] has been [REDACTED] and recommends [REDACTED] be released from detention and placed in the community.
5. [REDACTED] has an Australia citizen [REDACTED] and his [REDACTED] are Australian permanent residents.
6. As [REDACTED] has not been immigration cleared, [REDACTED] is not an *eligible non-citizen* and the Department is unable to grant [REDACTED] a visa.
7. This second stage submission is being referred to you for your final decision in the case of [REDACTED]

Background

8. [REDACTED] circumstances are outlined in submission MS16-001984. There have been no changes in [REDACTED] circumstances since your decision on 11 August 2016.

Ministerial intervention under section 195A

9. If you agree to intervene in [REDACTED] your non-compellable power under section 195A is enlivened in [REDACTED] case as [REDACTED] in immigration detention.

Visitor visa (subclass 600)

10. Should you intervene under section 195A of the Act to grant [REDACTED] a Visitor visa (subclass 600), [REDACTED] will be permitted to reside lawfully in the community for six months and [REDACTED] will have the ability to lodge a Remaining Relative visa (subclass 835) application. [REDACTED] Remaining Relative visa (subclass 835) application will be assessed through the normal departmental process and [REDACTED] will be required to meet the criteria for the grant, including paying the VAC of \$5,935.

11. As the holder of a Visitor visa (subclass 600), [REDACTED] would not be eligible for subsidised health care through Medicare and would not be eligible for any Centrelink assistance. The Department recommends that [REDACTED] Visitor visa (subclass 600) be granted with permission to work, should [REDACTED] have the need.

12. If you agree to intervene under section 195A of the Act to grant [REDACTED] a Visitor visa (subclass 600) for a period of six months, please sign the decision documentation at **Attachment A**.

Decline to consider

13. Should you decline to intervene in [REDACTED] case under section 195A of the Act, [REDACTED] will remain in held detention pending the resolution of [REDACTED] UN complaint.

Consultation – internal/external

14. NSW Case Management

Consultation – Secretary/Commissioner

15. This submission did not involve consultation with the Department's Secretary or the Commissioner of the Australian Border Force.

Client service implications

16. There are minimal client service implications.

Sensitivities

17. Not applicable.

Financial/systems/legislation/deregulation implications

18. The Department is unable to provide specific details regarding the financial implications of managing [REDACTED] either in the community or in detention. However, in general terms, the cost of held detention on the mainland can be between \$250,000 and \$320,000 per person per annum, whereas a BVE is estimated between \$35,000 and \$40,000 per person per annum. Importantly, the Department notes that all costings above are highly dependent on the individual's circumstances, including the level of support required.

Attachments

Attachment A Section 195A decision documentation

Attachment B MS16-001984

Authorising Officer
Cleared by:
Dora Chin-Tan Assistant Secretary Caseload Assurance Branch
25/08/2016 Ph: [REDACTED]

Contact Officer Chris De Ruyter, Director, Complex Case Resolution Section, Ph: [REDACTED]

CC Regional Director, NSW/ACT
NSW Case Management

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to this person's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant this person a Visitor visa (subclass 600) for a period of six months.



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

07/19 2016

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- DECISION INSTRUMENT -

Name:
Date of birth:
Client ID:



1. The above person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant this person a Visitor visa (subclass 600) for a period of six months.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) for a period of six months in favour of this person.

A handwritten signature in black ink, appearing to read 'Peter Dutton'.

THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

07/10/2016

Sensitive: Personal



Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS16-001984

To **Minister for Immigration and Border Protection**

Subject **Possible Ministerial intervention under section 195A of the Migration Act 1958 in relation to** [REDACTED]

Timing *Not applicable, however* [REDACTED] *is in held immigration detention.*

Recommendations

That you:

1. indicate whether you are inclined to consider intervening under section 195A of the *Migration Act 1958* to grant [REDACTED] a Visitor visa (subclass 600) for a period of six months, which will allow [REDACTED] to lodge a Remaining Relative visa (subclass 835) application;

consider / not consider

- if agreed, the Department will refer a further submission for your final decision.

OR

2. indicate whether you are inclined to consider intervening under section 195A of the *Migration Act 1958* to grant [REDACTED] a Bridging E visa (subclass 050) for a period of six months;

consider / not consider

- if agreed, please indicate whether you wish to impose condition 8101 - *the holder must not engage in work*;

impose / not impose

- if agreed, the Department will refer a further submission for your final decision.

Minister for Immigration and Border Protection

Signature *[Handwritten Signature]*

Date: 11 / 09 / 2016

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. [redacted] year old national of [redacted] initially arrived in Australia on [redacted] on a Tourist visa (subclass 676). When [redacted] returned to Australia on [redacted] his visa was cancelled upon arrival as [redacted] was found not to be a genuine visitor.
2. On [redacted] [redacted] lodged an application for a Protection visa (subclass 866) (PV). The Department refused [redacted] application on [redacted] and [redacted] sought merits and judicial review of the decision. [redacted] a former Minister intervened under section 195A of the *Migration Act 1958* (the Act), to grant [redacted] Bridging E visa (subclass 050) (BVE) while the judicial review of [redacted] PV decision was progressing.
3. The PV refusal decision was affirmed by the High Court on [redacted], and on [redacted] BVE expired and [redacted] was detained and placed at [redacted] where [redacted] remains. In total, [redacted] has spent over [redacted] and [redacted] in immigration detention.
4. On [redacted] [redacted] lodged a complaint with the United Nations Committee Against Torture (UNCAT) in relation to the persecution [redacted] would receive by the [redacted] if [redacted] was returned [redacted]. On [redacted], an Interim Measures Request (IMR) was issued by the UNCAT, requesting [redacted] not be removed from Australia while [redacted] complaint is being considered.
5. [redacted] has been [redacted] and an International Health and Medical Services (IHMS) report, dated [redacted] advises that [redacted] should be released into the community.
6. [redacted] has an Australian citizen [redacted] and [redacted] are Australian permanent residents. [redacted] has requested [redacted] be released to assist in the care of [redacted] advocacy group, [redacted] has also received significant support from [redacted]

Sensitive: Personal

7. As [REDACTED] has not been immigration cleared, [REDACTED] is not an *eligible non-citizen* as defined in section 72 of the Act and the Department is unable to grant [REDACTED] a visa.
8. [REDACTED] case is being referred to you for your consideration under section 195A of the Act, due to the IMR issued by UNCAT, [REDACTED] mental health and [REDACTED] Australian family links.

Background

Immigration history

9. As discussed above, [REDACTED] had his Tourist visa (subclass 676) cancelled on arrival on [REDACTED]. The Full Federal Court over-turned the cancellation decision on [REDACTED] however since [REDACTED] Tourist visa had naturally expired on [REDACTED] this decision was deemed to have no impact on [REDACTED] immigration status.
10. [REDACTED] was found not to be owed protection on [REDACTED] and this decision was affirmed by merits and judicial review.
11. [REDACTED] was granted a BVE on [REDACTED] and remained in the community until [REDACTED] when [REDACTED] was re-detained following the expiration of [REDACTED] last BVE.
12. [REDACTED] has no ongoing matters before the Department or courts. However, on [REDACTED] the UNCAT issued an IMR requesting that [REDACTED] not be removed from Australia, until [REDACTED] complaint has been finalised.
13. [REDACTED] complaint to the UNCAT centres on claims that, in [REDACTED] previous work with the [REDACTED], [REDACTED] was required to work in [REDACTED] of the [REDACTED]. [REDACTED] claims that the [REDACTED] believe he is a [REDACTED] and that he can no longer return to [REDACTED].
14. The Department provided a response to the UN complaint on [REDACTED] however there is no timeframe for when [REDACTED] complaint will be considered.
15. An immigration history for [REDACTED] is at Attachment A for your reference.

Health

16. An IHMS report, dated [REDACTED] indicates that [REDACTED] has significant mental health issues. [REDACTED] has been [REDACTED] [REDACTED] which is when [REDACTED].
17. IHMS advise that [REDACTED] is compliant with [REDACTED] and that this has [REDACTED].
18. Advice from IHMS indicates that [REDACTED] is not a significant risk to [REDACTED] or others. If you agree to place [REDACTED] in the community, [REDACTED] will be referred [REDACTED] and [REDACTED].
19. A copy of the IHMS report is at Attachment B for your reference.

Sensitive: Personal

Family and community links

20. [redacted] has an Australian citizen [redacted] and [redacted] and [redacted] are Australian permanent residents. [redacted] was granted a Contributory Parent visa (subclass 143) on [redacted] and [redacted] was granted a Parent visa (subclass 103) on 7 July 2016, with [redacted] as the sponsoring family member for both applications.

21. On [redacted] advised the Department that [redacted]

22. [redacted] has requested [redacted] be released to [redacted] and [redacted]

23. [redacted] has provided a letter of support for [redacted] to be released. A copy of this letter and a [redacted] is at Attachment D for your reference.

24. [redacted] has received significant support from [redacted] who regularly visits [redacted]

25. [redacted] claims to have no remaining family in [redacted] and if he were removed [redacted] would not have any family remaining in [redacted] to support [redacted]

Character, security and identity

26. On [redacted] prior to [redacted] arrival in Australia, [redacted] made an allegation to departmental officers [redacted] that [redacted] had [redacted] No movement record or visa grants for the [redacted] are reflected on departmental systems and an Interpol check on [redacted] produced a clear result for [redacted]

27. Further, on [redacted] advised the Department that [redacted] had been [redacted] and to date [redacted] does not know the whereabouts of [redacted]. The Department has been unable to confirm any details in relation to [redacted] or [redacted]

28. [redacted] has been in [redacted] incident in detention, when [redacted] was monitored and no further action was taken.

29. [redacted] has no known criminal history, onshore or offshore, and there is no information before the Department to suggest that [redacted] presents a risk to the Australian community. It is noted that [redacted] resided in the community from [redacted] without incident.

30. Departmental systems indicate that there are no security concerns in relation to [redacted]. As a [redacted] referral for a [redacted] security check is not required.

31. [redacted] identity has been conclusively established in accordance with the *Procedures Advice Manual 3 – Established Identity in the Field and in Detention*. [redacted] holds a [redacted] passport valid until [redacted] and [redacted] representatives at [redacted] have [redacted]

Sensitive: Personal

refused to provide the Department with [REDACTED] passport, however they have provided the Department with a copy for records.

Options for Future management

32. Given [REDACTED] Australian family links and barriers to removal, you may consider it in the public interest to use your Ministerial intervention powers under section 195A of the Act.

Ministerial intervention under section 195A***Visitor visa (subclass 600)***

33. Given [REDACTED] immediate family are Australian citizens or permanent residents, it would be open to [REDACTED] to lodge a remaining Relative visa (subclass 835) application. In order to lodge a valid application, as [REDACTED] is not an *eligible non-citizen* as per section 72, [REDACTED] needs to be granted a substantive visa. You may consider it appropriate to intervene under section 195A of the Act to grant [REDACTED] a Visitor visa (subclass 600).

34. Should [REDACTED] lodge a Remaining Relative visa (subclass 835) application, it would be assessed through regular departmental processes. The Department notes that [REDACTED] would be required to meet health, character, identity and security requirements, and would be required to pay the visa application charge of \$3870. It would also be open to [REDACTED] to explore other onshore options during the validity period of [REDACTED] visitor visa.

35. As the holder of a Visitor visa, [REDACTED] would not be eligible for subsidised health care through Medicare and would not be eligible for any Centrelink assistance.

36. Should you be inclined to consider intervening in [REDACTED] case to grant [REDACTED] a Visitor visa, the Department will refer a further submission for your final decision.

Bridging E visa (subclass 050)

37. If you are inclined to consider intervening in [REDACTED] case, to allow [REDACTED] to reside lawfully in the community while his UN complaint is being finalised, the Department considers the grant of a BVE for a period of six months to be the most appropriate.

38. As the holder of a BVE, [REDACTED] would be given permission to work, access to Medicare and may be eligible to receive support through the Status Resolution Support Services programme should [REDACTED] require it.

39. Should you be inclined to consider intervening to grant [REDACTED] a BVE, it is open to you to impose condition 8101 *'the holder must not engage in work'*. [REDACTED] would be ineligible to work and would be required to be supported by [REDACTED] family.

40. If you do not impose Condition 8101, [REDACTED] would be eligible to work and would be able to support [REDACTED] family. However, it is noted that this could also increase [REDACTED] integration into the Australian community.

41. If granted a BVE, [REDACTED] would be required to abide by the associated conditions, which broadly cover reporting and behaviour. Should [REDACTED] breach [REDACTED] visa conditions, [REDACTED] would be liable for consideration of discretionary visa cancellation under section 116 of the Act.

Sensitive: Personal

42. If you are inclined to consider intervening under section 195A of the Act to grant [REDACTED] a BVE, the Department will refer a further submission to you for your consideration.

Decline to consider

43. If you are not inclined to intervene, [REDACTED] will remain in held immigration detention pending the resolution of [REDACTED] UN complaint. [REDACTED] detention placement will continue to be reviewed on a regular basis, including management [REDACTED]

44. The Department notes that should you not be inclined to intervene in [REDACTED] case, [REDACTED] will remain in immigration detention, which may illicit negative responses from [REDACTED] community support, in particular [REDACTED]

Offshore pathway

45. Should you decline to consider intervening in [REDACTED] case, under section 195A of the Act, [REDACTED] would have a viable offshore pathway and would be eligible to apply for a Remaining Relative visa (subclass 115). [REDACTED] would be required to pay the application charge, which is currently \$3870.

46. As [REDACTED] is currently in detention, if [REDACTED] were to be removed, [REDACTED] may be excluded from applying for a visa offshore, for a period of three years, by Public Interest Criteria (PIC) 4014. It is open to [REDACTED] to request a waiver of PIC 4014.

Consultation – internal/external

47. NSW Case Management, Detention Health.

Consultation – Secretary/Commissioner

48. This submission did not involve consultation with the Department's Secretary or Deputy Secretaries, or the Australian Border Force Commissioner or Deputy Commissioners.

Client service implications

49. There are minimal client service implications.

Sensitivities

50. [REDACTED] is an IAA who has significant [REDACTED] Australian citizen family, community support from [REDACTED] and barriers to removal.

Financial/systems/legislation/deregulation implications

51. The Department is unable to provide specific details regarding the financial implications of managing [REDACTED] either in the community or in detention. However, in general terms, the cost of held detention on the mainland can be between \$250,000 and \$320,000 per person per annum, whereas a BVE is estimated between \$35,000 and \$40,000 per person per annum. Importantly, the Department notes that all costings above are highly dependent on the individual's circumstances, including the level of support required.

Sensitive: Personal

Attachments

Attachment A Immigration history

Attachment B IHMS report

Attachment C [REDACTED]

Attachment D Letter of support from [REDACTED]

Authorising Officer
Cleared by: Dora Chin-Tan Assistant Secretary Status Resolution Branch Date: 25/07/2016 Ph: [REDACTED]

Contact Officer Christopher De Ruyter, Director, Complex Case Resolution Section, Ph: [REDACTED]

CC Regional Director, NSW/ACT
NSW Case Management

CASE SUMMARY – Mr Zheng WANG

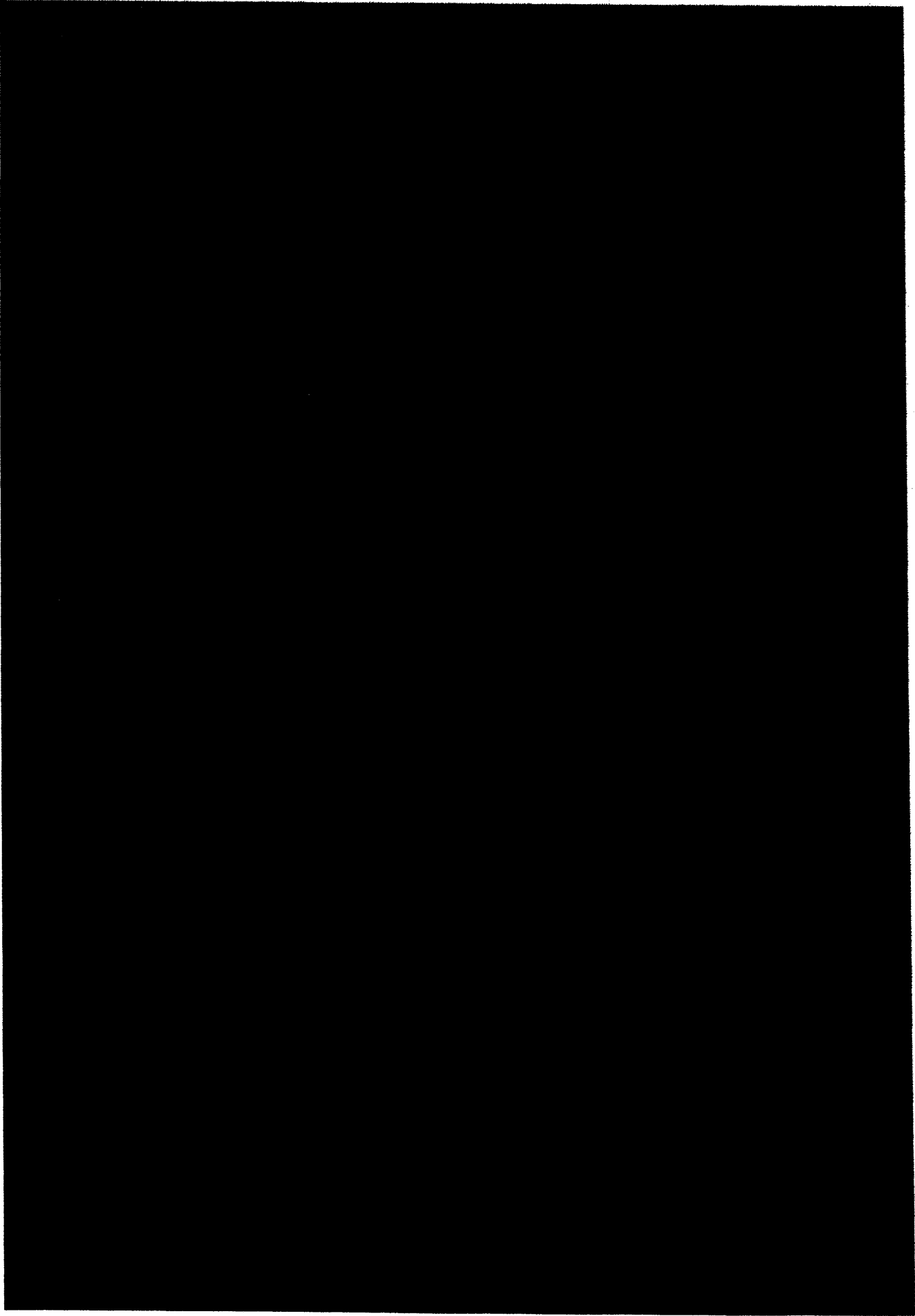
Name	[REDACTED]
Date of Birth	[REDACTED]
Citizenship	[REDACTED]
Gender	[REDACTED]
ICSE ID	[REDACTED]
Date Arrived in Australia	[REDACTED]
Date Detained	[REDACTED]
Current Location	[REDACTED]

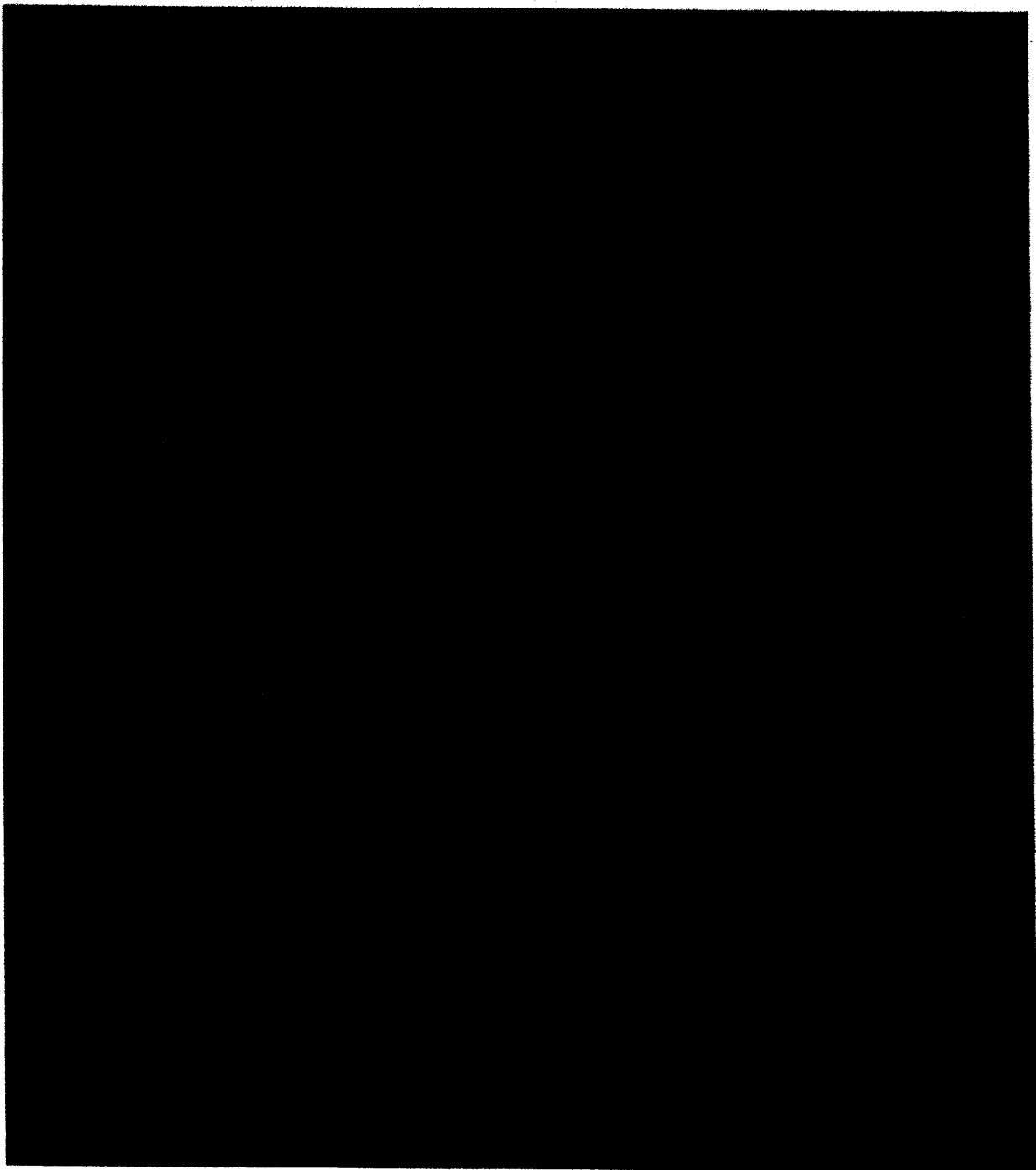
IMMIGRATION HISTORY:

Date	Event
[REDACTED]	[REDACTED] arrived in Australia on a Tourist visa (subclass 676).
[REDACTED]	[REDACTED] departed Australia.
[REDACTED]	[REDACTED] arrived in Australia on a Tourist visa (subclass 676), which was cancelled upon arrival and [REDACTED] was detained.
[REDACTED]	[REDACTED] lodged an application for a Protection visa (subclass 866) (PV).
[REDACTED]	[REDACTED] sought review of the cancellation decision at the Federal Magistrates Court (FMC).
[REDACTED]	The Department refused [REDACTED] PV application.
[REDACTED]	[REDACTED] sought review of the PV refusal at the Refugee Review Tribunal (RRT).
[REDACTED]	FMC affirmed the cancellation decision.
[REDACTED]	[REDACTED] sought review of the cancellation decision at the Full Federal Court (FFC).
[REDACTED]	FFC affirmed the cancellation decision.
[REDACTED]	[REDACTED] sought review of the cancellation decision at the High Court (HC).
[REDACTED]	The RRT affirmed the PV refusal decision.
[REDACTED]	[REDACTED] sought review of the RRT decision at the FMC.
[REDACTED]	The Minister intervened under section 195A of the Act and granted [REDACTED] a Bridging E visa (subclass 050) (BVE), with an expiry date of [REDACTED]. The Minister declined to intervene under section 197AB of the Act. [REDACTED] was released from detention.
[REDACTED]	The Minister withdrew from proceedings in the FMC and the case was remitted back to the RRT.
[REDACTED]	The Minister withdrew from proceedings in the HC and the case was remitted back to the FFC.
[REDACTED]	The RRT affirmed the PV refusal decision for a second time.
[REDACTED]	[REDACTED] sought review of the RRT decision at the Federal Circuit Court (FCC).
[REDACTED]	The Minister intervened under section 195A of the Act and granted [REDACTED] a BVE, with an expiry date of [REDACTED].
[REDACTED]	The FFC reversed the cancellation decision and reinstated [REDACTED] Tourist visa (subclass 676), which had already expired.
[REDACTED]	The Minister intervened under section 195A of the Act and granted [REDACTED] a BVE, with an expiry date of [REDACTED].

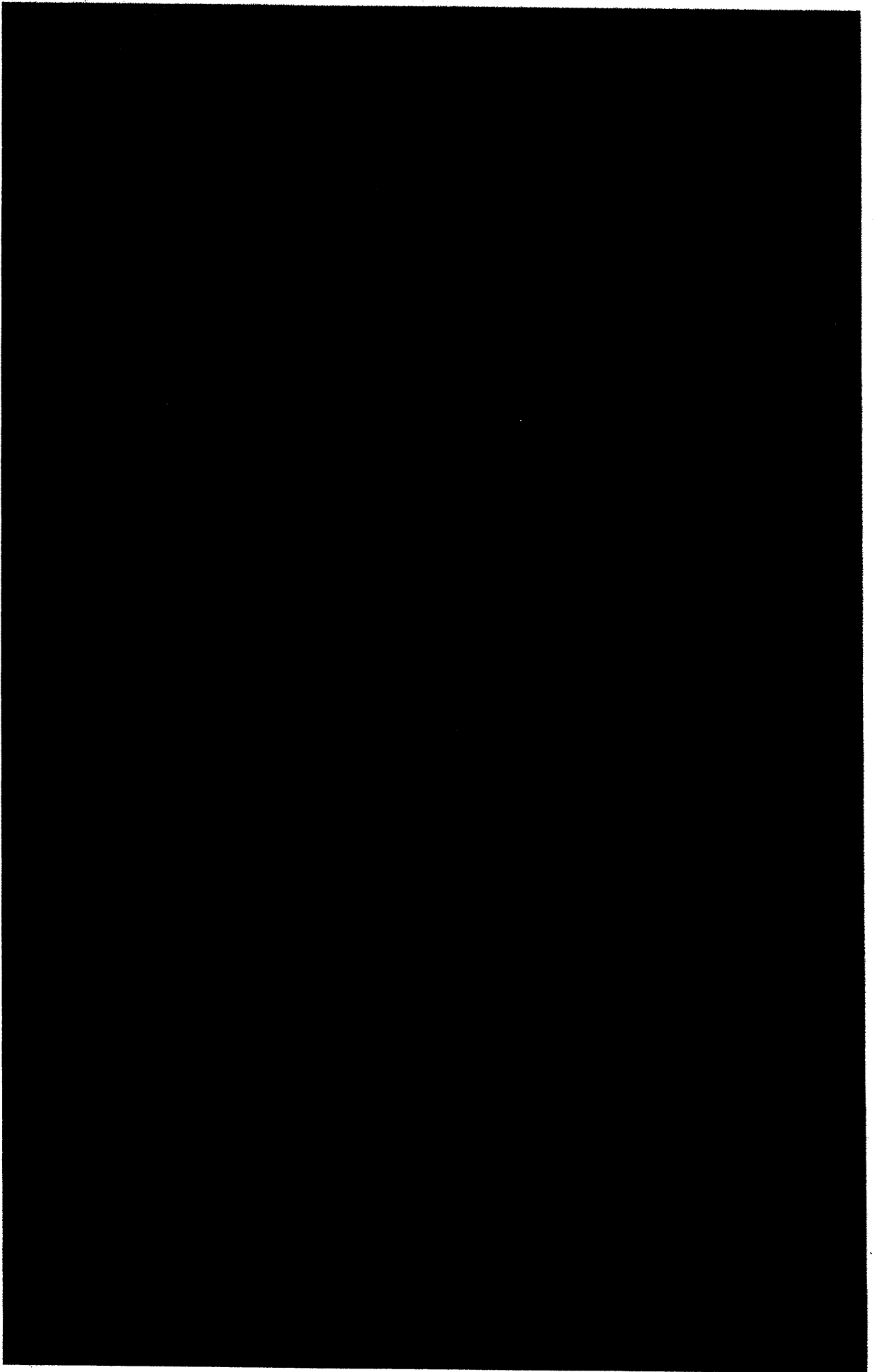
Attachment A

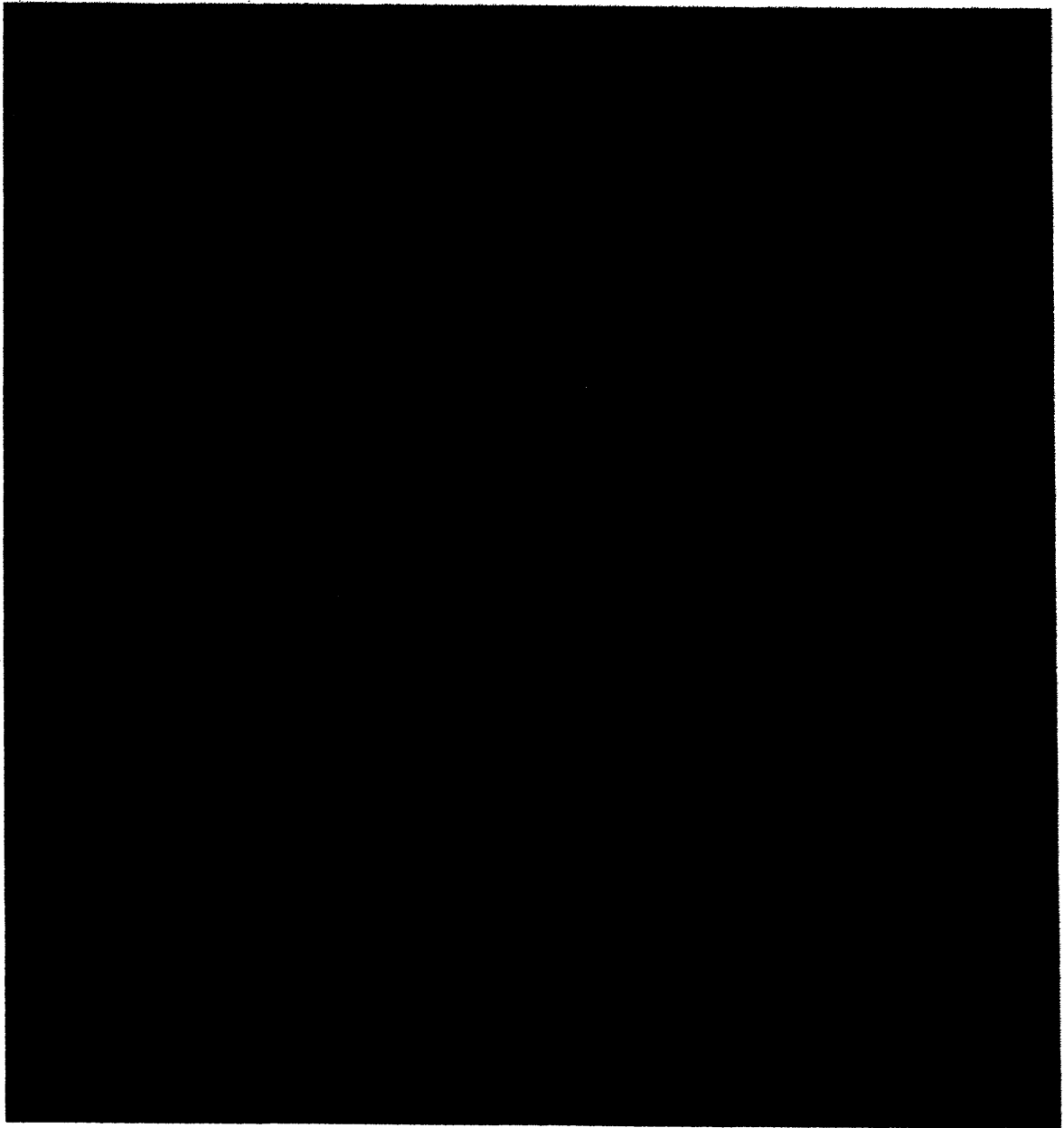
	<p> BVE expired and [REDACTED] became unlawful. The FFC affirmed the RRT decision. [REDACTED] sought review of the FCC decision at the FFC. The FFC affirmed the FCC decision. [REDACTED] sought review of the FMC decision at the HC. The Minister declined to consider [REDACTED] case under section 417 of the Act. The Minister intervened under section 195A of the Act and granted [REDACTED] a BVE, with an expiry date of 18/03/2015. The HC affirmed the FMC decision. [REDACTED] was located and placed in immigration detention. The United Nations issues an Interim Measures Request, preventing [REDACTED] removal from Australia. [REDACTED] case did not meet guidelines for referral to the Minister under section 417 of the Act. </p>
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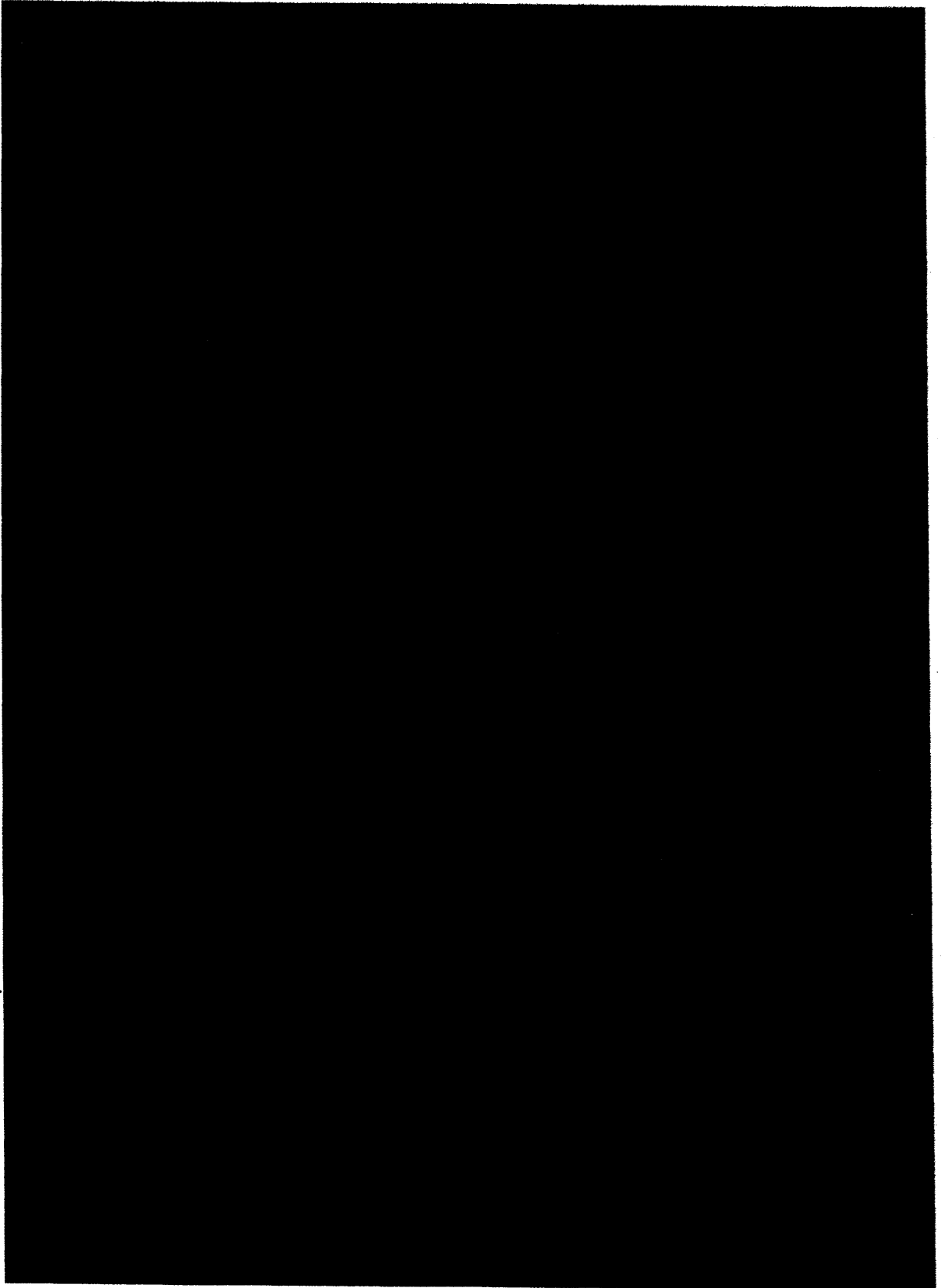


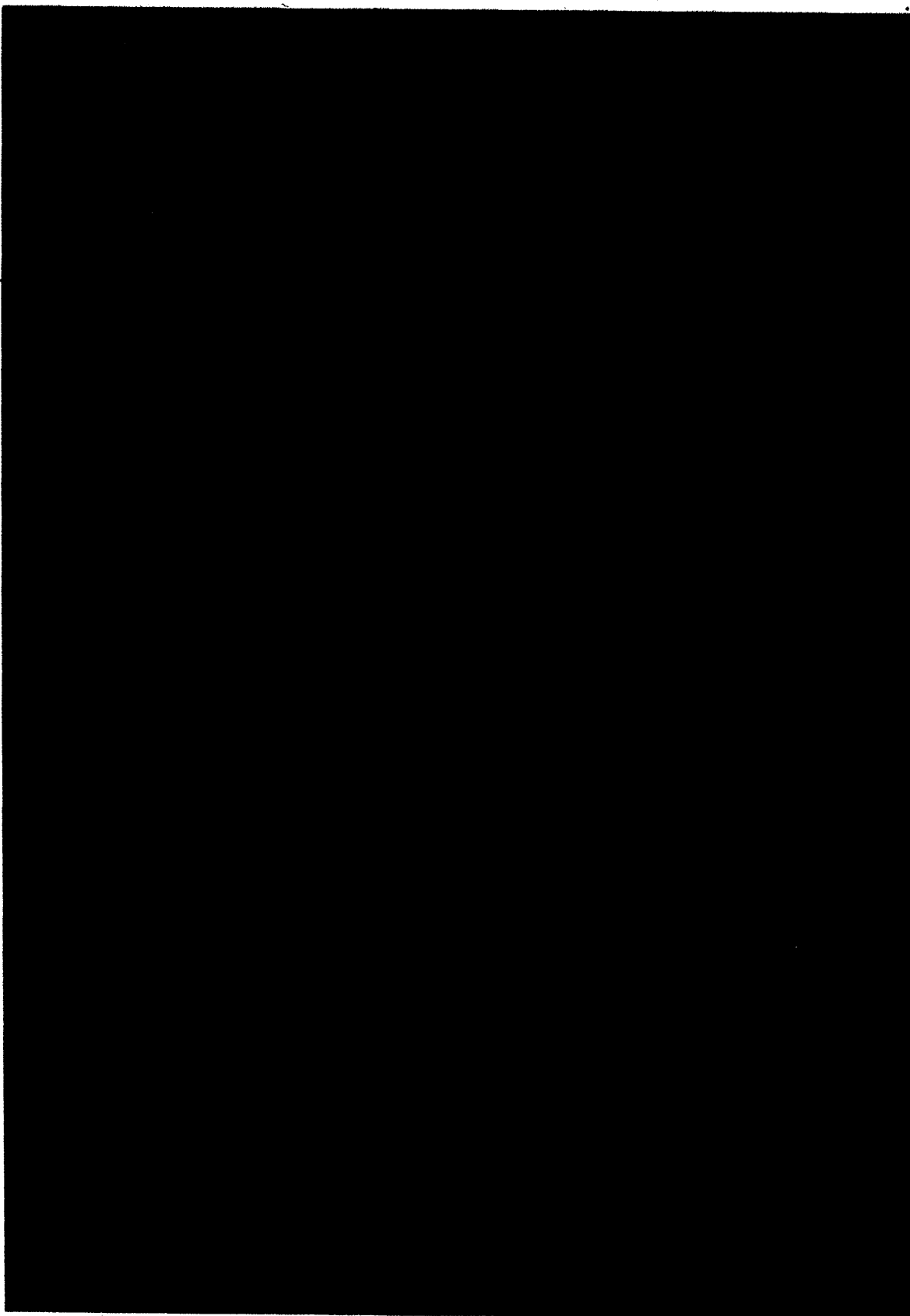


Confidential











Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS16-004797

To Minister for Immigration and Border Protection

Subject Possible Ministerial intervention under section 195A of the *Migration Act 1958* in relation to [REDACTED]
[REDACTED]

Timing As arranged with the Departmental Liaison Officers. [REDACTED] is residing in the community.

Recommendation

That you:

1. agree to intervene under section 195A of the *Migration Act 1958* to grant [REDACTED] a Visitor visa (subclass 600) for six months with permission to work;

intervene / decline to
intervene

- if agreed, please sign the section 195A decision documentation at Attachment A.

Minister for Immigration and Border Protection

Signature.....

Date: 08/02/2017

Document 11
Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 12 December 2016, you indicated that you were inclined to consider intervening under section 195A of the *Migration Act 1958* (the Act) to grant [REDACTED] a Visitor visa (subclass 600) for a period of six months with permission to work (submission MS16-001842 at **Attachment B** refers).
2. [REDACTED] of which he spent the majority of this time residing unlawfully in the community. [REDACTED] has significant links to the Australian community through [REDACTED]. [REDACTED] has no viable onshore visa pathway.
3. This second stage submission is being referred to you for your final decision.

Background

4. [REDACTED] circumstances are outlined in previous submission MS16-001842. There has been no change in his circumstances since your decision on 12 December 2016.

Options for Future Management

5. Given [REDACTED] significant links to the Australian community, the length of time he has remained in Australia and no viable onshore visa pathway available to resolve his case, you may consider it in the public interest to grant him a visa under section 195A of the Act.

Ministerial intervention under section 195A

Visitor visa (subclass 600)

6. Should you be inclined to intervene under section 195A of the Act to grant [REDACTED] a Visitor visa (subclass 600), this would allow him to remain in Australia for six months and will allow him to apply for a Partner (combined) visa (subclass 820/801). [REDACTED] Partner (combined) visa (subclass 820/801) visa application will be assessed through the normal departmental processes.

Sensitive: Personal

7. As the holder of a Visitor visa (subclass 600), [REDACTED] would not be eligible for Government assistance and he would be expected to pay for all his living and medical expenses. The Department recommends that [REDACTED] Visitor visa (subclass 600) be granted with permission to work to allow him to work and save for the visa application charge of the Partner (combined) visa (subclass 820/801).

8. If you agree to intervene under section 195A of the Act in [REDACTED] case, please sign the decision documentation at Attachment A.

Decline to intervene

9. If you are not inclined to intervene in this case, [REDACTED] will remain lawful in the community until his BVE expires. Following the expiry of [REDACTED] BVE, given he has no ongoing processes before the Department or the Courts he would be expected to make arrangements to depart Australia.

Consultation – internal/external

10. Not applicable.

Consultation – Secretary/Commissioner

11. This submission did not involve consultation with the Department’s Secretary or Deputy Secretaries, or the Australian Border Force Commissioner or Deputy Commissioners.

Client service implications

12. There are minimal client service implications.

Sensitivities

13. [REDACTED] has significant links to the Australian community and it is likely that his detention and possible removal from Australia will cause [REDACTED] emotional harm. Further, this case may be subject to public scrutiny from external review bodies and possible media interest.

Financial/systems/legislation/deregulation implications

14. Not applicable.

Attachments

Attachment A Section 195A decision documentation

Attachment B MS16-001842

Authorising Officer
Cleared by: Dora Chin-Tan Assistant Secretary Status Resolution Branch Date: 19/12/2016 Ph: [REDACTED]

Contact Officer Christopher De Ruyter, Director, Complex Case Resolution Section, Ph: [REDACTED]

CC Regional Director, QLD
Deputy State Director, QLD Status Resolution
QLD Community Status Resolution Officer

EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958*

- DECISION INSTRUMENT -

Name:

Date of Birth:

Client ID:



1. The above person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant this person a Visitor visa (subclass 600) for a period of six months.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) for a period of six months in favour of this person.

A handwritten signature in black ink, appearing to read 'Peter Dutton'.

THE HON PETER DUTTON MP

Minister for Immigration and Border Protection

08/02/2017

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to this person's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant this person a Visitor visa (subclass 600) for a period of six months.



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

08/04/2017

Sensitive: Personal



Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS16-001842

To Minister for Immigration and Border Protection
Subject Possible Ministerial intervention under section 195A of the
Migration Act 1958 in relation to [REDACTED]

Timing Not applicable.

Recommendation

That you:

1. indicate whether you are inclined to consider intervening under section 195A of the *Migration Act 1958* to grant [REDACTED] a Visitor visa (subclass 600) for six months with permission to work;
- if agreed, the Department will refer a further submission for your decision.

consider / not consider

Minister for Immigration and Border Protection

Signature

Date: 12/12/2016

Received
16 NOV 2016
Minister for Immigration
and Border Protection

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. [REDACTED]
[REDACTED] Departmental information confirms that a person with [REDACTED]
The Department notes [REDACTED] has remained in Australia since this time.
2. In March 2014, [REDACTED] voluntarily presented to the Department to resolve his immigration status. An [REDACTED] assessment was conducted in September 2015 and concluded that [REDACTED] was not taken to hold an [REDACTED] on 1 September 1994. Consequently, [REDACTED] has remained in Australia as an unlawful non-citizen. [REDACTED] is currently residing lawfully in the community as the holder of a Bridging E visa (subclass 050).
3. In 1990, [REDACTED] They have [REDACTED] together, [REDACTED] In addition, [REDACTED] residing in Australia.
4. Given [REDACTED] length of time in Australia, strong family ties and no viable onshore visa pathway this case is being referred to you under section 195A of the *Migration Act 1958 (the Act)* for your consideration of the grant of a Visitor visa (subclass 600), which would allow [REDACTED] to lodge a valid onshore Partner (combined) visa (subclass 820/801), which can be assessed through normal departmental channels.

Background

Immigration history

5. [REDACTED] claims to have arrived in Australia on a [REDACTED] The Department notes at the time of his arrival, [REDACTED] It is noted that [REDACTED] motivation for approaching the Department related to him having issues renewing his driver's licence.

Sensitive: Personal

6. [REDACTED] has advised that he wishes to apply for a Partner (combined) visa (subclass 820/801) application however does not have the necessary funds to pay for the visa application charge. Further, as [REDACTED] does not hold a substantive visa, he would need to satisfy additional criteria, specifically, Schedule 3 criteria 3001, 3003 and 3004, unless the delegate is satisfied there are compelling reasons for not applying those criteria. [REDACTED] would need to satisfy the delegate there are 'compelling reasons' as to why the Schedule 3 criteria should not be applied. There is no guarantee [REDACTED] would meet the additional criteria.

Health, character, identity and security

7. There is no evidence of any health or character concerns in [REDACTED] case. [REDACTED] has advised that he has [REDACTED]

8. Following his arrival to Australia, [REDACTED]

9. [REDACTED] for Public Interest Criterion 4002 security checks is not required for the grant of a permanent visa. There is no information in departmental systems to suggest any security concerns in relation to [REDACTED] at this time.

Removal availability

10. [REDACTED] has cooperated with the Department in order to obtain a travel document. While [REDACTED] is on a removal pathway, the Department considers it appropriate to consider Australia's international obligations under the International Covenant on Civil and Political Rights (ICCPR) through this Ministerial intervention process given [REDACTED] significant links to [REDACTED]. [REDACTED] Should you decline to consider intervening in this case, the Department will progress [REDACTED] removal.

Links to the Australian community

11. [REDACTED]
[REDACTED] In addition, [REDACTED] claims he has no close family residing in [REDACTED]

12. Articles 17 and 23 of the ICCPR, to which Australia is a party, are relevant in this case. Article 17 states that '*no one should be subjected to arbitrary or unlawful interference with...family*'. Article 23 states that '*the family...is entitled to protection by the society and the state.*' The separation of [REDACTED] may cause emotional and financial hardship. However, the protection of the family unit under Articles 17 and 23 does not amount to a right to enter or remain in Australia where there is no other right to do so.

Sensitive: Personal

Options for Future Management

13. Given [REDACTED] significant links to the Australian community, the length of time he has remained in Australia and no viable onshore visa pathway available to resolve his case, you may consider it in the public interest to use your Ministerial intervention powers under section 195A of the Act.

Ministerial intervention under section 195A

Visitor visa (subclass 600)

14. If you are inclined to consider intervening in [REDACTED] case under section 195A of the Act, the Department considers the grant of a Visitor visa (subclass 600) to be the most appropriate temporary option. This visa would allow [REDACTED] to remain in Australia for six months and will allow him to apply for a Partner (combined) visa (subclass 820/801). [REDACTED] Partner (combined) visa (subclass 820/801) visa application will be assessed through the normal departmental processes. He will be required to meet the criteria for the grant of the Partner (combined) visa (subclass 820/801), including any sponsorship requirements and pay the visa application charge of \$6865.

15. As the holder of a Visitor visa (subclass 600), [REDACTED] would not be eligible for Government assistance and he would be expected to pay for all his living and medical expenses. The Department recommends that [REDACTED] Visitor visa (subclass 600) be granted with permission to work to allow him to work and save for the visa application charge of the Partner (combined) visa (subclass 820/801).

16. If you are inclined to consider intervening in [REDACTED] case under section 195A to grant him a Visitor visa (subclass 600), the Department will provide a further submission for your final decision.

Decline to consider

17. If you are not inclined to intervene in this case, [REDACTED] will remain lawful in the community until his BVE expires on 16 December 2016. Following the expiry of Mr Smith's BVE, given he has no ongoing processes before the Department or the Courts he would be expected to make arrangements to depart Australia.

Consultation – internal/external

18. QLD Community Status Resolution.

Consultation – Secretary/Commissioner

19. This submission did not involve consultation with the Department's Secretary or Deputy Secretaries, or the Australian Border Force Commissioner or Deputy Commissioners.

Client service implications

20. There are minimal client service implications.

Sensitive: Personal

Sensitivities

21. He has significant links to the Australian community and it is likely that his detention and possible removal from Australia will cause [REDACTED] emotional harm. Further, this case may be subject to public scrutiny from external review bodies and possible media interest.

Financial/systems/legislation/deregulation implications

22. Not applicable.

Authorising Officer
Cleared by:
Dora Chin-Tan Assistant Secretary Status Resolution Branch
Date: 16 November 2016 Ph: [REDACTED]

Contact Officer Christopher De Ruyter, Director, Complex Case Resolution Section, Ph: [REDACTED]

CC Regional Director, QLD
 Deputy State Director, QLD Status Resolution
 QLD Community Status Resolution Officer

Sensitive: Personal



Australian Government
Department of Immigration and Border Protection

Submission

For decision
PDMS Ref. Number MS17-001469

To **Minister for Immigration and Border Protection**
Subject **Possible Ministerial intervention under section 195A of the Migration Act 1958 in relation to:**



Received
- 2 MAY 2017
Minister for Immigration and Border Protection

Timing *As discussed with advisor Alex Dagleish, for signing 11 May 2017*

Recommendation

That you:

- agree to intervene under section 195A of the *Migration Act 1958* to grant the [redacted] Visitor visas (subclass 600) for a period of three years, with permission to work;
 - If agreed, please sign the section 195A decision documents at **Attachment A**.

Intervene / decline to intervene

Minister for Immigration and Border Protection

Signature *[Handwritten Signature]*

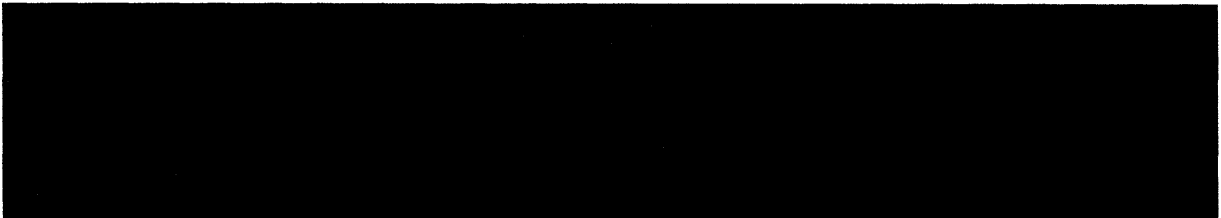
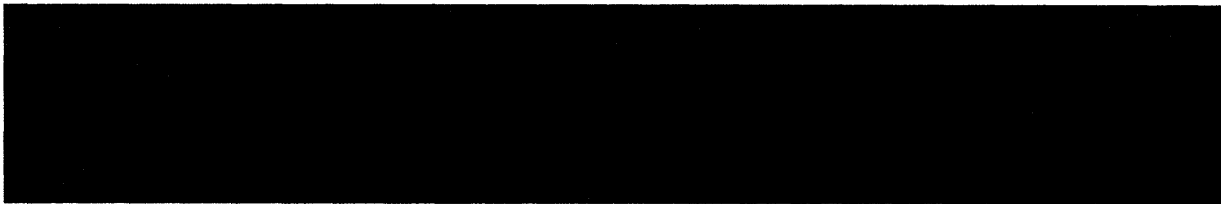
Date: *11/05*/2017

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 24 April 2017, you indicated you were inclined to consider intervening under section 195A of the *Migration Act 1958* (the Act) to grant the [REDACTED] Visitor visas (subclass 600) for a period of three years, with permission to work. Submission MS17-001419 at **Attachment B** refers.



4. Although [REDACTED] is eligible to lodge a valid [REDACTED] visa application prior to the [REDACTED] application being finalised, he is required to hold a [REDACTED] in order to meet the [REDACTED]. Should [REDACTED] lodge an [REDACTED] without the [REDACTED] he would not meet the criteria for approval of the visa application. He would also incur a financial loss of [REDACTED] which is the application charge for the [REDACTED].

5. [REDACTED] has advised that he has not completed a [REDACTED] at this time and the processing timeframes for an assessment can vary depending on the individual application, with the current approximate processing time to be 12 weeks.

6. As the holder of a [REDACTED] is not eligible to lodge a valid application for an [REDACTED] [REDACTED]s required to be the holder of a substantive visa, such as a Visitor visa (subclass 600), to be eligible to lodge a valid application for an [REDACTED].

Sensitive: Personal

7. The [redacted] case has attracted [redacted] community interest, including [redacted]

Background

[redacted]

9. On 1 February 2017, Assistant Minister for Immigration and Border Protection, the Hon Alex Hawke MP, intervened under section 351 of the Act to grant Visitor visas (subclass 600), which expired on [redacted] to enable [redacted] to make a further visa application in Australia.

10. [redacted] details are outlined in the previous submission at **Attachment B**.

Ministerial intervention under section 195A

11. If you agree to intervene in [redacted] case under section 195A, as indicated in your decision on 24 April 2017, the Department will place [redacted] into administrative immigration detention and enliven your power under section 195A of the Act. The Department will liaise closely with your office and [redacted] regarding these arrangements.

Visitor visa (subclass 600)

12. Should you intervene under section 195A of the Act to grant [redacted] Visitor visas (subclass 600), [redacted] will be permitted to reside lawfully in the community for three years and [redacted] will be eligible to lodge an application for an [redacted]

13. As the holders of Visitor visas (subclass 600), [redacted] would not be eligible for subsidised healthcare through Medicare and would not be eligible for any Centrelink assistance, however [redacted]

14. If you agree to intervene under section 195A of the Act to grant [redacted] Visitor visas (subclass 600) for a period of three years, please sign the decision documentation at **Attachment A**.

Decline to intervene

15. Should you decline to intervene in [redacted] case, [redacted] will remain lawful on [redacted] Visitor visas (subclass 600), until [redacted] expiry on 1 May 2017. After the expiry of [redacted] visas, it is open to [redacted] to apply for BVEs. The Department will continue to engage with [redacted] in relation to [redacted] immigration matters.

Consultation – internal/external

16. QLD Community Status Resolution, [redacted] Section

Sensitive: Personal

Consultation – Secretary/Commissioner

17. The Department's Secretary and the Australian Border Force Commissioner were not consulted regarding this submission.

Client service implications

18. There are minimal client service implications.

Sensitivities

19. This submission [redacted] community interest.

Financial/systems/legislation/deregulation/media implications

20. There are negligible financial, system or legislation implications for the Department.

Attachments

Attachment A Section 195A decision documents

Attachment B MS17-001419

Authorising Officer
Cleared by: Dora Chin-Tan Assistant Secretary Caseload Assurance Branch Date: 2 May 2017 Ph: [redacted]

Contact Officer: Chris De Ruyter, Director, Complex Case Resolution Section, Ph: [redacted]

CC Deputy State Director, QLD
QLD Community Status Resolution
Director, [redacted] Section

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. These persons are detained under section 189 of the Act as unlawful non-citizens.
2. Having regard to all the circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant these persons a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant these persons Visitor visas (subclass 600) for a period of three years.



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

11/05/2017

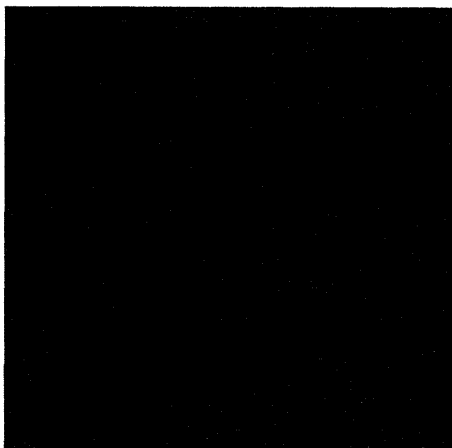
**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- DECISION INSTRUMENT -

Name:
Date of birth:
Client ID:

Name:
Date of birth:
Client ID:

Name:
Date of birth:
Client ID:



1. The above named persons are in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant the above named persons Visitor visas (subclass 600) for a period of three years.
3. I therefore exercise my power under section 195A of the Act to grant Visitor visas (subclass 600) for a period of three years in favour of the above named persons.

THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

11 / 05 / 2017



Australian Government
Department of Immigration and Border Protection

Submission

For decision
PDMS Ref. Number MS17-002730

To Minister for Immigration and Border Protection

Subject Possible Ministerial intervention under section 195A of the Migration Act 1958 in relation to:



Received
03 AUG 2017
Minister for Immigration and Border Protection

Timing Not applicable, this submission has been requested by your Office.

Recommendations

That you:

- 1. intervene under section 195A of the Migration Act 1958 to grant [redacted] Visitor visas (subclass 600) for a period of 12 months;
 - if agreed, please sign the decision documents at Attachment A.

intervene / not intervene

AND

- 2. indicate whether you are inclined to consider intervening under section 195A of the Migration Act 1958 to grant [redacted] Former Resident visas (subclass 151);
 - please indicate if health and character are required;
 - if agreed, the Department will refer a further submission for your decision.

consider / not consider

required / not required

Minister for Immigration and Border Protection

Signature

Date: 10/08/2017

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 25 July 2017, your office requested a submission in relation to [REDACTED]. The Department is referring this case to you for your consideration under section 195A of the *Migration Act 1958* (the Act), given the circumstances surrounding [REDACTED]. A copy of a client brief for the family, considered by your office is at Attachment B.

[REDACTED]

3. [REDACTED] is the holder of a Visitor visa (subclass 600), which is due to cease on 20 October 2017. A copy of their [REDACTED] is at Attachment C.

4. [REDACTED] lodged a Contributory Parent visa (subclass 143) application, sponsoring both his parents, [REDACTED] to migrate to Australia on 11 December 2015. [REDACTED] last arrival in Australia was on 10 September 2016 as holders of Visitor visas (subclass 600), which are due to cease on 10 September 2017. Upon the issuance of [REDACTED]

5. On 11 July 2017, [REDACTED] accompanied by a support person, approached the Department of Immigration and Border Protection and requested assistance. They stated an intention to remain in Australia, and were seeking access to support services and advice on the processes available to them. [REDACTED]

6. [REDACTED] first arrived in Australia on 6 April 2017 as holders of Tourist visa (subclass 600), which expires 8 September 2017. They departed Australia a month later on 5 May 2017. Their last arrival was on 8 June 2017, and they have remained in Australia since that date.

Sensitive: Personal

7. On 28 July 2017, [REDACTED] advised the Department that she, [REDACTED] intend to depart Australia on 13 August 2017 for a period of three weeks to return [REDACTED]
8. The Department notes that [REDACTED] do not have any onshore options available to them as condition 8503 'no further stay' is attached to their Visitor visas (subclass 600) and prevents them from lodging any further visa applications. They also have condition 8558 'Max 12M Stay in 18M' imposed on their Visitor visas (subclass 600), which prevents them from remaining in Australia for more than 12 months in any 18 month period. As [REDACTED] last arrived in Australia on 10 September 2016, they are not eligible to return to Australia on their Visitor visas (subclass 600) for a further six months once they depart.
9. The Department is proposing the grant of a Visitor visa (subclass 600) for 12 months to enable [REDACTED] Visitor visas (subclass 600) to take [REDACTED] and return to Australia. It is also open to you to consider the grant of permanent visas to [REDACTED]

Background

Immigration history

10. Full immigration histories can be found at Attachment E.

Health

11. The Department is unaware of any health concerns in regard to [REDACTED]
12. [REDACTED] was given a clear health examination, in relation to her Visitor visa application, on 30 June 2017. [REDACTED] were all auto-cleared offshore, in relation to their Visitor visa applications.
13. It is open to you to request [REDACTED] undertake further health examinations prior to the grant of a permanent visa.

Identity, Character and Security

14. The identities of [REDACTED] are established as they are the holders of valid [REDACTED] expires on 20 September 2026. [REDACTED] expire on 14 June 2019. [REDACTED] expire on 19 September 2026.
15. The Department is not aware of any character concerns in relation to [REDACTED] However, their character has not been formally assessed by the Department in relation to a permanent visa.
16. There is no information in departmental systems to suggest any security concerns in relation to [REDACTED] a referral to the External Agency for security checks is not required.

Sensitive: Personal

Options for future management

17. Section 195A of the Act provides the Minister with the power to grant a visa to a person in immigration detention, if he thinks it is in the public interest to do so. The Minister's section 195A power is sometimes applied to community cases where there are compelling or compassionate circumstances and no other resolution options are available.

18. Your section 195A power is non-compellable, meaning you are under no obligation to exercise or consider exercising your power. In order to enliven your power, the Department will need to cancel [REDACTED] current Visitor visas (subclass 600) and administratively detain them under section 189 of the Act.

Ministerial intervention under section 195A of the Act

Visitor visa (subclass 600)

19. If you are inclined to consider intervening in their case under section 195A of the Act to grant a temporary visa, the Department considers a Visitor visa (subclass 600) to be an appropriate option. This visa would allow them to take [REDACTED] and then return and remain in Australia for 12 months.

20. The grant of a temporary visa would allow [REDACTED] the option to apply for a further visa onshore. However, [REDACTED] would not be eligible to apply for any further onshore visas, as condition 8503 'no further stay' is imposed on their current visas.

21. [REDACTED] current Visitor visas (subclass 600) were granted with condition 8503 'no further stay' imposed. Condition 8503 provides that the holder will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa, while the holder remains in Australia.

22. By granting [REDACTED] Visitor visas (subclass 600) for them to return to [REDACTED] their departure from Australia would invalidate condition 8503 and upon their return to Australia, they will be eligible to lodge further visa applications. If [REDACTED] lodged further visa applications, they would be required to meet the criteria for the grant of a further visa, including any sponsorship requirements and visa application charges.

23. As the holders of Visitor visas (subclass 600), [REDACTED] would not be eligible for Government assistance and they would be expected to pay for all their living and medical expenses. The Department recommends that their Visitor visas (subclass 600) be granted with permission to work.

24. If you are inclined to consider intervening under section 195A of the Act to grant Visitor visas (subclass 600) for a period of 12 months, please sign the decision documents at Attachment A.

Former Resident visa (subclass 151)

25. If you are inclined to consider intervening under section 195A of the Act in [REDACTED] case to resolve their status permanently, the Department considers a Former Resident (subclass 151) visa to be the most appropriate option.

Sensitive: Personal

26. The Former Resident (subclass 151) visa is typically used where a Minister wishes to consider the grant of a permanent residence through the exercise of the relevant public interest powers. There is a specific allocation of Former Resident (subclass 151) visas for Ministerial intervention in the annual migration planning programme.

27. The Former Resident (subclass 151) visa would allow them to remain in Australia permanently, with permission to work, access to education without restriction, immediate access to Medicare and access to social security payments, where deemed appropriate by Centrelink.

28. If you are inclined to consider intervening in their case under section 195A of the Act to grant them Former Resident (subclass 151) visas, the Department will provide a further submission for your decision.

Decline to consider

29. Should you decline to intervene in [REDACTED] case under section 195A of the Act, they will continue to remain lawful in Australia until the cessation of their Visitor visas (subclass 600).

30. From the available information, it appears that [REDACTED] have no onshore options available to them as condition 8503 'no further stay' is attached to their Visitor visas (subclass 600). However, it is open to [REDACTED] to lodge a visa application offshore, noting it is unlikely that they would have any permanent visa options available to them.

Consultation – internal/external

31. Visitor Visa Policy, Victoria Status Resolution.

Consultation – Secretary/Commissioner

32. The submission did not involve consultation with the Deputy Secretary or the Commissioner of the Australian Border Force.

Client service implications

33. There are minimal client service implications.

Sensitivities

34. This submission involves the family of an [REDACTED] some of whom were in the process of being sponsored for permanent visas.

Financial/systems/legislation/deregulation implications

35. There are negligible financial, system or legislation implications for the Department.

Attachments

Attachment A Decision documentation

Attachment B Client brief – [REDACTED]

Attachment C [REDACTED]

Attachment D [REDACTED]

Attachment E [REDACTED] immigration history

<p>Authorising Officer</p> <p>Cleared by:</p> <p>Dora Chin-Tan Assistant Secretary Status Resolution Branch</p> <p>Date: 02/08/2017 Ph: [REDACTED]</p>
--

Contact Officer [REDACTED] Director, Complex Case Resolution Section, Ph: [REDACTED]

CC Regional Director, VIC

EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958*

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant visas under this section.

1. These persons are detained under section 189 of the Act as unlawful non-citizens.
2. Having regard to these persons' particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant these persons a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to individuals with ongoing needs, it is in the interests of Australia as a humane and generous society to grant these persons a Visitor visa (subclass 600) for a period of 12 months.



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

10/08/2017

EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958*

- DECISION INSTRUMENT -

Name:
Date of Birth:
Client ID:



Name:
Date of Birth:
Client ID:



Name:
Date of Birth:
Client ID:



Name:
Date of Birth:
Client ID:



Name:
Date of Birth:
Client ID:



1. The above persons are in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant these persons a Visitor visa (subclass 600) for a period of 12 months.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) for a period of 12 months in respect of these persons.


THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

10/08/2017

CLIENT BRIEF

[REDACTED]

Client Background:

A client brief was requested by the Minister's office on 12 July 2017 in relation to the family members of [REDACTED]

[REDACTED]

[REDACTED] first arrived in Australia on 21 November 2016 on a Tourist visa (subclass FA600), granted on 19 October 2016. She departed Australia on 9 February 2017 and arrived on 6 April 2017. On 30 June 2017, [REDACTED] lodged another Tourist visa (subclass FA600) application and was granted an associated Bridging A visa. A further Tourist visa was granted on 3 July 2017 and is due to cease on 20 October 2017.

[REDACTED]

[REDACTED] first arrived in Australia on 23 March 2012 on Tourist visas (subclass FA600), granted on 1 March 2012. They departed Australia on 19 June 2012. On 3 November 2014, further Tourist visas were granted and [REDACTED] re-entered on 14 December 2014. [REDACTED] departed on 7 December 2015 and their last arrival in Australia was 10 September 2016. Their Tourist visas are due to cease on 10 September 2017. On 11 December 2015, [REDACTED]

[REDACTED]

On 11 July 2017, [REDACTED] accompanied by a support person, approached the Department of Immigration and Border Protection and requested assistance. They stated an intention to remain in Australia and were seeking access to support services and advice on the processes available to them.

Immigration timeline:

Date	[REDACTED]
18/06/2002	[REDACTED]
02/07/2002	[REDACTED]
16/07/2002	[REDACTED]
24/12/2002	[REDACTED]
11/02/2003	[REDACTED]
03/03/2005	[REDACTED]
16/03/2005	[REDACTED]
14/06/2005	[REDACTED]
17/07/2005	[REDACTED]
22/06/2007	[REDACTED]

Date	
21/07/2007	
21/08/2007	
16/03/2008	
30/04/2008	
2/6/2008	
28/06/2008	
1/3/2011	
29/03/2011	
20/06/2012	
01/08/2012	
14/11/2012	
06/11/2013	
11/12/2015	CA143 lodged, sponsorship - customs pending

Date	Immigration Milestone
18/10/2016	FA600 lodged (offshore)
19/10/2016	FA600 granted (offshore)
21/11/2016	Arrived in Australia
09/02/2017	Departed Australia
6/4/2017	Arrived in Australia
30/06/2017	FA600 lodged, BVA granted
03/07/2016	FA600 granted, BVA ceased. LUD 20/10/2017.

Date	Immigration Milestone
27/02/2012	TR676 lodged (offshore)
01/03/2012	TR676 granted, ceased 28/02/2013
22/03/2012	Arrived in Australia
19/06/2012	Departed Australia
26/09/2014	FA600 lodged
03/11/2014	FA600 granted, LUD 10/09/2017
14/12/2014	Arrived in Australia
7/12/2015	Departed Australia
11/12/2015	CA143 lodged, dependant applicant
10/09/2016	Arrived in Australia

Date	Immigration Milestone
27/02/2012	TR676 lodged
01/03/2012	TR676 granted, ceased 28/02/2013
22/03/2012	Arrived in Australia
19/06/2012	Departed Australia
26/09/2014	FA600 lodged
03/11/2014	FA600 granted, LUD 10/09/2017
14/12/2014	Arrived in Australia
07/12/2015	Departed Australia
11/12/2015	CA143 lodged, main applicant
10/09/2016	Arrived in Australia

Health:

There are nil known health issues or concerns for the family members.

Potential options for clients:

_____ have an ongoing Contributory Parent (Migrant) visa (subclass CA143) application. _____

[REDACTED] The parents have the condition 8503 on their Tourist visa, restricting them from lodging a further application onshore.

Ministerial Intervention options:

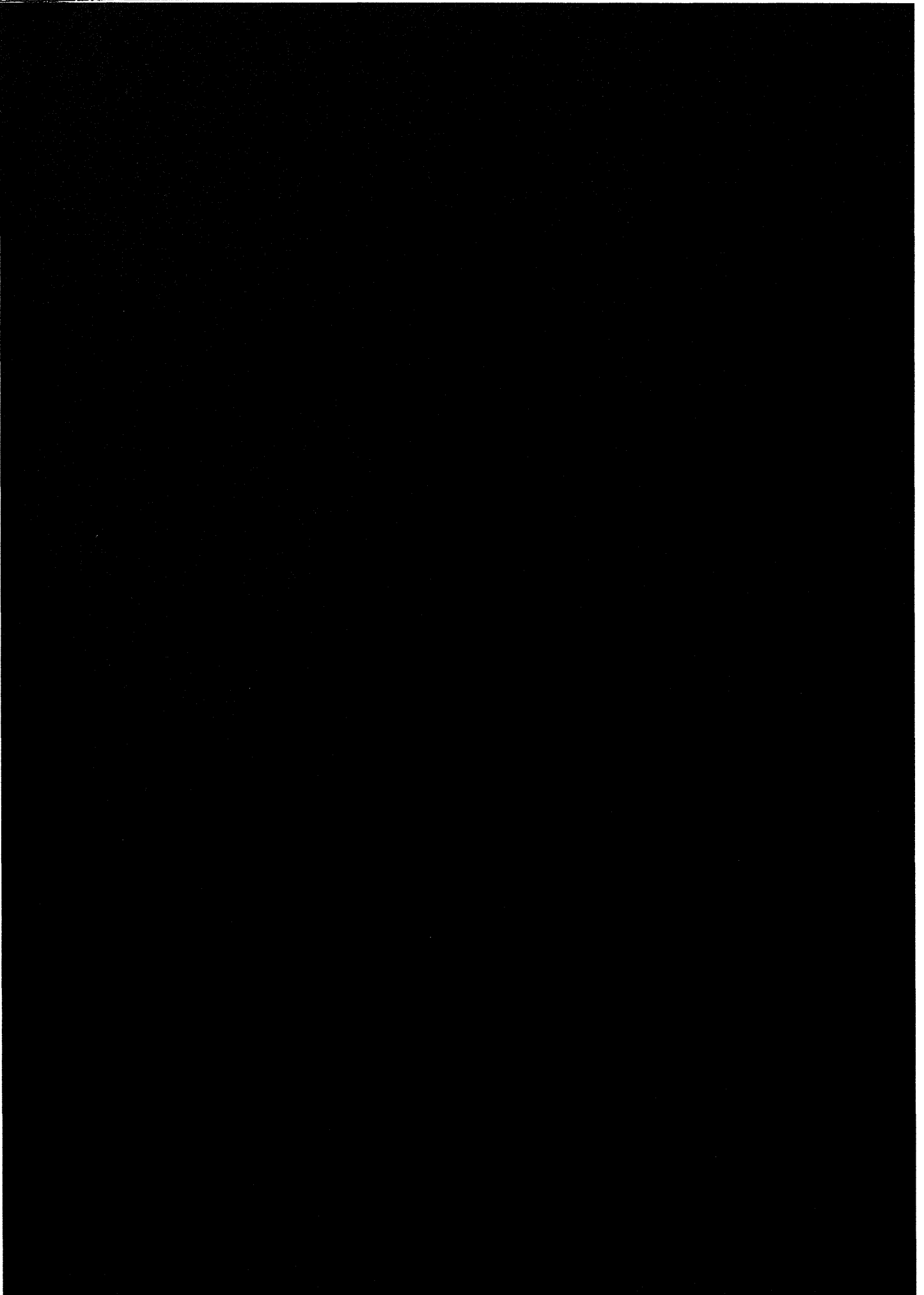
As [REDACTED] are not subject of a relevant Tribunal decision, the Minister's public interest powers under sections 351 and 417 of the Act are not enlivened.

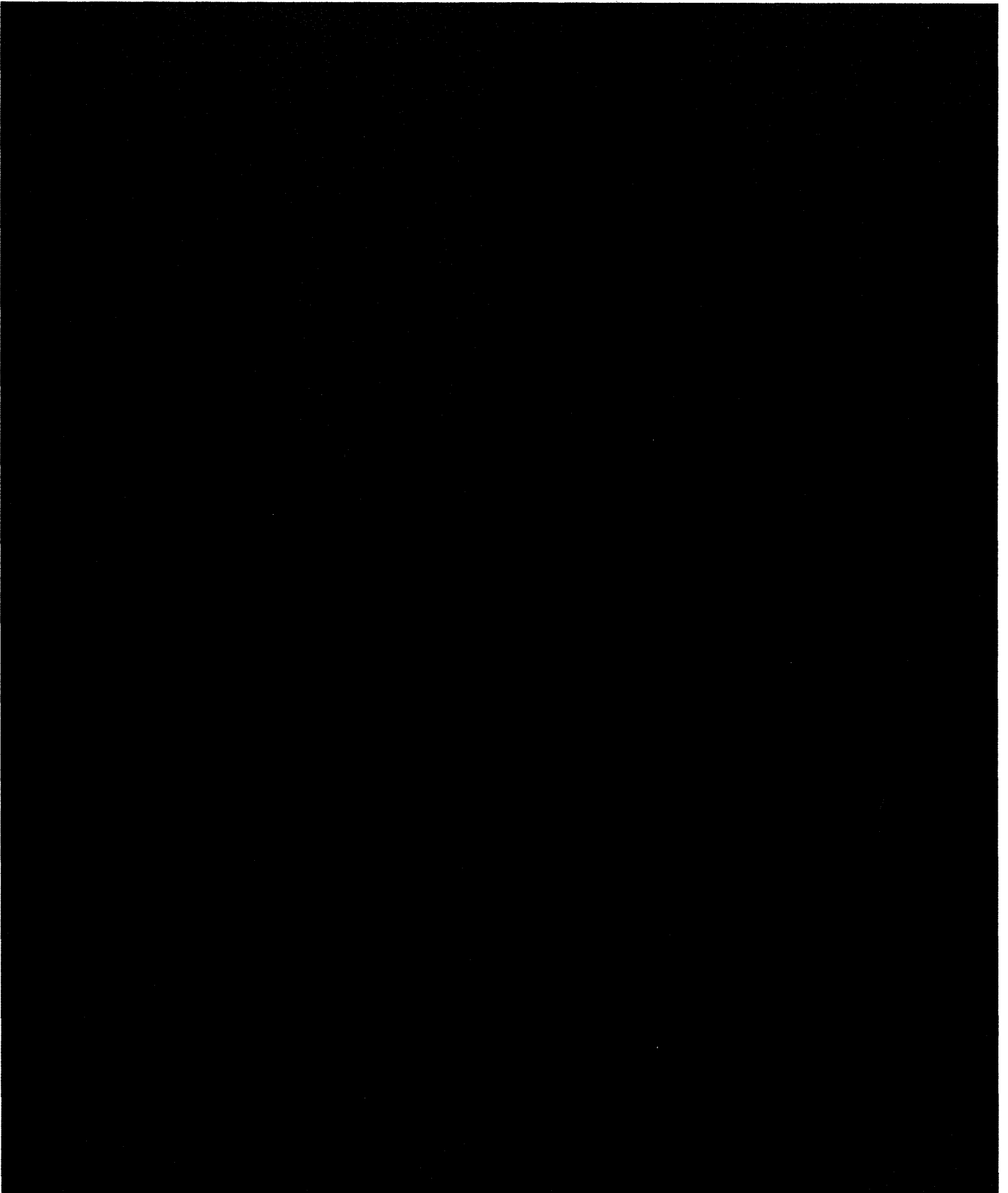
It is open to the Minister, however, to consider intervention under section 195A of the Act to grant a visa. Section 195A provides the Minister with the power to grant any visa to a person in immigration detention, if he thinks it is in the public interest to do so. The Minister's section 195A power is sometimes applied to community cases where there are compelling or compassionate circumstances and no other resolution options. Section 195A power is non-compellable, meaning the Minister is under no obligation to exercise or consider exercising your power.

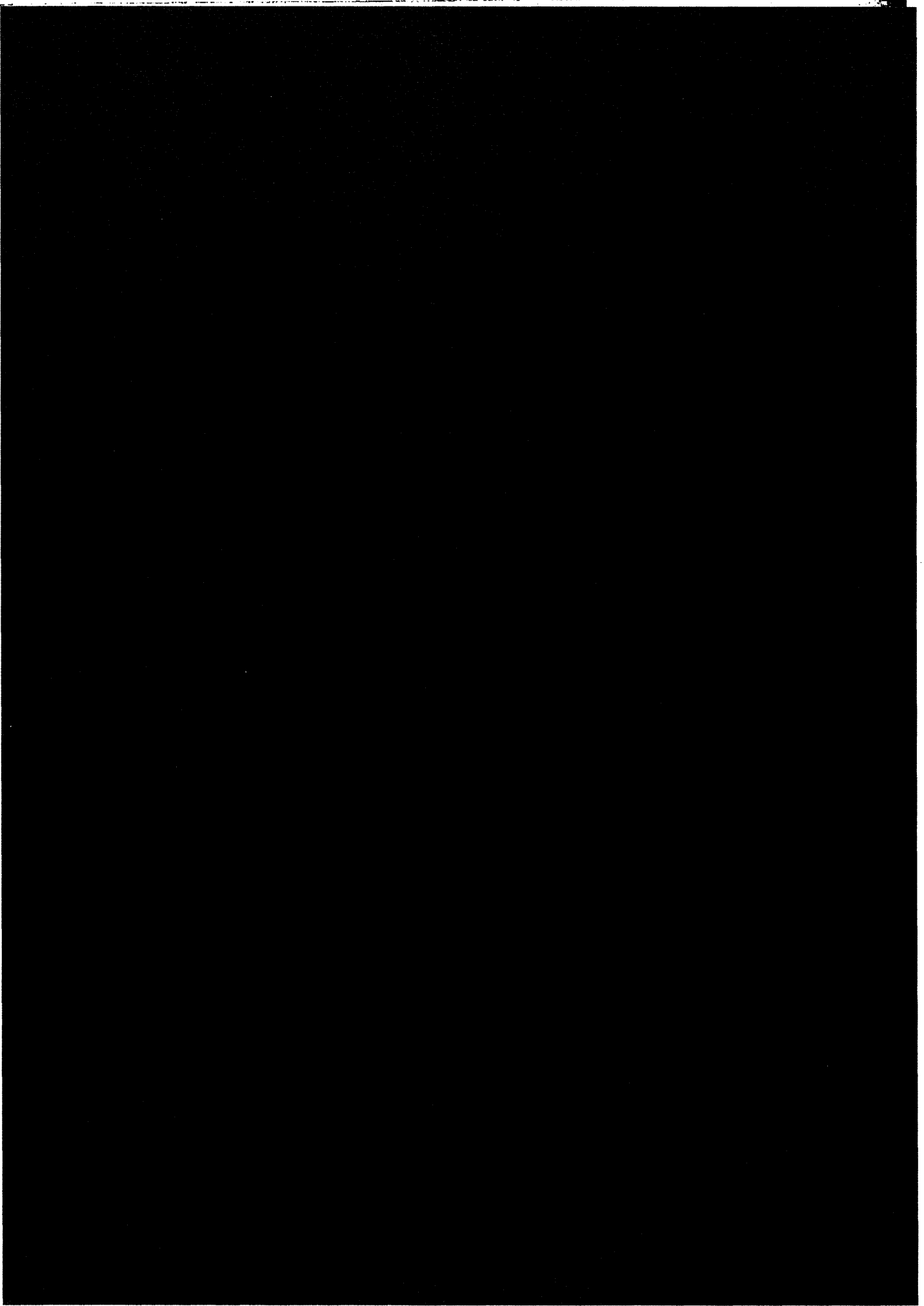
Authorising Officer	Contact Officer
Dora Chin-Tan Assistant Secretary Status Resolution Branch	[REDACTED] Director Complex Case Resolution Section

Date first prepared: 17 July 2017

Date last updated: 19 July 2017







Sensitive: Personal

IMMIGRATION HISTORY

Name	ICSE ID	DOB	Citizenship
1.			
2.			
3.			
4.			
5.			
6.			

IMMIGRATION HISTORY

Date	Event/s
18/06/2002	
02/07/2002	
16/07/2002	
24/12/2002	
11/02/2003	
03/03/2005	
16/03/2005	
14/06/2005	
17/07/2005	
22/06/2007	
21/07/2007	
21/08/2007	
16/03/2008	
30/04/2008	
02/06/2008	
28/06/2008	
01/03/2011	
29/03/2011	
20/06/2012	
01/08/2012	
14/11/2012	
06/11/2013	
11/12/2015	
05/06/2017	
15/06/2017	

Date	Event/s
18/10/2016	Tourist visas (subclass 600) lodged (offshore)
19/10/2016	Tourist visas (subclass 600) granted (offshore)
21/11/2016	Arrived in Australia
09/02/2017	Departed Australia
06/04/2017	Arrived in Australia

Sensitive: Personal

Sensitive: Personal

Date	Event/s
30/06/2017	Tourist visas (subclass 600) lodged, BVA granted
03/07/2016	Tourist visas (subclass 600) granted, BVA ceased LUD 20/10/2017.

Date	Event/s
27/02/2012	Tourist visa (subclass 676) lodged (offshore)
01/03/2012	Tourist visa (subclass 676) granted, ceased 28/02/2013
22/03/2012	Arrived in Australia
19/06/2012	Departed Australia
26/09/2014	Visitor visa (subclass 600) lodged
03/11/2014	Visitor visa (subclass 600) granted, LUD 10/09/2017
14/12/2014	Arrived in Australia
07/12/2015	Departed Australia
11/12/2015	CA143 lodged, dependant applicant
10/09/2016	Arrived in Australia

Date	Event/s
27/02/2012	Tourist visa (subclass 676) lodged
01/03/2012	Tourist visa (subclass 676) granted, ceased 28/02/2013
22/03/2012	Arrived in Australia
19/06/2012	Departed Australia
26/09/2014	Visitor visa (subclass 600) lodged
03/11/2014	Visitor visa (subclass 600) granted, LUD 10/09/2017
14/12/2014	Arrived in Australia
07/12/2015	Departed Australia
11/12/2015	Contributory Parent visa (subclass 143) lodged, dependant applicant
10/09/2016	Arrived in Australia

Date	Event/s
30/12/2016	Visitor visa (subclass 600) lodged (offshore)
03/01/2017	Visitor visa (subclass 600) granted, LUD 08/09/2017
06/04/2017	Arrived in Australia
05/05/2017	Departed Australia
08/06/2017	Arrived in Australia

Date	Event/s
30/12/2016	Visitor visa (subclass 600) lodged (offshore)
03/01/2017	Visitor visa (subclass 600) granted, LUD 08/09/2017
06/04/2017	Arrived in Australia
05/05/2017	Departed Australia
08/06/2017	Arrived in Australia

Sensitive: Personal



Australian Government
Department of Immigration and Border Protection

Submission

For decision
PDMS Ref. Number MS16-002964

To Minister for Immigration and Border Protection
Subject Possible Ministerial intervention under section 195A of the *Migration Act 1958* in relation to [REDACTED]
[REDACTED]

Received
26 AUG 2016
Minister for Immigration
and Border Protection

Timing For the attention of the Departmental Liaison Officer

Recommendation

That you:

1. agree to intervene under section 195A of the *Migration Act 1958* to grant [REDACTED] a Visitor visa (subclass 600) for 12 months, which will allow her to lodge a Partner (Combined) visa (subclass 820/801) application;

intervene / not intervene

- if agreed, please sign the section 195A decision documents at Attachment A.

Minister for Immigration and Border Protection

Signature [Handwritten Signature]

Date: 07/09/2016

Visitor visa (subclass 600)

8. Should you intervene under section 195A of the Act to grant [REDACTED] a Visitor visa (subclass 600), she will be permitted to reside lawfully in the community for 12 months and she will have the ability to lodge a Partner (Combined) visa (subclass 820/801) application. [REDACTED] Partner visa application will be assessed through the normal departmental process and she will be required to meet the criteria for the grant, including paying the VAC of \$6,865.

9. As the holder of a Visitor visa (subclass 600), [REDACTED] would not be eligible for subsidised health care through Medicare and would not be eligible for any Centrelink assistance. The Department recommends that [REDACTED] Visitor visa (subclass 600) be granted with permission to work, should she have the need.

10. If you agree to intervene under section 195A of the Act to grant [REDACTED] a Visitor visa (subclass 600) for a period of 12 months, please sign the decision documentation at **Attachment A**.

Decline to consider

11. Should you decline to intervene in [REDACTED] case under section 195A of the Act, the Department will advise her accordingly and engage with her to depart Australia voluntarily.

Consultation – internal/external

12. NSW Community Status Resolution

Consultation – Secretary/Commissioner

13. This submission did not involve consultation with the Department's Secretary or the Commissioner of the Australian Border Force.

Client service implications

14. There are minimal client service implications.

Sensitivities

15. [REDACTED] has an Australian citizen husband and child and no onshore pathway.

Financial/systems/legislation/deregulation implications

16. There are minimal financial/systems/legislation/deregulation implications.

Attachments

Attachment A Section 195A decision documents

Attachment B Submission MS16-002050

Authorising Officer
Cleared by: Dora Chin-Tan Assistant Secretary Caseload Assurance Branch 25/08/2016 Ph: [REDACTED]

Contact Officer Chris De Ruyter, Director, Complex Case Resolution Section, Ph: [REDACTED]


CC Regional Director, NSW/ACT
NSW Community Status Resolution

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to this person's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant this person a Visitor visa (subclass 600) for a period of 12 months.


THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

07/09/2016

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- DECISION INSTRUMENT -

Name:
Date of birth:
Client ID:



1. The above person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant this person a Visitor visa (subclass 600) for a period of 12 months.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) for a period of 12 months in favour of this person.


THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

07/09/2016

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 17 August 2016, you indicated you were inclined to consider intervening under section 195A of the *Migration Act 1958* (the Act) to grant [REDACTED] a Visitor visa (subclass 600) for 12 months, which will allow her to lodge a Partner (Combined) visa (subclass 820/801) application. Submission MS16-002050 at **Attachment B** refers.
2. [REDACTED] national, arrived as the holder of a Partner (Provisional) (Temporary) visa (subclass 309), on [REDACTED] [REDACTED] is married to an Australian citizen and has an Australian citizen son, aged [REDACTED] is currently residing lawfully in the community on a Bridging E visa (subclass 050) (BVE).
3. [REDACTED] Partner (Permanent) visa (subclass 100) application was refused on [REDACTED] after the Department failed to receive the appropriate documentation. [REDACTED] failed to lodge an application for merits review within appropriate timeframes.
4. [REDACTED] was refused a Partner visa, she is currently barred by section 48 of the Act and cannot lodge a valid application for a substantive visa onshore.
5. This second stage submission is being referred to you for your final decision in the case of [REDACTED]

Background

6. [REDACTED] circumstances are outlined in submission MS16-002050. There have been no changes in [REDACTED] circumstances since your decision on 17 August 2016.

Ministerial intervention under section 195A

7. If you agree to intervene in [REDACTED] case under section 195A of the Act, the Department will arrange for [REDACTED] to be administratively placed into immigration detention, so as to enliven your power under section 195A. The Department will liaise closely with your office and [REDACTED] regarding these arrangements.



Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS16-002050

To **Minister for Immigration and Border Protection**

Subject **Possible Ministerial intervention under section 195A of the Migration Act 1958 in relation to [REDACTED]**

Timing *Not applicable, please note [REDACTED]s in the community.*

Recommendations

That you:

1. indicate whether you are inclined to consider intervening under section 195A of the *Migration Act 1958* to grant [REDACTED] a Visitor visa (subclass 600) for 12 months, which will allow her to lodge a Partner (Combined) visa (subclass 820/801) application;

consider / not consider

- if you agree to recommendation 1, the Department will refer a further submission for your final decision.

OR

2. indicate whether you are inclined to consider intervening under section 195A of the *Migration Act 1958* to grant [REDACTED] a Former Resident visa (subclass 151);

consider / not consider

- if you agree to recommendation 2, please indicate whether you require [REDACTED] to undertake health and character assessments.

required / not required

- if you agree to recommendation 2, the Department will refer a further submission for your final decision.

Minister for Immigration and Border Protection

Signature [Handwritten Signature]

Date: 17 08 / / 2016

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. [REDACTED] national, last arrived in Australia on [REDACTED] as the holder of a Partner (Provisional) (Temporary) visa (subclass 309). [REDACTED] is currently in the community on a Bridging E visa (subclass 050) (BVE), following the refusal of her Partner (Permanent) visa (subclass 100) application on [REDACTED] current BVE is due to expire on 22 July 2016.
2. [REDACTED] is married to an Australian citizen [REDACTED] and has an Australian citizen son [REDACTED].
3. [REDACTED] Partner (Permanent) visa (subclass 100) application was refused on [REDACTED] after the Department failed to receive the appropriate documentation. [REDACTED] have advised that they [REDACTED] and had made various attempts to contact the Department regarding submitting the documentation for their application.
4. [REDACTED] lodged an application for review of the refusal of her Partner visa application, at the Administrative Appeals Tribunal (AAT). On [REDACTED] the AAT refused the application, as it was not lodged within timeframes.
5. As [REDACTED] was refused a Partner visa since last entering Australia, and is not the holder of a substantive visa, she is subsequently barred by section 48 of the *Migration Act 1958* (the Act). This prohibits [REDACTED] from lodging a valid application for a substantive visa onshore.
6. [REDACTED] case is being referred to you for your consideration under section 195A of the Act for the possible grant of a temporary or permanent visa, in order to allow her to remain onshore with her Australian citizen family.

Document 14
Sensitive: Personal

Background

Immigration history

7. [REDACTED] first travelled to Australia on [REDACTED] on a Visitor visa (subclass 600). [REDACTED] returned to Australia on [REDACTED] as the holder of a Partner (Provisional) (Temporary) visa (subclass 309).
8. [REDACTED] Partner (Permanent) visa (subclass 100) application was refused on [REDACTED] and her application for merit's review was refused after she failed to lodge within the appropriate timeframes.
9. [REDACTED] is being managed by the Department through the grant of BVEs.
10. A detailed immigration history for [REDACTED] is at Attachment A.

Family

11. [REDACTED] has been married to [REDACTED] since [REDACTED]. A copy of their marriage certificate is at Attachment B for your reference.
12. [REDACTED] has resided in Australia since [REDACTED] on various [REDACTED] visas, and he acquired Australian citizenship on [REDACTED].
13. [REDACTED] gave birth to [REDACTED] an Australian citizen. A copy of [REDACTED] birth certificate is at Attachment C.

Best interest of the child

14. Australia is a signatory to the United Nations *Convention on the Rights of the Child* (CROC). Article 3 of the CROC requires that in all actions concerning children under the age of 18 on Australia's jurisdiction, the best interests of the child shall be a primary consideration (note that it need only be *a*, rather than *the*, primary consideration and that it may be balanced by other countervailing considerations).
15. Given [REDACTED] family circumstances, Articles 17 and 23 of the *International Covenant on Civil and Political Rights* (ICCPR), to which Australia is a party, are relevant in this case. Article 17 states that '*no one should be subjected to arbitrary or unlawful interference with...family*'. Article 23 states that '*the family...is entitled to protection by society and the state.*' The removal of [REDACTED] and possible separation from her Australian citizen family, may cause emotional and financial hardship. However, the protection of the family unit under section 17 and 23 does not amount to a right to enter or remain in Australia where there is no other right to do so. The Department notes that should [REDACTED] depart Australia, she has a viable offshore pathway, and that it is open to [REDACTED] and their child to accompany her.
16. It is open to you to consider that it is in the best interests of [REDACTED] child to allow her to remain in Australia.

Health, identity, character and security

17. There is no evidence before the Department to indicate that there are any health issues or concerns in relation to [REDACTED].

Document 14
Sensitive: Personal

18. [REDACTED] identity has been established in accordance with *Procedures Advice Manual 3: Establishing Identity in the Field and Detention*.

19. There is no evidence before the Department that there are any character or security concerns in relation to [REDACTED]

Options for future management

Ministerial intervention under section 195A of the Act

Visitor visa (subclass 600)

20. As [REDACTED] had her Partner (Permanent) visa (subclass 100) application refused, she is currently barred under section 48 of the Act from lodging a valid visa application. Should you agree to consider intervening in [REDACTED] case, the Department considers the grant of a Visitor visa (subclass 600) to be the most appropriate.

21. If you consider intervening to grant [REDACTED] a Visitor visa, she would be able to lodge a Partner (Combined) visa (subclass 820/801) application, which would be assessed through regular departmental processes. The Department notes that [REDACTED] would be required to pay the visa application charge of \$6,865. [REDACTED] would be required to meet health, character, identity and security requirements.

22. As the holder of a Visitor visa (subclass 600), [REDACTED] would not be eligible for subsidised health care through Medicare and would not be eligible for any Centrelink assistance.

23. Should you be inclined to consider intervening in [REDACTED] case, under section 195A of the Act to grant her a Visitor visa (subclass 600) with work rights, the Department will refer a further submission for your decision.

Former Resident visa (subclass 151)

24. If you are inclined to consider intervening in [REDACTED] case under section 195A of the Act, to resolve her immigration status permanently, the Department considers the grant of a Former Resident visa (subclass 151) to be the most appropriate.

25. The Former Resident visa (subclass 151) is typically used where a Minister wishes to consider the grant of a permanent residence visa through the exercise of the relevant public interest powers. There is a specific allocation of Former Resident visas (subclass 151) for Ministerial intervention purposes in the annual migration planning programme.

26. A Former Resident visa (subclass 151) would allow [REDACTED] to remain in Australia permanently and would provide her with access to Medicare and Centrelink benefits and would allow [REDACTED] permission to work. It is open to you to request that health and character checks be undertaken.

27. The Department considers the grant of a Former Resident visa (subclass 151) to be the less preferred option, as the relationship between [REDACTED] would not be subject to departmental assessment.

28. If you are inclined to consider intervening under section 195A of the Act to grant a Former Resident visa (subclass 151) to [REDACTED] the Department will refer a further submission to you for your final decision.

Document 14
Sensitive: Personal

Decline to intervene

29. If you decline to intervene under section 195A of the Act in ██████ case, the Department will advise her accordingly and engage with her to depart Australia voluntarily. However, should ██████ disengage, the Department will commence planning her detention and subsequent removal.

Offshore pathway

30. Should ██████ agree to depart Australia voluntarily, she would have a viable offshore immigration pathway, and would be eligible to apply for a Partner (Provisional) (Temporary) visa (subclass 309) again. The processing time for this visa subclass is currently exceeding 12 months. ██████ would also be required to pay the visa application charge, which is currently \$6,865.

31. It should be noted that if ██████ chose this option and went offshore to lodge a Partner (Provisional) (Temporary) visa (subclass 309) application, she would likely be separated from her Australian citizen family for 12 months or more. However, it is open to ██████ Australian citizen family to accompany her during this process.

32. As ██████ is currently on a BVE, if she were to be removed, she may be excluded from applying for a visa offshore, for a period of three years, by Public Interest Criteria (PIC) 4014. If ██████ does agree to depart and lodge an application offshore, it is open to her to request a waiver of PIC 4014.

Consultation – internal/external

33. NSW Community Status Resolution.

Consultation – Secretary/Commissioner

34. This submission did not involve consultation with the Department's Secretary or Deputy Secretaries, or the Australian Border Force Commissioner or Deputy Commissioners.

Client service implications

35. There are minimal client service implications.

Sensitivities

36. ██████ national, who has an Australian citizen husband and child. ██████ was refused a Partner (Permanent) visa (subclass 100) application after the Department failed to receive the appropriate documentation. ██████ has no onshore immigration pathway.

Financial/systems/legislation/deregulation implications

37. There are negligible financial/ systems / legislation implications for the Department.

Attachments

Attachment A Immigration history

Attachment B Marriage certificate

Attachment C [REDACTED] birth certificate

Authorising Officer
Cleared by: Dora Chin-Tan Assistant Secretary Status Resolution Branch Date: 25/07/2016 Ph: [REDACTED]

Contact Officer Christopher De Ruyter, Director, Complex Case Resolution Section, Ph: [REDACTED]

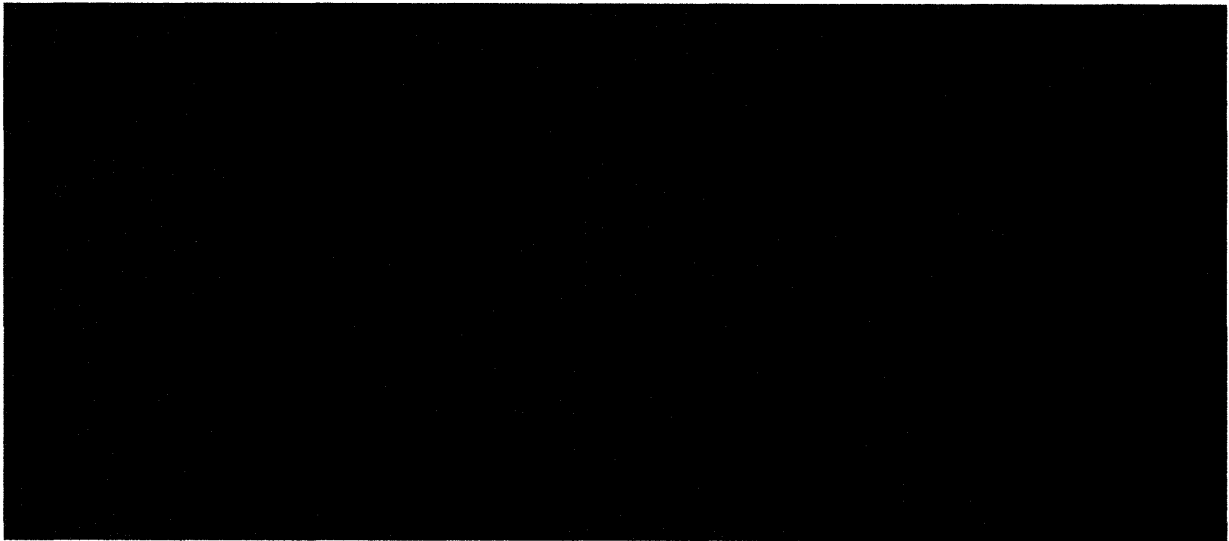
CC Regional Director, NSW/ ACT
NSW Community Status Resolution

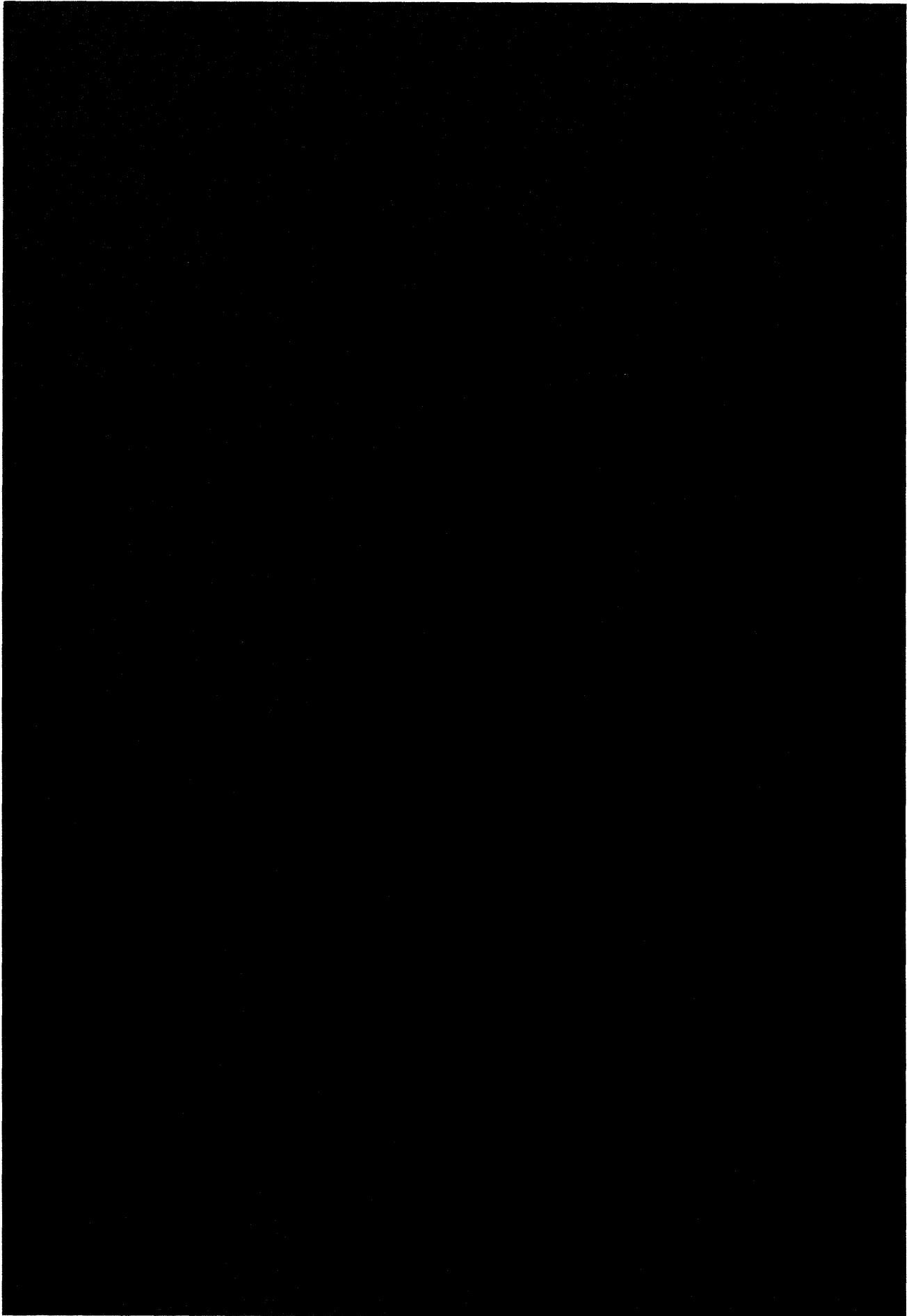
IMMIGRATION HISTORY - [REDACTED]

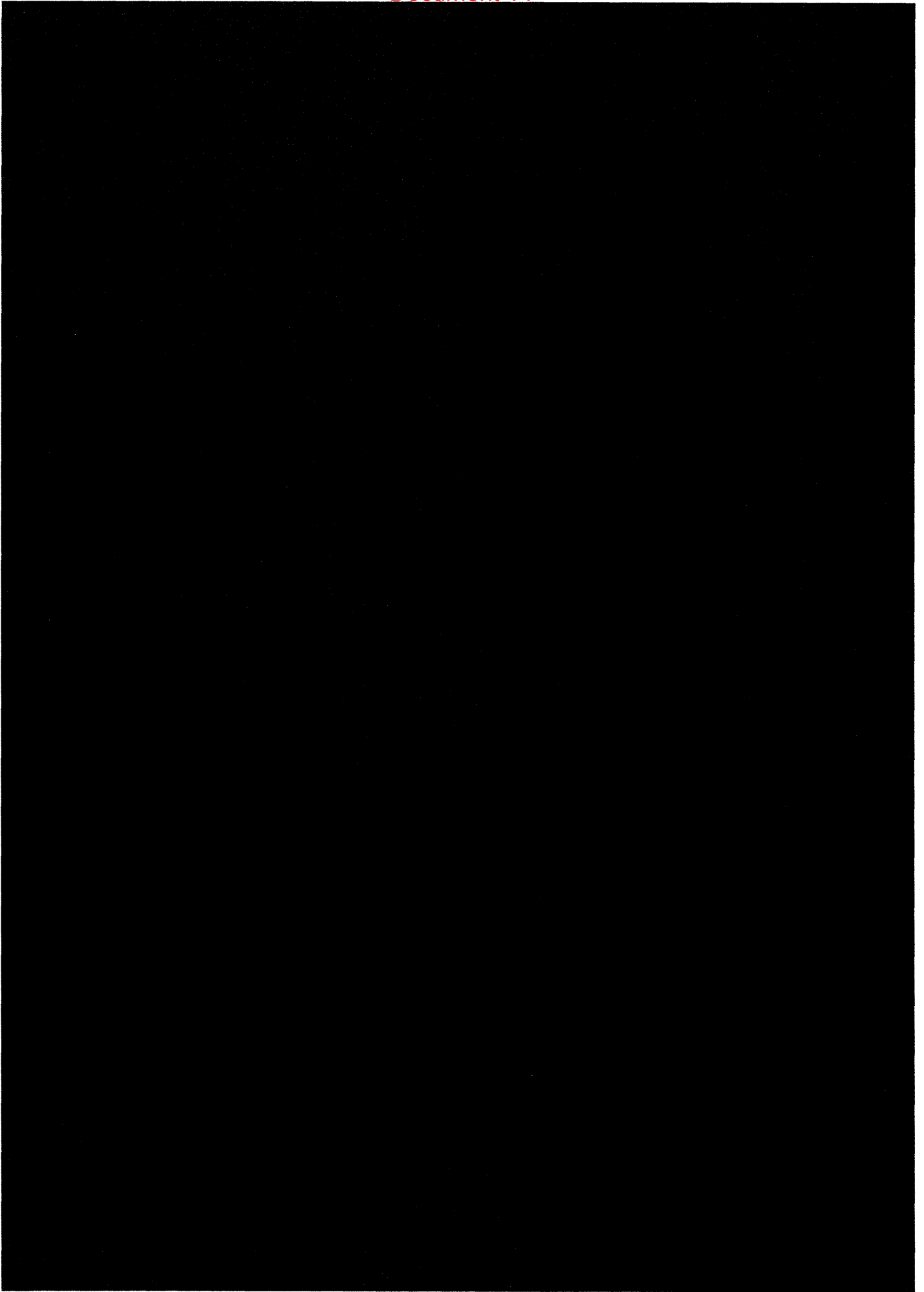
Name
Date of birth
Citizenship
Alias
Gender
ICSE ID
Date Most Recently Arrived in Australia
Date Detained
Current Location



IMMIGRATION HISTORY:







Sensitive: Personal



Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS17-002213

To Minister for Immigration and Border Protection


Subject Possible Ministerial intervention under section 195A of the *Migration Act 1958* in relation to



Timing Not applicable – please note this is a second stage submission.

Recommendations

That you:

- intervene under section 195A of the *Migration Act 1958* to grant  Visitor visas (subclass 600) for 18 months, with permission to work;
 - if agreed, please sign the section 195A decision documentation at Attachment A.

intervene / decline to intervene

Minister for Immigration and Border Protection

Signature 

Date: 21/09/2017

Received

- 1 AUG 2017

Minister for Immigration and Border Protection

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 13 June 2017, you agreed to consider intervening under section 195A of the *Migration Act 1958* (the Act) to grant [REDACTED] Visitor visas (subclass 600) for 18 months, with permission to work, to enable them to apply for Regional Sponsored Migration Scheme (RSMS) (subclass 187) visas without departing Australia. Submission MS17-001540 at **Attachment B** refers.

2. Since your decision of 13 June 2017, the Department delayed referral of a second stage submission as [REDACTED] departed offshore for family reasons for ten days, and [REDACTED] departed again on [REDACTED] to attend [REDACTED]. While offshore, [REDACTED] applied for Electronic Travel Authority (ETA) (subclass 601) visas valid for 12 months, which enabled them to return to Australia, however permission to work is not a feature of this visa.

3. [REDACTED] have also lodged the visa application component of the Regional Sponsored Migration Scheme (RSMS) (subclass 187) visa, and have been granted Bridging A (subclass 010) visas in association with this application. While a Bridging A (subclass 010) visa does not have conditions (and therefore would provide them with permission to work), their Bridging A (subclass 010) visas will not be in effect while they continue to hold ETA visas. As such, they are currently unable to work in Australia, and the Department is seeking your intervention to provide them with permission to work.

4. There have been no other changes in the [REDACTED] circumstances since your decision of [REDACTED].

5. This submission is being referred to you for your final decision in this case.

Sensitive: Personal

Background

Immigration history

6. [redacted] have principally resided in Australia since [redacted] was granted a Student visa (subclass 572) with [redacted] held this visa until 18 February 2014, when [redacted] was granted a Temporary Work (Skilled) visa (subclass 457), with [redacted]. These visas were cancelled on [redacted] and [redacted] lodged a review of the Department's decision [redacted] with the AAT. This review remains ongoing. [redacted] are currently lawful in the community holding ETA visas.

7. Further details of the case are outlined in submission MS17-001540 at Attachment B.

Options for future management

Ministerial intervention under section 195A of the Act

8. If you are inclined to exercise your Ministerial Intervention power under section 195A of the Act to grant [redacted] visitor visas (subclass 600) for 18 months, with permission to work, as indicated in your decision of 13 June 2017, this will enable [redacted] to work lawfully in Australia while awaiting the outcome of their RSMS application.

9. If you are inclined to intervene in [redacted] case under section 195A of the Act, to grant them Visitor visas (subclass 600) for 18 months, with permission to work, they will need to request the cancellation of their current visas, in order to be administratively detained and enliven your power under section 195A. The Department will liaise closely with your office and [redacted] regarding these arrangements.

10. If you are inclined to intervene in [redacted] case to grant them Visitor visas (subclass 600) for 18 months, with permission to work, please sign the decision instruments at Attachment A.

Decline to consider

11. Should you decline to intervene in [redacted] case under section 195A of the Act, they will continue to remain lawful in Australia as holders of ETA visas, and following the expiry of these visas, their Bridging A (subclass 010) visas will come into effect. This will mean that [redacted] are unable to work lawfully in Australia until June 2018.

Consultation – internal/external

12. Your office, Permanent Employer Sponsored Entry Section, WA Community Status Resolution

Consultation – Secretary/Commissioner

13. This submission did not involve consultation with the Department's Secretary or the Commissioner of the Australian Border Force.

Client service implications

14. There are minimal client service implications.

Sensitive: Personal

Sensitivities

15. Nil.

Financial/systems/legislation/deregulation implications

16. There are minimal financial/systems/legislation/deregulation implications

Attachments

Attachment A Section 195A decision documentation – Visitor visa

Attachment B Submission MS17-001540

Authorising Officer
Cleared by: Dora Chin-Tan Assistant Secretary Status Resolution Branch 01/08/2017 Ph: [REDACTED]

Contact Officer: [REDACTED] Director, Complex Case Resolution Section, Ph [REDACTED]

CC Permanent Visas and Citizenship Branch

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. These people are detained under section 189 of the Act as unlawful non-citizens.
2. Having regard to these people's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant these people visas.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant these people Visitor visas (subclass 600) for a period of 18 months.



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

21 / 09 2017

EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958*

- DECISION INSTRUMENT -

Name:
Date of birth:
Client ID:



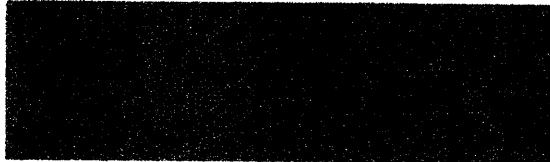
Name:
Date of birth:
Client ID:



Name:
Date of birth:
Client ID:



Name:
Date of birth:
Client ID:



1. The above people are in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant these people a Visitor visa (subclass 600) for a period of 18 months.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) for a period of 18 months in favour of these people.

A handwritten signature in black ink, appearing to read 'Peter Dutton'.

THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

21/09/2017

Sensitive: Personal



Australian Government
Department of Immigration and Border Protection

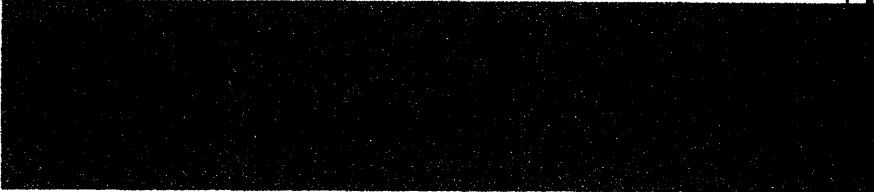
Submission

For decision

PDMS Ref. Number MS17-001540

To Minister for Immigration and Border Protection

Subject Possible Ministerial intervention under section 195A of the *Migration Act 1958* in relation to




Received
4 MAY 2017
Minister for Immigration and Border Protection

Timing As requested by your office 28 April 2017


Recommendation

That you:

1. indicate whether you are inclined to consider intervening under section 195A of the *Migration Act 1958* to grant  Visitor visas (subclass 600) for 18 months, with permission to work, to enable them to apply for Regional Sponsored Migration Scheme visas (subclass 187) without departing Australia;
- if agreed, the Department will refer a further submission for your final decision.

consider / not consider

Minister for Immigration and Border Protection

Signature..... 

Date: 13/06/2017

Minister's Comments

Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:
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Sensitive: Personal

Sensitive: Personal

Key Issues

1. [REDACTED] are being referred for your consideration under section 195A of the *Migration Act 1958* (the Act), as requested by your office on 28 April 2017, to enable them to apply for Regional Sponsored Migration Scheme visas (subclass 187) without departing Australia.
2. [REDACTED] have principally resided in Australia since [REDACTED] when [REDACTED] was granted a Student visa (subclass 572) with [REDACTED] held this visa until [REDACTED] when [REDACTED] was granted a Temporary Work (Skilled) visa (subclass 457), with [REDACTED]. These visas were [REDACTED] and [REDACTED] lodged a review of the Department's decision to [REDACTED] with the Administrative Appeals Tribunal (AAT). This issue is discussed in more detail in paragraphs 6 – 12.
3. [REDACTED] lodged a Regional Sponsored Migration Scheme (RSMS) Direct Entry nomination (subclass 187) application for the position of [REDACTED] for this position. At this time [REDACTED] is unable to lodge an associated Regional Sponsored Migration Scheme visa (subclass 187) application for [REDACTED] as they do not hold an appropriate visa to lodge this application onshore. As such, [REDACTED] would be required to depart Australia to lodge a valid application.
4. Should you agree to consider intervening under section 195A of the Act to grant [REDACTED] Visitor visas (subclass 600), as the holder of a substantive visa [REDACTED] would be eligible to lodge a valid associated Regional Sponsored Migration Scheme visa (subclass 187) application while remaining onshore.
5. [REDACTED] are currently lawful in the community holding Bridging E visas (subclass 050), in association with [REDACTED] ongoing AAT matter. These visas will remain valid for 28 days after the AAT decides the review request.

Background

Immigration history

6. [REDACTED] was granted a Temporary Work (Skilled) visa (subclass 457), with [REDACTED] his nominated employer.
7. [REDACTED] lodged a subclass 457 Temporary Work (Skilled) nomination application, naming [REDACTED]. The Department refused this application [REDACTED] as the decision-maker was not satisfied that the position associated with the nomination was genuine.
8. On [REDACTED] the Department commenced the cancellation process in relation to his Temporary Work (Skilled) visa (subclass 457). Following further assessment and consideration of information provided by [REDACTED] it was deemed that he had breached condition 8107 – *Not cease or change work*. The Department subsequently [REDACTED] and his [REDACTED]. A copy of the refusal decision record is available at [REDACTED].

Sensitive: Personal

Attachment A. [REDACTED] lodged a review of the Department's decision to [REDACTED] with the Administrative Appeals Tribunal (AAT). This review remains ongoing.

9. On [REDACTED] lodged a further subclass 457 Temporary Work (Skilled) nomination application, naming [REDACTED]. This application was refused as non-genuine on [REDACTED]. [REDACTED] lodged a review with the AAT of the Department's decision to refuse [REDACTED] subclass 457 Temporary Work (Skilled) nomination application. This review remains ongoing.

10. Further details of the [REDACTED] immigration history are available at Attachment B.

Regional Sponsored Migration Scheme Direct Entry nomination (subclass 187) and associated visa application

11. As stated above, [REDACTED] lodged a Regional Sponsored Migration Scheme (RSMS) Direct Entry nomination (subclass 187) application for the position [REDACTED] as the [REDACTED] indicative processing timeframes for this type of application is currently 12 – 13 months.

12. Should you agree to consider intervening under section 195A of the Act, to grant the [REDACTED] [REDACTED] visitor visas (subclass 600), [REDACTED] would be able to lodge her Regional Sponsored Migration Scheme visa (subclass 187) application at any time, and pay the Visa Application Charge (VAC) of \$7200. However, should [REDACTED] lodge her application prior to the Department finalising the Regional Sponsored Migration Scheme Direct Entry nomination (subclass 187) application, and this application is unsuccessful, [REDACTED] visa application will be refused and she will forfeit her VAC. As such, the Department recommends that should the [REDACTED] be granted Visitor visas (subclass 600), that they be granted for a period of 18 months, to allow [REDACTED] the flexibility to lodge their Regional Sponsored Migration Scheme visa (subclass 187) application at a time of their choosing and appropriate to their circumstances.

AAT review related to the cancellation of the Temporary Work (Skilled) visa (subclass 457)

13. Should the AAT find in favour of [REDACTED] review request and remit his case back to the Department with direction [REDACTED] Temporary Work (Skilled) visas (subclass 457) would be re-instated.

14. Should the AAT affirm the Department's decision, your power under section 351 of the Act would be enlivened. This will enable [REDACTED] to request Ministerial intervention under section 351 of the Act, allowing you to substitute a more favourable decision, if you think it is in the public interest to do so.

AAT review related to the refusal of [REDACTED] subclass 457 Temporary Work (Skilled) nomination application

15. Should the AAT find in favour of [REDACTED] review request and remit his case back to the Department finding that the position associated with the nomination was genuine, it would then be open to [REDACTED] to lodge an application for a Temporary Work (Skilled) visa (subclass 457). This application would then be assessed in line with other Temporary Work (Skilled) visa (subclass 457) applications, against the appropriate criteria. Indicative processing timeframes for this type of application is currently six months.

Sensitive: Personal

External interest

16. [REDACTED] have made representations to the Office of the Hon. Christian Porter MP, Senator Dean Smith, and Mr Frank Alban MLA. Additionally in [REDACTED] the Office of the Hon. Christian Porter MP advised [REDACTED]

Link to the Australian community

17. [REDACTED] have lived in Australia for the last five years. They have bought a house, [REDACTED] and advised the Department that they wish to stay in Australia as they are committed to a life here.

Character and security

18. There are no known character issues related to [REDACTED] on or offshore. Appropriate character checks were conducted as part of their previous visa applications. Additionally, the Department will conduct any further character checks as required related to any ongoing visa application, prior to grant.

19. There is no information in departmental systems to suggest that there any security concerns in relation to [REDACTED]

Identity

20. [REDACTED] identities are established. [REDACTED] holds valid passports for [REDACTED] and [REDACTED] all hold valid passports for [REDACTED]

National Returns and Removals Taskforce/Removal Availability

21. This submission has been reviewed by the National Returns and Removals Taskforce on 3 May 2017.

22. [REDACTED] have an ongoing matter before the AAT and are therefore not currently available for removal. [REDACTED] all hold valid passports and removal arrangements would be straightforward should they be required to depart Australia.

23. [REDACTED] any removal action would need to consider [REDACTED]

Options for future management

Ministerial intervention under section 195A of the Act

24. If you are inclined to consider intervening under section 195A of the Act in [REDACTED] case to grant them a substantive visa, the Department recommends that a Visitor visa (subclass 600) for a period of 18 months, with permission to work as the most appropriate option. This would allow them to lodge an associated Regional Sponsored Migration Scheme visa (subclass 187) application onshore.

25. As the holder of Visitor visas (subclass 600), [REDACTED] would not be eligible for Australian Government assistance, however they may be entitled to health care through reciprocal medical arrangements with [REDACTED]

Sensitive: Personal

26. The grant of Visitor visas (subclass 600), would allow [redacted] to remain lawfully in the Australian community as holders of substantive visas whilst the Department assesses [redacted] Regional Sponsored Migration Scheme (RSMS) Direct Entry nomination (subclass 187) application.

Decline to consider

27. Should you decline to intervene in [redacted] case under section 195A of the Act, they will continue to remain lawful in Australia as holders of Bridging E visas (subclass 050), in association with [redacted] ongoing AAT matter, which depending on the outcome, will provide [redacted] with further options in regard to their immigration matter.

Consultation – internal/external

28. Your office, Permanent Employer Sponsored Entry Section, National Returns and Removals Taskforce

Consultation – Secretary/Commissioner

29. This submission did not involve consultation with the Department’s Secretary or the Commissioner of the Australian Border Force.

Client service implications

30. There are minimal client service implications.

Sensitivities

31. As previously mentioned, the [redacted] are unable to lodge a valid Regional Sponsored Migration Scheme visa (subclass 187) application onshore.

Financial/systems/legislation/deregulation implications

32. There are minimal Financial/systems/legislation/deregulation implications

Attachments

Attachment A [redacted] 457 visa cancellation decision record

Attachment B Immigration history

Authorising Officer
Cleared by:
Dora Chin-Tan Assistant Secretary Status Resolution Branch 4 May 2017 Ph: [redacted]

Contact Officer: [redacted] Director, Complex Case Resolution Section, Ph: [redacted]

CC Permanent Visas and Citizenship Branch

IMMIGRATION HISTORY



Name	Date of Birth	Gender	Citizenship
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ICSE ID	[REDACTED]		

IMMIGRATION HISTORY:

Date	Event
15/03/2008	[REDACTED] arrived in Australia holding an ETA.
20/04/2008	[REDACTED] departed Australia
16/08/2012	[REDACTED] arrived in Australia holding a eVisitor.
09/09/2012	[REDACTED] departed Australia
08/11/2012	[REDACTED] granted a Student visa (subclass 572), with [REDACTED]
26/12/2012	[REDACTED] arrived in Australia holding Student visas (subclass 572).
11/03/2013	[REDACTED] departed Australia
29/03/2013	[REDACTED] arrived in Australia
17/06/2013	[REDACTED] departed Australia
08/07/2013	[REDACTED] arrived in Australia
24/09/2013	[REDACTED] departed Australia
09/10/2013	[REDACTED] arrived in Australia
03/11/2013	[REDACTED] departed Australia
26/11/2013	[REDACTED] arrived in Australia
06/12/2013	[REDACTED] lodged a subclass 457 Temporary Work (Skilled) nomination application, naming [REDACTED]
18/02/2014	[REDACTED] granted a Temporary Work (Skilled) visa (subclass 457), with [REDACTED]
26/02/2014	[REDACTED] departed Australia
19/03/2014	[REDACTED] arrived in Australia
28/04/2014	[REDACTED] departed Australia
12/05/2014	[REDACTED] arrived in Australia
10/10/2014	[REDACTED] departed Australia
26/10/2014	[REDACTED] arrived in Australia
28/03/2015	[REDACTED] departed Australia
07/04/2015	[REDACTED] arrived in Australia
26/07/2015	[REDACTED] departed Australia
16/08/2015	[REDACTED] arrived in Australia
05/09/2015	[REDACTED] departed Australia
15/09/2015	[REDACTED] arrived in Australia
10/03/2016	[REDACTED]



Australian Government
Department of Immigration
and Border Protection

**RECORD OF DECISION WHETHER TO CANCEL VISA UNDER
SECTION 116 OF THE *MIGRATION ACT 1958***

PART A: CLIENT AND VISA DETAILS

1. Personal particulars of visa holder

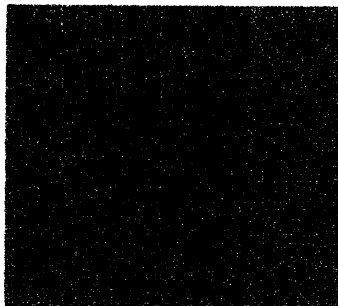
Family Name :

Given Names :

Date of Birth :

Citizenship :

Client ID:



2. Visa details

Visa class/subclass:

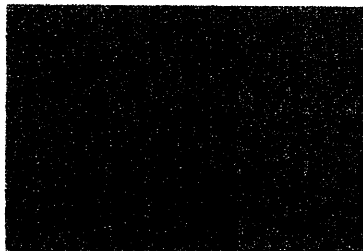
Class UC Subclass 457 - Temporary Work (Skilled)

Date of visa grant :

Visa expiry date:

File Reference:

Cancellation ID:



PART B: CONSIDERATION OF VISA CANCELLATION

Information considered

I am a delegated decision maker under Section 116 (General Power) of the *Migration Act 1958* (the Act). In reaching my decision regarding visa cancellation I have considered the following:

- relevant legislation contained in the Act and *Migration Regulations (1994)* (the Regulations), collectively 'migration law';
- information contained in the Department's *Procedures Advice Manual 3*;
- documents and information provided by [redacted] and
- other relevant information held on departmental files.

PART C: GROUND(S) FOR CANCELLATION

The ground(s) for cancellation considered in this decision record are:

s116 (1) Subject to subsections (2) and (3), the Minister may cancel a visa if she or she is satisfied that:

(b) its holder has not complied with a condition of the visa;

Assessment

Based on the information before me, I am satisfied there is a ground for cancellation of [REDACTED] visa under section 116 of the Act because [REDACTED] has not complied with condition 8107 which was imposed on his visa. He has not complied with paragraph 3(b) of condition 8107, which states:

8107

(3) If the visa is, or the last substantive visa held by the applicant was, a Subclass 457 (Temporary Work (Skilled)) visa that was granted on the basis that the holder met the requirements of subclause 457.223(2) or (4):

(b) if the holder ceases employment — the period during which the holder ceases employment must not exceed 90 consecutive days;

Reasons

The standard business sponsor who nominated [REDACTED] in the most recently approved nomination for his visa is [REDACTED] (the sponsor).

On 18 April 2016 the sponsor advised the Department in writing that [REDACTED] had ceased employment with them effective [REDACTED]. Neither he nor the sponsor have informed the Department that he has returned to work for the sponsor or an associated entity of theirs within 90 consecutive days of ceasing employment.

Departmental records do not indicate that within 90 consecutive days of ceasing employment with the sponsor a more recent Temporary Business Entry nomination application was approved for [REDACTED] in relation to any other sponsor.

I am satisfied [REDACTED] has ceased employment for more than 90 consecutive days and does not meet the requirements of paragraph 8107(3)(b) of condition 8107 attached to his visa.

[REDACTED] no longer meets the requirements of Regulation 457.223(2) or (4).

According to Australian migration law, in these circumstances, [REDACTED] visa may be cancelled under paragraph 116(1)(b) of the Act as set out above.

The powers to make a decision about whether to cancel the visa exist whether the non-compliance was deliberate or inadvertent.

Response to the Notice of Intention to Consider Cancellation

[REDACTED] was notified on 13 December 2016, by registered mail, of the intention to consider cancellation and the Notice of Intention to Consider Cancellation (NOICC) invited [REDACTED] to respond in writing.

A response was received from [REDACTED] via email on 21 December 2016 and a further response was received on 3 January 2017. Attached to these emails were the following documents:

- Notification of approval as a Temporary Business Entry Standard Business Sponsorship for [REDACTED] dated 30 November 2016.
- A contract of employment between [REDACTED] subject to approval of [REDACTED] nomination, signed and dated 6 July 2016.
- Copy of an email from [REDACTED] requesting the Department link the nomination application to [REDACTED] existing subclass 457 visa.
- A copy of the 'acknowledgement of nomination application received', dated 21 December 2016.
- An email with attached character reference from Mr Frank Alban, MLA, dated 23 December 2016.
- An email dated 23 December 2016 with attached character reference from [REDACTED]
- A character reference dated 19 December 2016 from [REDACTED]
- An outdoor photograph of the [REDACTED]
- A departmental email, dated 22 December 2016, acknowledging receipt of [REDACTED] initial response to the NOICC received on 21 December 2016.

In his initial response to the NOICC [REDACTED] confirms his approved sponsor ceased his employment with them on 15 April 2016 and a new nomination was lodged on his behalf by [REDACTED] on 12 July 2016.

This nomination was refused on 6 December 2016. [REDACTED] refers to 'numerous delays brought on by continued requests from the 457 department...' (sic) and states 'this nomination was unfairly refused...'. No supporting evidence or argument has been submitted to support [REDACTED] characterisation of 'unfairly refused'.

[REDACTED] confirms a new nomination for him was lodged by [REDACTED] on 21 December 2016. He states:

'I believe that if the processing times on the 457 visa fell within the stipulated period of 28 days as they were noting at the time, I would not have been outside of my 90 day period by much more than a week or two. I could certainly have started working for [REDACTED] at any stage from the 6th July 2016 and it was only the 457 department delay that caused me to be out of employment for this lengthy period of time.'

Migration law is clear on this point: a new nomination must be lodged within 90 days of cessation of employment with the previous approved sponsor. The initial nomination by [REDACTED] complied with this regulation. However, that nomination was lawfully refused on 6 December 2016. The time taken to finalise the application is not relevant to this consideration of cancellation.

By [REDACTED] own calculations, if the Department had refused the 12 July 2016 nomination application *'within the stipulated period of 28 days as they were noting at the time'* he would have been outside the 90 day period to have another nomination lodged on his behalf by *'a week or two'*.

This would still constitute non-compliance with paragraph 8107(3)(b) of condition 8107 attached to his visa and [REDACTED] would still not meet the requirements of Regulation 457.223(2) or (4). One factor contributing to Australia's stability and its appeal as a migration destination is the strength of our commitment to upholding the law by complying with legislation and regulations.

As a reason not to cancel his visa [REDACTED] asserts *'I have at all times abided by the conditions set for me by the Department of Border Protection'* (sic). I acknowledge he appears to have endeavoured to comply with all conditions of the visa as per the legislation and regulations. However, as outlined above, [REDACTED] became non-compliant with paragraph (3)(b) of condition 8107 attached to his visa when the nomination application was refused on 6 December 2016 and he chose to remain in Australia and contravene Australia's migration laws.

While I acknowledge it might be inconvenient, subclass 457 visa holders in this situation have the option of applying for any other visa for which they might be eligible or departing Australia until their sponsorship nomination is decided. If they do not comply, their visa may be cancelled.

[REDACTED] describes how [REDACTED] are settled here and committed to a life in Australia: having *'bought a house, set our roots and will consider remaining here should [REDACTED] indicate that they are willing to continue with this position'*.

The subclass 457 visa is a temporary visa and while [REDACTED] had previously applied for a permanent visa, the outcome of any application is not certain until it is finalised.

In his second response to the NOICC [REDACTED] states *'this is the first time we have received direct communication from Immigration. Communications have always been between our Immigration Agent and yourselves'* This is a requirement whereby a migration agent authorised by the visa applicant becomes the authorised representative and correspondence recipient for a particular matter. As visa cancellation consideration is a different matter, for which no agent has been authorised to receive communication on [REDACTED] behalf, it was appropriate for the Department to communicate directly only with the authorised migration agent.

[REDACTED] reiterates his earlier assertion *'we have obeyed DIBPs every instruction and requirement in order to stay/work within all legal perimeters in Australia, and we have done so the honourable way'* (sic).

As previously noted, [REDACTED] appears to have endeavoured to comply with the conditions of his visa as per the legislation and regulations until the nomination application lodged on his behalf by [REDACTED] was refused on 6 December 2016. By voluntarily choosing to remain in Australia after this decision he is contravening Australia's migration laws.

In his second response to the NOICC [REDACTED] details the sequence of events which led to the cessation of his employment with the sponsor, [REDACTED]. While the events [REDACTED] describes are concerning they are more properly the jurisdiction of Fair Work Australia. I have not been made aware of any action in this regard, neither is there any information before me that a formal allegation of breach of sponsorship obligations has been made to the Department.

In his second NOICC response [redacted] again criticises the time the Department took, firstly to approve [redacted] application to become an approved business sponsor and secondly to refuse their nomination of him for the position of [redacted]. As I have noted above, given that the nomination was refused, this timeline makes no difference to the outcome. [redacted] would still have become non-compliant with paragraph 8107(3)(b) of condition 8107 attached to his visa and he would not meet the requirements of Regulation 457.223(2) or (4) while he remained in Australia.

[redacted] states *'our agent was advised that the Sponsorship for [redacted] was approved, however contrary to the report emailed to us the nomination was refused. I re-read the report many times and it still seems contradictory in its evaluation from one paragraph to the next' (sic)*. This is not directly relevant to this consideration of visa cancellation. However, as [redacted] has raised the issue, I will briefly address it.

As implied in the previous paragraph, the employer's application to become an approved business sponsor is a separate matter from the nomination of a particular person for a specified position.

As to [redacted] contention regarding contradictions in the decision record, the document clearly outlines the ways in which [redacted] did not justify its need for an employee in this position given it only employs [redacted] and has not demonstrated a turnover or profit margin sufficient to warrant employing [redacted].

[redacted] states the Department is *'considering [redacted] my 457 visa on the grounds that I haven't worked for 90 consecutive days as per my visa stipulations'*.

This is incorrect. I am considering cancellation of [redacted] subclass 457 visa on the grounds that, although a new nomination was lodged for him within 90 days of cessation of employment, that nomination was refused. As the 90 day timeframe has expired it is not possible for another nomination to be lodged on [redacted] behalf within the legally allowable timeframe. This timeframe exists because the subclass 457 visa programme is designed to address identified skill shortages in the Australian workforce. If a nomination is not lodged within the 90 days, or is lodged within the timeframe but is then refused, the legislation and regulations deem the visa holder's particular skill is no longer required. While [redacted] remains onshore he contravenes Australian migration law which states that in such a situation the visa may be cancelled.

[redacted] reiterates, *'I am following the rules, and as per my initial response to you, I have seriously stuck to your rules, as I'm not permitted to work while the application is in the process or in an approval stage' (sic)*. This is partially correct. However, the condition relating to working only for an approved sponsor once a nomination is approved is one of a number of conditions attached to the visa. As detailed above [redacted] is in contravention of paragraph 3(b) of condition 8107 and no longer meets the requirements of Regulation 457.223(2) or (4).

[redacted] then makes 13 numbered points attesting to [redacted] good character and *'honourable intentions'*. The character references submitted provide substantial support for this claim and I accept at face-value [redacted] good character and honourable intentions. These are not at issue in this consideration of cancellation, however I will address some of these points in Part D below.

In conclusion [redacted] reasserts *'I have followed the Immigration 457 Visa rules to the letter' (sic)*. As previously mentioned, there is no evidence to contradict this assertion up until the time the nomination by [redacted] was refused. At this point [redacted]

ceased to follow 'the Immigration 457 Visa rules to the letter' (sic) by choosing to remain in Australia and contravene Australia's migration laws.

██████████ also alludes to Australia's stability and its appeal as a migration destination due to our commitment to upholding the law by complying with legislation and regulations when he states he 'will continue to follow all Australian rules - as this is part of the reasoning why we made the decision to invest our lives into this country' (sic).

While ██████████ remains onshore holding a subclass 457 visa without either an approved nomination, an application underway for another visa, and/or an appropriate bridging visa he is contradicting this claim by continuing to contravene Australia's migration laws.

There is no evidence before me indicating ██████████ has availed himself of the option of applying for any other visa for which he might be eligible or departing Australia until his current sponsorship nomination is decided.

PART D: DECISION WHETHER TO CANCEL

Assessment of relevant factors

Taking into account the material listed under 'Information considered' above, I have made the following assessment with regard to several relevant factors.

- the purpose of ██████████ travel to and stay in Australia.

On 18 February 2014 ██████████ was granted a Temporary Work (Skilled) visa (subclass 457) for the purpose of being able to fill a skill shortage and work in Australia for an approved sponsor in a skilled occupation for which he was specifically nominated and which could not be filled from within the Australian workforce. The 457 Temporary Work (Skilled) visa also allows the holder a period of 90 days after ceasing employment in which to either:

- Find another employer to lodge a new subclass 457 nomination application for them to take over sponsorship of the existing 457 Temporary Work (Skilled) visa which must be approved before they can start working for the employer;
- Lodge a further application while they remain in Australia for a visa relevant to their changed circumstances and if approved will provide an alternative, appropriate pathway for them to be able to remain in Australia if their subclass 457 Temporary Work (Skilled) is cancelled; or
- Depart Australia, and if the visa is cancelled they will be able lodge a new visa application from overseas if they either find a new sponsor willing to sponsor them for a new Temporary Work (Skilled) visa or if they have another purpose for wishing to return to Australia.

In his response to the NOICC ██████████ refers to the quality of life and some of the benefits ██████████ enjoys by living in Australia. He also refers to the fact they had expected to gain permanent residency in Australia. This does not relevantly address the purpose of his travel to and stay in Australia with regard to the provisions of migration law and regulations relating to the subclass 457 visa, as outlined in the NOICC.

The Temporary Work (Skilled) visa (subclass 457) is a temporary visa intended to address Australia's skill shortages; it is not designed to enable ██████████ to settle permanently in Australia.

- On 12 July 2016, 88 days after ██████████ ceased employment with the sponsor of the visa, a new 457 nomination application was lodged by Australian employer ██████████ to work for them in the occupation of ██████████

- [REDACTED]
- That nomination was refused on 6 December 2016.
- [REDACTED] then lodged another nomination application for him on 21 December 2016.
- This indicates his purpose for remaining in Australia is now on the basis of wishing to work for that business if the nomination is approved.
- It is not in line with the purpose of the visa that beyond 90 days from ceasing employment with the sponsor the visa holder continues to hold a subclass 457 visa for an extended period of time to continue searching for another sponsor or to wait the outcome of a new 457 nomination application lodged outside the 90 day period. The visa holder is able to do that from overseas.
- A subclass 457 visa holder can only commence working for a new employer once a new 457 nomination application has been approved.
- While [REDACTED] remains in Australia holding a subclass 457 visa he is unable to lawfully work for any new employer in order to financially support [REDACTED] while he continues to live in Australia.
- It is not known how long it may take for this new 457 nomination application to be processed, nor what the outcome will be. It is not in line with the purpose of the visa that beyond 90 days from ceasing employment a client continues to hold a subclass 457 visa for an extended period of time to attempt to find another sponsor or to await the outcome of a new 457 nomination application lodged outside of the 90 day period. This new nomination application was lodged 160 days after the 90 day period ended and 266 days after [REDACTED] ceased employment. This is an extended period of time.
- If I decide to cancel the visa under these grounds it will not incur a penalty to prevent [REDACTED] being able to apply for, or be granted, a new visa from overseas. If the current 457 nomination application is subsequently approved, or if he finds another sponsor and has a 457 nomination application approved for them, it will then be open to him to apply for a new 457 Temporary Work (Skilled) visa from overseas to seek to return here to commence working for the new sponsor.

I give this consideration no weight in the visa holder's favour.

- the extent of [REDACTED] compliance with any conditions subject to which [REDACTED] visa was granted.

[REDACTED] appears to have complied with the conditions of his visa until the nomination made on his behalf by [REDACTED] was refused on 6 December 2016. Since that time he has not complied with paragraph 3(b) of condition 8107 and no longer meets the requirements of Regulation 457.223(2) or (4).

I give this consideration a little weight in the visa holder's favour.

- the degree of hardship that may be caused to [REDACTED]

In his response to the NOICC [REDACTED] refers to the quality of Australian society and improved opportunities for [REDACTED]. He states that with the prospect of permanent residency he 'returned to [REDACTED] and wrapped-up various elements of our lives' (sic).

[REDACTED] describes how [REDACTED] are settled here and committed to a life in Australia; having 'bought a house, set our roots and will consider remaining here should [REDACTED] indicate that they are willing to continue with this position'. He states [REDACTED] seemed to feel so much better not being "those foreigners" as now they could say "one day we will be one of you".

The subclass 457 visa is a temporary visa and while [REDACTED] had previously applied for a permanent visa, the outcome of any application is not certain and should not be presumed until it is finalised.

[REDACTED] refers to his preference that [REDACTED] note many [REDACTED] regularly relocate despite the potential stress caused.

[REDACTED] have previously relocated at least once. [REDACTED] was disrupted when [REDACTED] decided to come to Australia and [REDACTED] and I were only here on a 4-year adventure of work February 2014-2018, I still had my work in [REDACTED] and it was our intention to return when the time came' (sic). At that time the [REDACTED] would have once more been disrupted after having spent longer in Australia, perhaps making that relocation more disruptive.

There are provisions under the Temporary Work (Skilled) visa (subclass 457) regulations which require a sponsor pay reasonable repatriation costs of the visa holders on cessation of their employment. There is no evidence before me of [REDACTED] attempting to make use of this provision.

While I acknowledge cancellation of [REDACTED] visa may result in some inconvenience and/or hardship for [REDACTED] he was granted a temporary visa to fill an identified skill shortage and work in Australia for an approved sponsor in a skilled occupation for which he was specifically nominated and which could not be filled from within the Australian workforce.

As noted above, that purpose ended on 6 December 2016 when the nomination lodged by [REDACTED] behalf was refused.

While [REDACTED] has made an argument on compassionate grounds it is not compelling given the temporary nature of the visa and the need to consistently apply Australia's migration laws.

I give this consideration minimal weight in the visa holder's favour.

- the circumstances in which the ground for cancellation arose.

I acknowledge the circumstances in which the ground for cancellation arose might to some extent have been beyond [REDACTED] control, in that the alleged behaviour of his sponsor led to his dismissal and the refusal of the nomination made by [REDACTED] was out of his hands.

However, it is [REDACTED] choice to remain in Australia despite no longer being eligible to hold the visa.

I give this consideration no weight in the visa holder's favour.

- [REDACTED] past and present behaviour towards the department.

There is no other evidence [REDACTED] has been uncooperative with the Department.

I give this consideration a little weight in the visa holder's favour.

- whether there are persons in Australia whose visas would, or may, be cancelled under s140

According to departmental records [REDACTED]

If I decide to cancel the visa this will result in the automatic consequential cancellation of the above visas by operation of law under section 140 of the Act.

It is not an unintended consequence of the legislation if [REDACTED] visas are consequentially cancelled; [REDACTED] immigration status will then continue to remain the same for each individual. This will avoid the possibility of splitting [REDACTED] if one were permitted to remain in, or return to, Australia but others could not.

I give this consideration no weight in the visa holder's favour.

- whether Australia has international obligations that would or may be breached as a result of cancelling [REDACTED] visa.

According to departmental records [REDACTED] has not raised any issues of requiring protection from his home country.

I give this consideration no weight in the visa holder's favour.

- legal consequences of a decision to cancel the visa

Australia's migration laws are clear; there is no necessity nor legal basis in law for [REDACTED] to continue to hold the visa.

A decision to cancel the visa under the grounds being considered would result in a section 48 bar on applying for certain visas onshore. Cancellation might also result in [REDACTED] becoming an unlawful non-citizen liable to detention under s189 and removal under s198 of the Act if he did not voluntarily depart Australia. However, any risk of detention would arise from the lack of a bridging visa rather than the cancellation of the substantive visa.

Given the circumstances as set out above, I do not consider this to be a significant reason not to cancel his visa.

I have also considered whether, as a result of a cancellation decision, [REDACTED] would be subject to indefinite detention. As [REDACTED] has the right to reside in [REDACTED] do not place weight on this consideration as a reason not to cancel his visa.

Given the circumstances outlined above, these are not unreasonable consequences of the cancellation nor are they unintended consequences of the legislation.

I give this consideration no weight in the visa holder's favour.

- other relevant matters

No other relevant matters have been raised.

PART E: DECISION

After careful consideration of all the information before me, I am satisfied there is a ground for cancelling [REDACTED] subclass 457 visa and I am satisfied the grounds for cancelling the visa outweigh any reasons for not cancelling.

I have decided to cancel the visa.

[REDACTED]
Position number: 00001670
Senior Visa Cancellation Officer
Visa Cancellation Unit WA
General Cancellations Network
Department of Immigration and Border Protection

6 January 2017
3:45pmWST

Attachment A

	(Australia) lodged a subclass 186 Employer Nominated Scheme (ENS) Temporary Residence Transition (TRT) nomination application.
29/03/2016	departed Australia
18/04/2016	notified the Department that employment had been terminated on 15/04/2016.
17/04/2016	arrived in Australia
12/07/2016	lodged a subclass 457 Temporary Work (Skilled) nomination application, naming as the primary applicant.
24/07/2016	departed Australia
07/08/2016	arrived in Australia
12/08/2016	The Department commenced the cancellation process in relation to the Temporary Work (Skilled) visa (subclass 457) granted to on 18/02/2014.
15/08/2016	departed Australia
02/09/2016	arrived in Australia
07/11/2016	withdrew the subclass 186 Employer Nominated Scheme (ENS) Temporary Residence Transition (TRT) nomination application as was no longer employed by them.
02/12/2016	subclass 457 Temporary Work (Skilled) nomination application was refused.
21/12/2016	lodged a further subclass 457 Temporary Work (Skilled) nomination application, naming as the primary applicant.
06/01/2017	The Department cancelled Temporary Work (Skilled) visas (subclass 457) due to breach of condition 8107 – <i>Not cease or change work</i> , had not worked for his sponsoring employer for 90 days.
10/01/2017	were granted Bridging E visas (subclass 050) for two weeks as they advised they would be lodging an Administrative Appeals Tribunal (AAT) review.
11/01/2017	lodged a review of the Department's decision to cancel his Temporary Work (Skilled) visa (subclass 457). This review remains ongoing.
24/01/2017	were granted Bridging E visas (subclass 050) for a further two weeks.
02/02/2017	The Department refused subclass 457 Temporary Work (Skilled) nomination application.
02/02/2017	were granted Bridging E visas (subclass 050) in association with ongoing AAT review.
22/02/2017	lodged an AAT review of the Department's decision to refuse the subclass 457 Temporary Work (Skilled) nomination application. This review remains ongoing.
16/03/2017	lodged a Regional Sponsored Migration Scheme (RSMS) Direct Entry nomination (subclass 187) application for the position of with for this position. Indicative processing timeframes for this type of application is currently 12 – 13 months.



Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS17-003050

To Minister for Immigration and Border Protection
Subject Possible Ministerial intervention under section 195A of the *Migration Act 1958* in relation to [redacted]

Received

21 AUG 2017

Minister for Immigration and Border Protection

Timing N/A

Recommendation

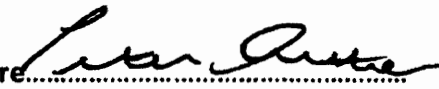
That you:

- 1. intervene under section 195A of the *Migration Act 1958* to grant [redacted] a Visitor visa (subclass 600) for a period of six months;

intervene not intervene

- If agreed, please sign the decision documents at Attachment A.

Minister for Immigration and Border Protection

Signature 

Date: 21/09/2017

Minister's Comments

[Empty box for Minister's Comments]

Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:
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Key Issues

1. On 14 August 2017, you indicated that you were inclined to consider intervening under section 195A of the *Migration Act 1958* (the Act) to grant [REDACTED] a Visitor visa (subclass 600) (MS17-002028 at Attachment B refers)
2. This submission is being referred for your final decision under section 195A of the Act in [REDACTED] case.

Background

3. The circumstances of [REDACTED] are outlined in previous submission MS17-002028.

Ministerial intervention under section 195A of the Act

4. If you are inclined to exercise your Ministerial intervention power under section 195A of the Act to grant [REDACTED] a Visitor visa (subclass 600) for a period of six months with work rights, as indicated in your decision of 14 August 2017, she would be able to lodge a further Partner (Combined) visa (subclass 820/801) application, which would be assessed through regular departmental processes. [REDACTED] would be required to pay the visa application charge of \$6865.
5. As the holder of a Visitor visa (subclass 600), [REDACTED] would not be eligible for subsidised healthcare through Medicare or the Pharmaceutical Benefits Scheme and would not be eligible for any Centrelink assistance.
6. Should you be inclined to intervene in [REDACTED] case under section 195A of the Act to grant her a Visitor visa (subclass 600), she will need to request the cancellation of her current Bridging E visa (subclass 050), in order for her to be administratively placed into immigration detention and enliven your power under section 195A. The Department will liaise closely with your office and [REDACTED] regarding these arrangements.
7. If you agree to intervene under section 195A of the Act, to grant [REDACTED] a Visitor visa (subclass 600), please sign the decision instruments at Attachment A.

Decline to consider

8. Should you decline to intervene in [REDACTED] case under section 195A of the Act, the Department will liaise with her to facilitate her removal from Australia. However, as discussed in previous submission MS17-002028, as [REDACTED] and has an [REDACTED] this may cause emotional and financial hardship to the [REDACTED]

Consultation – internal/external

9. Nil

Consultation – Secretary/Commissioner

10. The Department's Secretary and the Australian Border Force Commissioner were not consulted regarding this submission.

Client service implications

11. There are minimal client service implications.

Sensitivities

12. As previously mentioned, [REDACTED] and they have an [REDACTED] and as such, the *Convention on the Rights of the Child* and the *International Covenant on Civil and Political Rights* are relevant in this case.

Financial/systems/legislation/deregulation implications

13. Costings provided through the 2016-2017 financial year MYEFO update in December 2016 estimate that the cost of managing somebody on a BVE estimated at \$16,000 per person per annum. Importantly, the Department notes that costs will be highly depending on the individual circumstances, including the level of support required.

Attachments

Attachment A Section 195A decision documentation

Attachment B MS17-002028

Authorising Officer Dora Chin-Tan Assistant Secretary Status Resolution Branch 17/08/2017 Ph: [REDACTED]
--

Contact Officer: [REDACTED] Director, Complex Case Resolution Section, Ph: [REDACTED]

CC Regional Director, Vic/Tas
CSR Officer Vic

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to this person's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interest of Australia as a humane and generous society to grant this person a Visitor visa (subclass 600).



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

21/09 2017

Document 16

EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958*

- DECISION INSTRUMENT -

Name:
Date of Birth:
Client ID:



1. The above person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered her case under section 195A of the Act.
2. I have determined that it is in the public interest to grant this person a Visitor visa (subclass 600).
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) in favour of this person.

A handwritten signature in black ink, appearing to read 'Peter Dutton'.

THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

21/09/2017



Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS17-002028

To Minister for Immigration and Border Protection
Subject Possible Ministerial intervention under section 195A of the
Migration Act 1958 in relation to
[REDACTED]

Received

- 5 JUL 2017

Minister for Immigration
and Border Protection

Timing N/A

Recommendation

That you:

1. indicate whether you are inclined to intervene under section 195A of the *Migration Act 1958* to grant [REDACTED] a Visitor visa (subclass 600) for a period of six months;
 - If agreed, the Department will refer a further submission for your final decision.

consider / not consider

Minister for Immigration and Border Protection

Signature

Date: 14/08/2017

Minister's Comments

Rejected Yes/No	Timely Yes/No	Relevance	Length	Quality
		<input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	<input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. [REDACTED] is being referred for your consideration under section 195A of the *Migration Act 1958* (the Act), as (a) she is [REDACTED] and (b) she is currently barred under section 48 of the Act from lodging a valid visa application onshore.
2. [REDACTED] arrived in Australia on [REDACTED] holding a Prospective Marriage visa (subclass 300). She is a failed Partner visa applicant, with her [REDACTED] the sponsor of her application. This application was refused in March 2006 as their relationship was not considered genuine. As such, [REDACTED] is barred under section 48 of the Act from lodging a valid visa application onshore.
3. Following the Partner visa refusal, [REDACTED] became an unlawful non-citizen until she presented to the Department in February 2016 to regularise her immigration status. At that time, she advised that she had [REDACTED]

Background

Immigration history

4. Further details of [REDACTED] immigration history is available at Attachment A.

Family composition and best interest of the child

- [REDACTED]
6. Australia is a signatory to the *United Nations Convention on the Rights of the Child* (CRC). Article 3 of the CRC requires that in all actions concerning children under the age of 18 in Australia's jurisdiction, the best interests of the child shall be a primary consideration (note that it need only be a, rather than the, primary consideration and that it may be balanced by other countervailing considerations).
 7. Article 9(1) of the CRC states that "a child may not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such a separation is necessary for the best interests of the child". Article 9(4) of CRC specifically recognises that a child can become separated from a parent through such actions as detention, imprisonment, or deportation, and obliges State Parties to provide information on the whereabouts of absent family members in such situations. There is no suggestion that Australia would not abide by these obligations in this case.
 8. While considerations of the best interests of the child do not automatically lead to a decision to allow the child's family to remain in Australia, the Department acknowledges that it may be in the best interests of the child for [REDACTED] to remain in Australia.
 9. Given [REDACTED] family circumstances, Articles 17 and 23 of the *International Covenant on Civil and Political Rights* (ICCPR), to which Australia is a party, are also relevant in this case. Article 17 states that 'no one should be subjected to arbitrary or unlawful interference with...family'. Article 23 states that 'the family...is entitled to protection by the society and the state.' [REDACTED] may cause

Document 16
Sensitive: Personal

emotional and financial hardship. However, the protection of the family unit under Articles 17 and 23 does not amount to a right to enter or remain in Australia where there is no other right to do so.

Previous Partner application

10. [REDACTED] holding a Prospective Marriage visa (subclass 300), sponsored by her [REDACTED] and lodged a Partner visa (subclass 820/801) application on [REDACTED]

11. This application was refused on 21 December 2004 as their relationship was not considered genuine. [REDACTED] lodged a review of the Department's decision to refuse her visa with the Migration Review Tribunal (MRT) on [REDACTED] and on 15 March 2005 was granted an associated Bridging B visa (subclass 020) (BVB). On [REDACTED] contacted the Department to withdraw his sponsorship, advising that [REDACTED]. On 2 February 2006, [REDACTED] withdrew her MRT review.

Compliance

12. [REDACTED] BVB ceased on 2 March 2006, and she became an unlawful non-citizen until 4 February 2016, when she presented to the Department with her Migration Agent to regularise her immigration status.

13. At that time, [REDACTED] advised that she had remained unlawfully in the community for a lengthy period as she had been traumatised by her relationship with [REDACTED] and claims to have been hiding from him in [REDACTED]

Identity, character and security

14. [REDACTED] identity was established when she first arrived in Australia holding a Prospective Marriage visa (subclass 300), and again prior to the Department granting her a Bridging E visa (subclass 050) in February 2016.

15. There are no known character issues related to [REDACTED] however, this will be explored further should [REDACTED] be considered for a visa at any time in the future.

16. A check of departmental systems indicates there are no national security concerns related to [REDACTED]

17. Should you agree to consider intervening under section 195A of the Act in [REDACTED] case, her identity, character and security will be assessed in line with normal visa processing procedures.

National Returns and Removals Taskforce/Removal Availability

18. This submission has been reviewed by the National Returns and Removals Taskforce on 6 June 2017.

19. [REDACTED] holds a [REDACTED] which could be used to facilitate her removal from Australia should this be required. However, as she has [REDACTED] any removal action would need to [REDACTED]

Options for future management

Sensitive: Personal

Ministerial intervention under section 195A of the Act

20. As [REDACTED] is a refused Partner (Combined) visa (subclass 820/801) applicant, she is currently barred under section 48 of the Act from lodging a valid onshore visa application. Should [REDACTED] be granted a substantive temporary visa, such as a Visitor visa (subclass 600), she would be able to lodge a further Partner (Combined) visa (subclass 820/801) application, which would be assessed through regular departmental processes. The Department notes that [REDACTED] would be required to pay the visa application charge of \$6865.

21. As the holder of a Visitor visa (subclass 600), [REDACTED] would not be eligible for subsidised healthcare through Medicare or the Pharmaceutical Benefits Scheme and would not be eligible for any Centrelink assistance.

22. Should you be inclined to consider intervening in [REDACTED] case under section 195A of the Act to grant her a Visitor visa (subclass 600) with work rights, the Department will refer a further submission for your final decision.

Decline to consider

23. Should you decline to intervene in [REDACTED] case under section 195A of the Act, the Department will liaise with her to facilitate her removal from Australia. However, as discussed above, as [REDACTED] and has [REDACTED] this may cause emotional and financial hardship to [REDACTED]

Consultation – internal/external

24. Victorian Status Resolution, National Returns and Removals Taskforce

Consultation – Secretary/Commissioner

25. This submission did not involve consultation with the Department's Secretary or the Commissioner of the Australian Border Force.

Client service implications

26. There are minimal client service implications.

Sensitivities

27. As previously mentioned, [REDACTED] and as such, the CRC and ICCPR are relevant in this case.

Financial/systems/legislation/deregulation implications

28. There are minimal financial/systems/legislation/deregulation implications

Attachments

Attachment A Immigration history

Authorising Officer
Cleared by:
Tom Kirkpatrick A/g Assistant Secretary Status Resolution Branch 05/07/2017 Ph: [REDACTED]

Contact Officer: [REDACTED] Director, Complex Case Resolution Section, Ph: [REDACTED]

CC Regional Director, Vic/Tas
CSR Officer Vic

IMMIGRATION HISTORY - [REDACTED]

Name	[REDACTED]
Date of Birth	[REDACTED]
Citizenship	[REDACTED]
Gender	[REDACTED]
ICSE ID	[REDACTED]
Date Arrived in Australia	[REDACTED]
Current Location	[REDACTED]

IMMIGRATION HISTORY:

Date	Event
[REDACTED]	[REDACTED] holding a Prospective Marriage visa (subclass 300), sponsored by her [REDACTED]
24/08/2004	[REDACTED] lodged a Partner visa (subclass 820/801) application
21/12/2004	[REDACTED] partner visa (subclass 820/801) application was refused as the relationship was considered non-genuine.
07/01/2005	[REDACTED] lodged a review of the Department's decision to refuse her visa with the Migration Review Tribunal (MRT).
15/03/2005	[REDACTED] was granted an associated Bridging B visa (subclass 020) (BVB) in relation to the MRT review.
23/05/2005	[REDACTED] contacted the Department to withdraw his sponsorship, and advised that [REDACTED]
02/02/2006	[REDACTED] withdrew her MRT review.
02/03/2006	[REDACTED] VB ceased and she became an unlawful non-citizen.
04/02/2016	[REDACTED] presented to the Department with her Migration Agent to regularise her immigration status.
16/02/2016 – present	[REDACTED] is currently lawful in the community through the grant of a number of BVEs.



Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS17-003818

To Minister for Immigration and Border Protection

Subject Possible Ministerial intervention under section 195A of the *Migration Act 1958* in relation to [REDACTED]

Timing As requested by your office on 5 September 2017.
Please note this is a 2nd stage submission

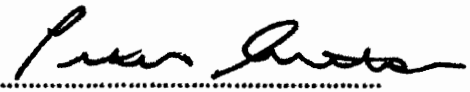
Recommendation

That you:

- agree to intervene under section 195A of the *Migration Act 1958* (the Act) to grant [REDACTED] a Visitor visa (subclass 600) for 12 months, with work rights;
 - if agreed, please sign the section 195A decision documentation at Attachment A.

agreed / not agreed

Minister for Immigration and Border Protection

Signature.....

Date:.....22 / 11 / 2017

Received
25 OCT 2017
Minister for Immigration
and Border Protection

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to this person's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interest of Australia as a humane and generous society to grant this person a Visitor visa (subclass 600) for 12 months with work rights.



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

27/1/2017

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- DECISION INSTRUMENT -

Name:
Date of Birth:
Client ID:



1. The above person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered her case under section 195A of the Act.
2. I have determined that it is in the public interest to grant this person a Visitor visa (subclass 600) for 12 months with work rights.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) for 12 months with work rights in favour of this person.

A handwritten signature in black ink, appearing to read 'Peter Dutton'.

THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

22/11/2017

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 13 October 2017, you agreed to consider intervening under section 195A of the *Migration Act 1958* (the Act), to grant [REDACTED] Visitor visa (subclass 600) for 12 months, with work rights to allow her to apply for a Contributory Parent visa (subclass 864). Submission MS17-003451 at **Attachment B** refers.
2. There have been no changes in [REDACTED] circumstances since your decision of 13 October 2017. [REDACTED] continues to reside in [REDACTED] with [REDACTED] and the support of [REDACTED].
3. This submission is being referred at the request of your office for your final decision in the case of [REDACTED].

Background

Immigration history

4. [REDACTED] has been a regular visitor to Australia since first arriving on 13 October 2005. [REDACTED] has travelled in and out of Australia on a number of occasions, holding a number of temporary visas, most recently a Working Holiday visa (subclass 417), valid until 13 February 2018. Further details of [REDACTED] immigration history and personal circumstances is available at **Attachment B**.

Options for future management

Ministerial intervention under section 195A of the Act

5. If you are inclined to exercise your Ministerial Intervention power under section 195A of the Act to grant [REDACTED] a Visitor visa (subclass 600) for 12 months, with work rights, as indicated by your decision of 13 October 2017, this would allow [REDACTED] to lodge a Contributory Parent visa (subclass 864) application onshore.

Sensitive: Personal

6. As the holder of a Visitor visa (subclass 600), [REDACTED] would not be eligible for subsidised healthcare through Medicare or the Pharmaceutical Benefits Scheme and would not be eligible for any Centrelink assistance, however, she may be entitled to health care through reciprocal medical arrangements with [REDACTED]

Decline to consider

7. Should you decline to intervene in [REDACTED] case under section 195A of the Act, when her current visa ceases, the Department will liaise with her to facilitate her departure from Australia. However, as discussed in submission MS17-003451 at Attachment B, as [REDACTED] this could result in emotional and financial hardship for the family.

Consultation – internal/external

8. WA Status Resolution, Family and Citizenship Programme Branch, your office

Consultation – Secretary/Commissioner

9. This submission did not involve consultation with the Department's Secretary or the Commissioner of the Australian Border Force.

Client service implications

10. There are minimal client service implications.

Sensitivities

11. N/A

Financial/systems/legislation/deregulation implications

12. There are minimal financial/systems/legislation/deregulation/media implications

Sensitive: Personal

Attachments

Attachment A Section 195A decision documents

Attachment B Submission MS17-003451

Authorising Officer
Cleared by: Sally Pfeiffer Acting Assistant Secretary Status Resolution Branch Date: 25/10/2017 Ph: [REDACTED]

Contact Officer: [REDACTED] Director, Complex Case Resolution Section, Ph: [REDACTED]

CC Assistant Secretary, Family and Citizenship Programme Branch
Director, Family and Citizenship Programme Branch
Regional Director, Central and West
Director, WA Status Resolution West

Sensitive: Personal



Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS17-003451

To Minister for Immigration and Border Protection
Subject Possible Ministerial intervention under section 195A of the *Migration Act 1958* in relation to [REDACTED]

Timing As requested by your office on 5 September 2017

Recommendations

That you:

1. indicate whether you are inclined to consider intervening under section 195A of the *Migration Act 1958* (the Act) to grant [REDACTED] a Visitor visa (subclass 600) for 12 months, with work rights;
 - if agreed, the Department will refer a further submission to you for your final decision.

consider / not consider

Minister for Immigration and Border Protection

Signature *[Handwritten Signature]*

Date: 13/10/2017

Received

- 3 OCT 2017

Minister for Immigration
and Border Protection

Sensitive: Personal

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. This case is being referred for your consideration under section 195A of the *Migration Act 1958* (the Act) as (a) [redacted] current visa is due to expire on 13 February 2018 and following cessation she does not have a viable immigration pathway that will allow her to remain in Australia, (b) [redacted] and (c) your office requested a first stage submission in relation to [redacted] with the option of a Visitor visa (subclass 600) with work rights.
2. [redacted] has held a number of temporary visas since first arriving in Australia on 13 October 2005. On 20 February 2017, [redacted] was granted a Working Holiday visa (subclass 417) on the basis that she had completed three months of specified work in regional Australia, with [redacted]. This visa is valid until 13 February 2018. Following the cessation of this visa, [redacted] has no viable immigration pathway which will allow her to remain in Australia.
3. [redacted] has strong links to the Australian community. She was previously in a relationship with [redacted].
Additionally, [redacted]
4. This submission is being referred at the request of your office for your consideration under section 195A of the Act for the possible grant of a Visitor visa (subclass 600), to allow [redacted] to apply for a Contributory parent visa (subclass 864).

Sensitive: Personal

11. As the holder of a Visitor visa (subclass 600), [REDACTED] would not be eligible for subsidised healthcare through Medicare or the Pharmaceutical Benefits Scheme and would not be eligible for any Centrelink assistance, however, she may be entitled to health care through reciprocal medical arrangements with [REDACTED]

12. Should you be inclined to consider intervening in [REDACTED] case under section 195A of the Act to grant her a Visitor visa (subclass 600) with work rights, the Department will refer a further submission for your final decision.

Decline to consider

13. Should you decline to intervene in [REDACTED] case under section 195A of the Act, when her current visa ceases, the Department will liaise with her to facilitate her departure from Australia. However, as discussed above, as [REDACTED] this could result in emotional and financial hardship for the family.

Consultation – internal/external

14. WA Status Resolution, Family and Citizenship Programme Branch, your office

Consultation – Secretary/Commissioner

15. This submission did not involve consultation with the Department's Secretary or the Commissioner of the Australian Border Force.

Client service implications

16. There are minimal client service implications.

Sensitivities

17. N/A

Financial/systems/legislation/deregulation/media implications

18. There are minimal financial/systems/legislation/deregulation/media implications

Sensitive: Personal

Attachments

Attachment A Immigration history

Authorising Officer
Cleared by:
Sally Pfeiffer Acting Assistant Secretary Status Resolution Branch
Date: 29/09/2017 Ph: [REDACTED]

Contact Officer: [REDACTED] Director, Complex Case Resolution Section, Ph: [REDACTED]

CC Assistant Secretary, Family and Citizenship Programme Branch
Director, Family and Citizenship Programme Branch
Regional Director, Central and West
Director, WA Status Resolution West

IMMIGRATION HISTORY

Name	
Date of Birth	
Citizenship	
Gender	
ICSE ID	
Date First Arrived in Australia	
Current Location	

IMMIGRATION HISTORY:

Date	Event
13/10/2005	Arrived in Australia holding an Electronic Travel Authority (Visitor) visa (subclass 976), valid until 13/10/2006.
29/10/2005	Departed Australia.
24/01/2008	Granted an Electronic Travel Authority (Visitor) visa (subclass 976), valid until 08/05/2008.
02/03/2008	Arrived in Australia holding an Electronic Travel Authority (Visitor) visa (subclass 976).
08/05/2008	Granted a Temporary Work (Skilled) (subclass 457) visa, valid until 06/05/2010.
01/11/2008	Departed Australia.
22/11/2008	Arrived in Australia holding a Temporary Work (Skilled) (subclass 457) visa.
09/12/2009	Granted a Bridging A visa (subclass 010) in association with application.
06/05/2010	Granted a Bridging A visa (subclass 010) in association with application. valid until 06/05/2015, due to application.
27/05/2010	Departed Australia.
01/06/2010	Arrived in Australia holding a Bridging A visa (subclass 010) in association with application.
05/11/2010	Departed Australia.
16/11/2010	Arrived in Australia holding a Bridging A visa (subclass 010) in association with application.
06/02/2012	Departed Australia.
29/02/2012	Arrived in Australia holding a Bridging A visa (subclass 010) in association with application.
14/11/2013	Departed Australia.
09/12/2013	Arrived in Australia holding a Bridging A visa (subclass 010) in association with application.
05/05/2015	Granted a Bridging A visa (subclass 010) in association with Remaining Relative (Residence) (Full) (subclass 835) visa application. This visa was refused as documentation showed that had near relatives living outside Australia.
08/05/2015	Granted a Bridging B visa (subclass 020) valid 05/02/2016.
12/05/2015	Departed Australia.
21/05/2015	Arrived in Australia holding a Bridging B visa (subclass 020).
05/02/2016	Granted a Bridging B visa (subclass 020) valid 16/03/2016.
09/02/2016	Departed Australia.
11/02/2016	Granted a Working Holiday (subclass 417), valid until 13/02/2017.
13/02/2016	Arrived in Australia holding a Working Holiday (subclass 417).
10/02/2017	Granted a Bridging A visa (subclass 010) in association with a Working Holiday (subclass 417) application.
20/02/2017	Granted a Working Holiday (subclass 417), valid until 13/02/2018.

Received

14 FEB 2018

Submission

Minister for Immigration and Border Protection

For decision

PDMS Ref. Number MS18-000615



Australian Government
Department of Home Affairs

To Minister for Home Affairs
Minister for Immigration and Border Protection

Subject Possible Ministerial intervention under section 195A of the
Migration Act 1958 in relation to [REDACTED]
[REDACTED]).

Timing As requested by your office on 13 February 2018.

Recommendations

That you:

1. note [REDACTED] current Visitor visa (subclass 600) was considered for refusal under section 501 of the Act. noted / please discuss

AND

2. intervene under section 195A of the *Migration Act 1958* to grant [REDACTED] a Visitor (Tourist stream) visa (subclass 600) for two months; intervene / not intervene

- if agreed, please sign the decision documents at Attachment A

AND


3. indicate whether you are inclined to consider intervening under section 195A of the *Migration Act 1958* to grant [REDACTED] a Partner (Temporary) visa (subclass 820); consider / not consider

- please indicate whether you require [REDACTED] to provide additional evidence of the genuineness of his relationship. required / not required

- if you are inclined to consider, please indicate whether you require [REDACTED] to undergo health checks. required / not required

- please note the Department will seek legal advice prior to a further submission being referred for your decision. noted / please discuss

Minister for Home Affairs
Minister for Immigration and Border Protection

Signature 

Date: 15/02/2018

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. [REDACTED] case is being referred for your consideration under section 195A of the *Migration Act 1958* (the Act) following a request from your office on [REDACTED] for the possible grant of a Visitor visa (subclass 600) or a Partner (Temporary) visa (subclass 820).
2. [REDACTED] a [REDACTED] national arrived in Australia as the holder of a Visitor visa, valid for three months, on [REDACTED]. [REDACTED] Visitor visa has condition 8503 (no further stay/application) imposed and [REDACTED] is unable to lodge any further visa applications onshore.
3. [REDACTED] Visitor visa application was referred to the Visa Applicant Character Cancellation Unit (VACCU) for refusal consideration on [REDACTED] due to offshore criminal convictions. A delegate of the Minister decided not to refuse [REDACTED] Visitor visa application and [REDACTED] was issued a warning letter.
4. On 2 March 2017, [REDACTED] married [REDACTED] an Australian citizen. [REDACTED] has [REDACTED] children from a previous relationship. [REDACTED] travel to Australia was to [REDACTED].
5. [REDACTED] has applied for a waiver of condition 8503 on three occasions and each time a delegate refused [REDACTED] request. As condition 8503 restricts [REDACTED] from lodging a valid visa application, [REDACTED] has no viable visa pathway onshore and [REDACTED] Visitor visa will cease on [REDACTED].

Sensitive: Personal

Background

Immigration history

6. [REDACTED] has had two Visitor visa applications refused. On [REDACTED] [REDACTED] was refused a Visitor visa as [REDACTED] failed to submit the required police clearance. On [REDACTED] he was refused a further Visitor visa as the decision maker found [REDACTED] did not meet the Genuine Temporary Entrant requirements.
7. [REDACTED] lodged a further Visitor visa application on [REDACTED] requesting a three month stay in Australia to visit [REDACTED] partner and [REDACTED]. In his application [REDACTED] declared criminal convictions and provided an [REDACTED]
8. On [REDACTED] Visitor visa application was referred to VACCU for refusal consideration. On [REDACTED] a delegate found [REDACTED] did not pass the character test but decided not to exercise their discretion under section 501(1) of the Act to refuse [REDACTED] visitor visa application. A copy of the section 501 decision record is at **Attachment B**. [REDACTED] was issued with a warning letter and counselled about further offending.
9. [REDACTED] arrived in Australia on [REDACTED] as the holder of a Visitor visa, valid until [REDACTED]. [REDACTED] has applied for a waiver of condition 8503 on three occasions and each time, a delegate refused [REDACTED] waiver request. A copy of the most recent waiver refusal, of [REDACTED] is at **Attachment C**.

Criminality

10. In [REDACTED] Visitor visa application [REDACTED] declared criminal convictions and provided an [REDACTED] indicating [REDACTED]
11. On [REDACTED] [REDACTED] was convicted of [REDACTED] for which [REDACTED] was sentenced [REDACTED]
12. On [REDACTED] [REDACTED] was convicted of [REDACTED] for which [REDACTED] was sentenced to [REDACTED]

Australian citizen links

13. [REDACTED] advised the Department [REDACTED] is in a relationship with an Australian citizen, [REDACTED] states the two were married on [REDACTED] in the [REDACTED] [REDACTED] has not provided evidence of their marriage, however departmental systems indicate [REDACTED] was not in Australia on [REDACTED]
14. [REDACTED] has [REDACTED] Australian citizen children from a previous relationship [REDACTED]

Sensitive: Personal

Health, security and identity

15. [REDACTED] has not undergone health checks as part of [REDACTED] Visitor visa application. It is open to you to request [REDACTED] complete health checks prior to the grant of a further visa.
16. There is no information on departmental systems that indicates [REDACTED] is a security concern.
17. [REDACTED] entered Australia on [REDACTED] passport and was immigration cleared. In this regard, [REDACTED] identity has been established in accordance with *Identity, biometrics and immigration status instructions*.

Condition 8503 (no further stay/application)

18. The purpose of condition 8503 is to provide greater assurance that a temporary entrant will depart Australia before the expiry of their visa and to maintain the integrity of certain visa programs, such as the Visitor program. Condition 8503 will stay in effect while the visa holder remains in Australia, even after the end date of the visa, unless it has been waived, the visa holder departs Australia or the Minister grants a permanent visa through one of his Ministerial intervention powers.
19. Condition 8503 is a discretionary condition. Imposition of condition 8503 is seen as a desirable safeguard in circumstances where an applicant appears to satisfy the criteria for the grant of a visa but residual concerns exist.
20. Sub regulation 2.05(4) of the *Migration Regulations 1994* (the Regulations) provides circumstances in which condition 8503 can be waived (**Attachment E** refers). The power to exercise sub regulation 2.05(4) of the Regulations has been delegated to the Department.
21. On [REDACTED] and [REDACTED] a delegate refused [REDACTED] request to waive condition 8503. As the exercise of the waiver power by the delegate is deemed to have been exercised by you, this restricts the circumstances in which you can personally exercise the power to those in which you are satisfied that substantially different compelling and compassionate circumstances have developed since the previous refusal decision. Please note that [REDACTED] has not advised the Department of any changes to [REDACTED] circumstances since the delegate's decision of [REDACTED]

Visa pathway

22. [REDACTED] has no viable visa option in Australia as [REDACTED] is prevented by condition 8503 from making a valid substantive visa application, other than a protection visa. As the delegate has refused to waive condition 8503, this condition will remain in effect until [REDACTED] departs Australia.
23. If [REDACTED] is granted a Visitor visa through your Ministerial intervention power under section 195A of the Act (without condition 8503 imposed) and [REDACTED] departs Australia, [REDACTED] could re-enter Australia and lodge a valid visa application onshore, for example a Partner visa.

Options for future management

24. Your power under section 195A of the Act is sometimes applied to community cases, where there are compassionate and compelling circumstances. Your section 195A power is non-compellable which means you are under no obligation to exercise or to consider

Sensitive: Personal

exercising your power. You may consider it in the public interest to grant [REDACTED] a visa using your power under section 195A of the Act. To enliven your power, the Department will need to cancel [REDACTED] current visa and detain [REDACTED] under section 189 of the Act.

25. Noting [REDACTED] claimed relationship has not yet been assessed by the Department and in light of [REDACTED] offshore criminal convictions, the Department is not providing a permanent visa option for you to consider in this case.

Temporary visa option – Visitor visa (subclass 600)

26. If you agree to temporarily resolve [REDACTED] immigration status, the Department considers the grant of a Visitor visa (subclass 600) for two months, with multiple entry permits and without condition 8503, to be the most appropriate option. As the holder of a Visitor visa with multiple entries permitted, [REDACTED] would be able to depart and re-enter Australia.
27. [REDACTED] departure from Australia would render condition 8503 imposed on [REDACTED] previous Visitor visa ineffective. Once [REDACTED] re-enters Australia he would be able to lodge a visa application onshore, such as a Partner visa application. [REDACTED] would be eligible for an associated Bridging A visa (subclass 010) should [REDACTED] apply before his Visitor visa expires. The Department notes that [REDACTED] does not need to return to the [REDACTED] to render condition 8503 ineffective.
28. A Visitor visa has mandatory condition 8101 (no work) and 8201 (limited study) imposed. Should [REDACTED] lodge a further visa application onshore and be granted an associated BVA, condition 8101 would be imposed in accordance with subclass 010.611(4) of the Regulations. [REDACTED] would be allowed to study on a BVA and should [REDACTED] have a compelling need to work, it would be open to [REDACTED] to apply for a BVA without condition 8101.
29. If you agree to intervene and grant [REDACTED] a Visitor visa under section 195A of the Act, please sign the decision document at **Attachment A**. The Department will also counsel [REDACTED] around [REDACTED] eligibility for applying for a Partner visa and the need for [REDACTED] to travel offshore prior to lodging [REDACTED] application.
30. This option will ensure [REDACTED] maintains a legal status in Australia and will allow the Department to thoroughly consider [REDACTED] against all relevant criteria for any visa [REDACTED] applies for in the future. The onus would be on [REDACTED] to provide sufficient evidence to satisfy a decision maker.

Temporary visa option – Partner visa (subclass 820)

31. If you are inclined to temporarily resolve [REDACTED] immigration status, the grant of a Partner (Temporary) visa (subclass 820) is an option. If you agree to consider granting [REDACTED] a Partner (Temporary) visa, it would remain affected by condition 8503 until [REDACTED] departed Australia.
32. A Partner (Temporary) visa would allow [REDACTED] to remain in Australia temporarily, with access to Medicare and Centrelink benefits, where appropriate. Further, [REDACTED] would have permission to work and be able to undertake study in Australia. A Partner (Temporary) visa has no cessation date and it will not cease until [REDACTED] Partner (Residence) visa (subclass 801) is finalised.

Sensitive: Personal

33. The Partner visa (subclass 820/801) is a combined application and the Department has not previously granted a Partner (Temporary) visa, under section 195A. A Partner (Temporary) visa granted under section 195A does not require an application or payment of the associated visa application charge, which is a criteria for the grant of a Partner (Residence) visa. Prior to a further submission being referred, the Department will need to seek legal advice on the ability to transition [REDACTED] to a Partner (Residence) visa in these circumstances.
34. The Department notes that the majority of relationship, health and character checks are completed at the assessment of the Partner (Temporary) visa stage. Prior to the grant of a Partner (Residence) visa, [REDACTED] would need to prove the genuineness of [REDACTED] relationship and would also be required to meet health and character.

Decline to consider

35. If you decline to consider intervening in [REDACTED] case, [REDACTED] will be permitted to remain in Australia until his Visitor visa expires on [REDACTED] has no viable onshore visa pathway available to [REDACTED] and [REDACTED] will be expected to depart Australia. It is open to [REDACTED] to lodge an application for a Partner visa offshore.

Consultation – internal/external

36. Status Resolution Helpdesk, Minister's Office, Family Migration Programme Management.

Consultation – Secretary

37. This submission did not involve consultation with the Department's Secretary.

Client service implications

38. There are minimal client service implications.

Sensitivities

39. This case was requested by your office.

Financial/systems/legislation/deregulation/media implications

40. There are minimal financial/systems/legislation/deregulation/media implications.

Sensitive: Personal

Attachments


Attachment A Section 195A decision documents


Attachment B Section 501 decision record

Attachment C 8503 Waiver Request



Attachment E Regulation 2.05

Authorising Officer
Cleared by: Sally Pfeiffer A/g Assistant Secretary Status Resolution Branch
Date:
Ph: 

Contact Officer Chris De Ruyter, Director, Complex Case Resolution Section, Ph: 

CC Director, National Character Consideration Office
Director, Family Migration Programme

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to this person's particular circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interest of Australia as a humane and generous society to grant this person a Visitor visa (subclass 600) for two months.



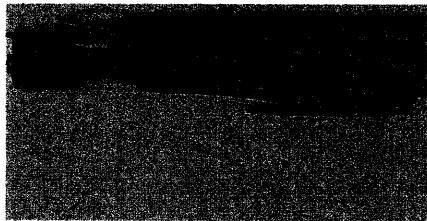
THE HON PETER DUTTON MP
Minister for Home Affairs
Minister for Immigration and Border Protection

15 /02/ 2018

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- DECISION INSTRUMENT -

Name:
Date of Birth:
Client ID:



1. The above person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered her case under section 195A of the Act.
2. I have determined that it is in the public interest to grant this person a Visitor visa (subclass 600) for two months.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) for two months in favour of this person.

A handwritten signature in black ink, appearing to read 'Peter Dutton'.

THE HON PETER DUTTON MP
Minister for Home Affairs
Minister for Immigration and Border Protection

15/04 2018



Australian Government
Department of Home Affairs

Submission

For decision
PDMS Ref. Number MS18-000371

To Minister for Home Affairs
Minister for Immigration and Border Protection

Subject Possible Ministerial intervention under section 195A of the
Migration Act 1958 in the case of [REDACTED]
[REDACTED]

Timing Not applicable.

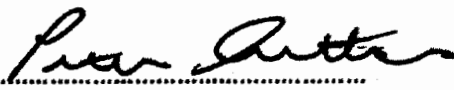
Recommendations

That you:

1. intervene under section 195A of the *Migration Act 1958* to grant [REDACTED] a Visitor visa (subclass 600) for a period of 18 months;
- please, sign the decision documents at Attachment A.

intervene / decline to
intervene

Minister for Home Affairs
Minister for Immigration and Border Protection

Signature.....

Date:...../...../2018
12 04



Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 25 January 2018, you agreed to consider intervening under section 195A of the *Migration Act 1958* (the Act) to grant [REDACTED] a Visitor visa (subclass 600). Submission MS17-004110 at **Attachment B** refers.
2. [REDACTED] has travelled to Australia numerous times since [REDACTED] as the holder of Visitor visas (subclass 600). Her current visa allows her to remain in Australia until 22 December 2018. [REDACTED] visa is subject to condition 8503 'no further stay'.
3. [REDACTED]
4. On 16 October 2017, [REDACTED] applied for a waiver of condition 8503, which the Department refused on 20 October 2017.
5. In your decision on 25 January 2018, you indicated that you were inclined to consider waiving condition 8503. As the exercise of the waiver power by the delegate is deemed to have been exercised by you, this restricts the circumstances in which you can personally exercise the power. In this situation, you can personally exercise the power if you are satisfied that substantially different compelling and compassionate circumstances from those previously considered have developed. Please note that [REDACTED] has not advised the Department of other compelling and compassionate circumstances since the delegate's decision of 20 October 2017.

Background

6. [REDACTED] circumstances are outlined in previous submission MS17-004110. There have been no changes in [REDACTED] circumstances since your decision on 25 January 2018.

Sensitive: Personal

7. While it is open to you to grant [REDACTED] a further Visitor visa (subclass 600), as her current visa is subject to condition 8503, she will remain affected by the condition and unable to lodge a further visa application onshore. Condition 8503 remains in effect while the visa holder remains in Australia unless it has been waived or the visa holder leaves Australia.

Options for Management

8. Your power under section 195A of the Act is sometimes applied to community cases, where there are compelling circumstances. Your section 195A power is non-compellable which means you are under no obligation to exercise or to consider exercising your power. You may consider it in the public interest to grant [REDACTED] a visa using your power under section 195A of the Act.

Ministerial intervention under section 195A of the Act*Visitor visa (subclass 600) – temporary visa option*

9. If you are inclined to consider intervening under section 195A of the Act in [REDACTED] case to allow her to remain in Australia, the Department considers the grant of a Visitor visa (subclass 600) for a period of 18 months to be the most appropriate option.
10. [REDACTED] current visa is subject to condition 8503, therefore she will remain affected by the condition and unable to lodge a further visa application onshore. As the holder of a Visitor visa with multiple entries permitted, [REDACTED] would be able to depart and re-enter Australia. [REDACTED] departure from Australia would render condition 8503, imposed on her previous Visitor visa, ineffective. Once [REDACTED] re-enters Australia, she would be able to apply for a Contributory Parent (Temporary) visa (subclass 173) if she wishes to extend her stay in Australia. In addition, it would permit [REDACTED] to make multiple returns to Australia, and allow her to fulfil the visa requirement that she be outside of Australia if granted a Contributory Parent visa.
11. While residing in the community as the holder of a Visitor visa, [REDACTED] would be required to abide by her visa conditions and Australian laws. Should [REDACTED] breach these conditions, she would be liable for consideration of discretionary visa cancellation under section 116 of the Act.

Condition 8503 (no further stay/application)

12. The purposes of condition 8503 are to provide greater assurance that a temporary entrant will depart Australia before the expiry of their visa and to maintain the integrity of certain visa programs such as the Visitor program. Condition 8503 will stay in effect while the visa holder remains in Australia unless it has been waived or the visa holder departs Australia.
13. Condition 8503 is a discretionary condition. Imposition of condition 8503 is seen as a desirable safeguard in circumstances where an applicant appears to satisfy the criteria for the grant of a visa but residual concerns exist.
14. Subregulation 2.05(4) of the Migration Regulations 1994 (the Regulations) provides circumstances in which condition 8503 can be waived (Attachment C refers). The power to exercise subregulation 2.05(4) of the Regulations has been delegated to the Department.

Sensitive: Personal

Decline to intervene

15. Should you decline to consider intervening in [REDACTED] case under section 195A, she will remain lawfully in Australia on her current Visitor visa (subclass 600) which ceases on 22 December 2018. [REDACTED] would have the option of applying for a Contributory Parent or a further Visitor visa upon her return to [REDACTED]

Consultation – internal/external

16. Status Resolution Central.

Consultation – Secretary

17. This submission did not involve consultation with the Department's Secretary.

Client service implications

18. Not applicable.

Sensitivities

19. Not applicable.

Financial/systems/legislation/deregulation/media implications

20. Not applicable.

Attachments

Attachment A Section 195A decision documentation

Attachment B MS17-004110

Attachment C Migration Regulations 1994 (subregulation 2.05)

Authorising Officer
Cleared by:
Sally Pfeiffer A/g Assistant Secretary Status Resolution Branch
Date: 21/03/2018 Ph: [REDACTED]

Contact Officer Christopher De Ruyter, Director, Complex Case Resolution Section, Ph: [REDACTED]

CC Regional Director, NSW
SRO, NSW Status Resolution

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- DECISION INSTRUMENT -

Name:
Date of Birth:
Client ID:



1. The above named person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant the above named person a Visitor visa (subclass 600) for a period of 18 months;
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) in favour of the above named person.

A handwritten signature in black ink, appearing to read 'Peter Dutton'.

THE HON PETER DUTTON MP
Minister for Home Affairs
Minister for Immigration and Border Protection

12/24 2018

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to all the circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant this person a Visitor visa (subclass 600).



THE HON PETER DUTTON MP
Minister for Home Affairs
Minister for Immigration and Border Protection

12 / 04 2018

Sensitive: Personal



Australian Government
Department of Home Affairs

Submission

For decision
PDMS Ref. Number MS17-004110

To Minister for Home Affairs
Minister for Immigration and Border Protection

Subject Possible Ministerial intervention under section 195A of the
Migration Act 1958 in the case of [REDACTED]
[REDACTED]

Timing Not applicable – Requested by your office on 9 November 2017

Recommendations

That you:

- 1. indicate whether you are inclined to consider intervening under section 195A of the *Migration Act 1958* (the Act) to grant [REDACTED] a Visitor visa (subclass 600) for a period of 18 months; consider / not consider
- if agreed, please indicate if you agree to consider waiving condition 8503 to allow [REDACTED] to make an application for a visa in Australia; consider / not consider
- if you are inclined to consider intervening under section 195A of the Act, the Department will refer a further submission for your final decision.

OR

- 2. indicate whether you are inclined to consider intervening under section 195A of the Act to grant [REDACTED] a Former Resident visa (subclass 151); consider / not consider
- if agreed, please indicate if health and character checks are required; required/ not required
- if you are inclined to consider intervening under section 195A of the Act, the Department will refer a further submission for your final decision.

Minister for Home Affairs
Minister for Immigration and Border Protection

Date:...../...../2018

Signature.....

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 9 November 2017, your office requested [REDACTED] case be referred for your consideration under section 195A of the *Migration Act 1958* (the Act) following representations from then Assistant Minister for Cities and Digital Transformation, the Hon. Angus Taylor's office.
2. [REDACTED] has travelled to Australia numerous times since [REDACTED] as the holder of Visitor visas (subclass 600). Her current visa allows her to remain in Australia until 22 December 2018. [REDACTED] visa is subject to condition 8503 'no further stay'.
4. [REDACTED] travelled to Australia with [REDACTED] On [REDACTED] away prior to their planned departure from Australia on [REDACTED] Refer to **Attachment A** for further details.
5. [REDACTED]
6. [REDACTED] applied for a waiver of condition 8503, which the Department refused on 20 October 2017. A copy of the refusal is at **Attachment B** for your reference. While it is open to you to grant [REDACTED] a further Visitor visa (subclass 600), as her current visa is subject to condition 8503, she will remain affected by the condition and unable to lodge a further visa application.
7. Your office requested [REDACTED] case be referred on 9 November 2017, however [REDACTED] departed Australia on 14 November 2017 and her family did not respond to the Department's requests for details on when or if she was returning to Australia. On 22 December 2017, [REDACTED] returned to Australia.

Background

8. A summary of [REDACTED] immigration history is at **Attachment C**.

Sensitive: PersonalIdentity, Security, Character and Health

9. [REDACTED]
Identity has been conclusively established.
11. There is no information before the Department to indicate [REDACTED] is a risk to the community or has any criminal convictions. [REDACTED] has reported no health issues to the Department.

National Returns and Removals Taskforce and removal availability

12. The National Returns and Removals Taskforce reviewed this submission on 5 January 2018. [REDACTED] is currently residing in the community with a Visitor visa valid until 22 December 2018 and is not available for removal at this time.

Condition 8503

13. [REDACTED] is currently unable to make a valid substantive visa application in Australia as condition 8503 is attached to her current Visitor visa (subclass 600). Condition 8503 prevents a visa holder from being entitled to be granted a substantive visa, other than a Protection visa, while the holder remains in Australia. The holder of a visa with condition 8503 is unable to make a valid visa application in Australia, other than for a Protection visa.

Options for management

14. Your power under section 195A of the Act is sometimes applied to community cases, where there are compelling circumstances. Your section 195A power is non-compellable which means you are under no obligation to exercise or to consider exercising your power. You may consider it in the public interest to grant [REDACTED] a visa using your power under section 195A of the Act.

Ministerial intervention under section 195A of the Act*Visitor visa (subclass 600) – temporary visa option*

15. If you are inclined to consider intervening under section 195A of the Act in [REDACTED] case to allow her to remain in Australia, the Department considers the grant of a Visitor visa (subclass 600) for a period of 12 months, with condition 8503 waived, to be the most appropriate option.
16. If granted a Visitor visa (subclass 600), [REDACTED] would be able to apply for a Contributory Parent (Temporary) visa (subclass 173) if she wishes to extend her stay in Australia. In addition, it would permit [REDACTED] to make multiple returns to Australia, and allow her to fulfil the visa requirement that she be outside of Australia if granted a Contributory Parent visa.
17. While residing in the community as the holder of a Visitor visa, [REDACTED] would be required to abide by her visa conditions and Australian laws. [REDACTED] visa would be subject to condition 8558, which allows total stays of no more than 12 months in any 18-month period. Should [REDACTED] breach these conditions, she would be liable for consideration of discretionary visa cancellation under section 116 of the Act.

Sensitive: Personal

18. If you are inclined to consider intervening under section 195A of the Act, the Department will refer a further submission for your final decision.

Former Resident visa (subclass 151) – permanent visa option

19. If you are inclined to consider intervening under section 195A of the Act in [REDACTED] case to allow her to remain in Australia, the Department considers the grant of a Former Resident visa (subclass 151) an appropriate option.
20. The Former Resident (subclass 151) visa is typically used where a Minister wishes to consider the grant of a permanent residence visa through the exercise of the relevant public interest powers. There is a specific allocation of Former Resident (subclass 151) visas for Ministerial intervention purposes in the annual migration planning programme.
21. A Former Resident (subclass 151) visa would allow [REDACTED] to remain in Australia permanently with [REDACTED]. It would give her permission to work, access to Medicare and social security payments, where deemed appropriate by Centrelink.
22. It is open to you to request [REDACTED] undergo health and character checks prior to a further submission being referred to you.
23. If you are inclined to consider intervening under section 195A of the Act, the Department will refer a further submission for your final decision.

Decline to intervene

24. Should you decline to consider intervening in [REDACTED] case under section 195A, she will remain lawfully in Australia on her current Visitor visa (subclass 600) which ceases on 22 December 2018. As she is affected by condition 8503, [REDACTED] is unable to be granted another visa onshore. [REDACTED] would have the option of applying for a Contributory Parent or a further Visitor visa upon her return to [REDACTED].
25. [REDACTED] has expressed concern about [REDACTED] returning to [REDACTED] alone, in a letter to Member of Parliament for Camden, the Hon. Angus Taylor at **Attachment D**. Declining to intervene in [REDACTED] case could potentially attract negative media attention due to the compassionate circumstance of her case.

Consultation – internal/external

26. Family Migration Programme Management, Visitor Visa Section, National Returns and Removals Taskforce, NSW Status Resolution

Consultation – Secretary

27. The Secretary of the Department was not consulted on this submission.

Client service implications

28. Not applicable.

Sensitive: Personal

Sensitivities

29. [REDACTED] has limited visa options onshore and representation has been made by then Assistant Minister for Cities and Digital Transformation, the Hon. Angus Taylor's office.

Financial/systems/legislation/deregulation/media implications

30. Not applicable.

Attachments

Attachment A Death Certificate

Attachment B Condition 8503 waiver

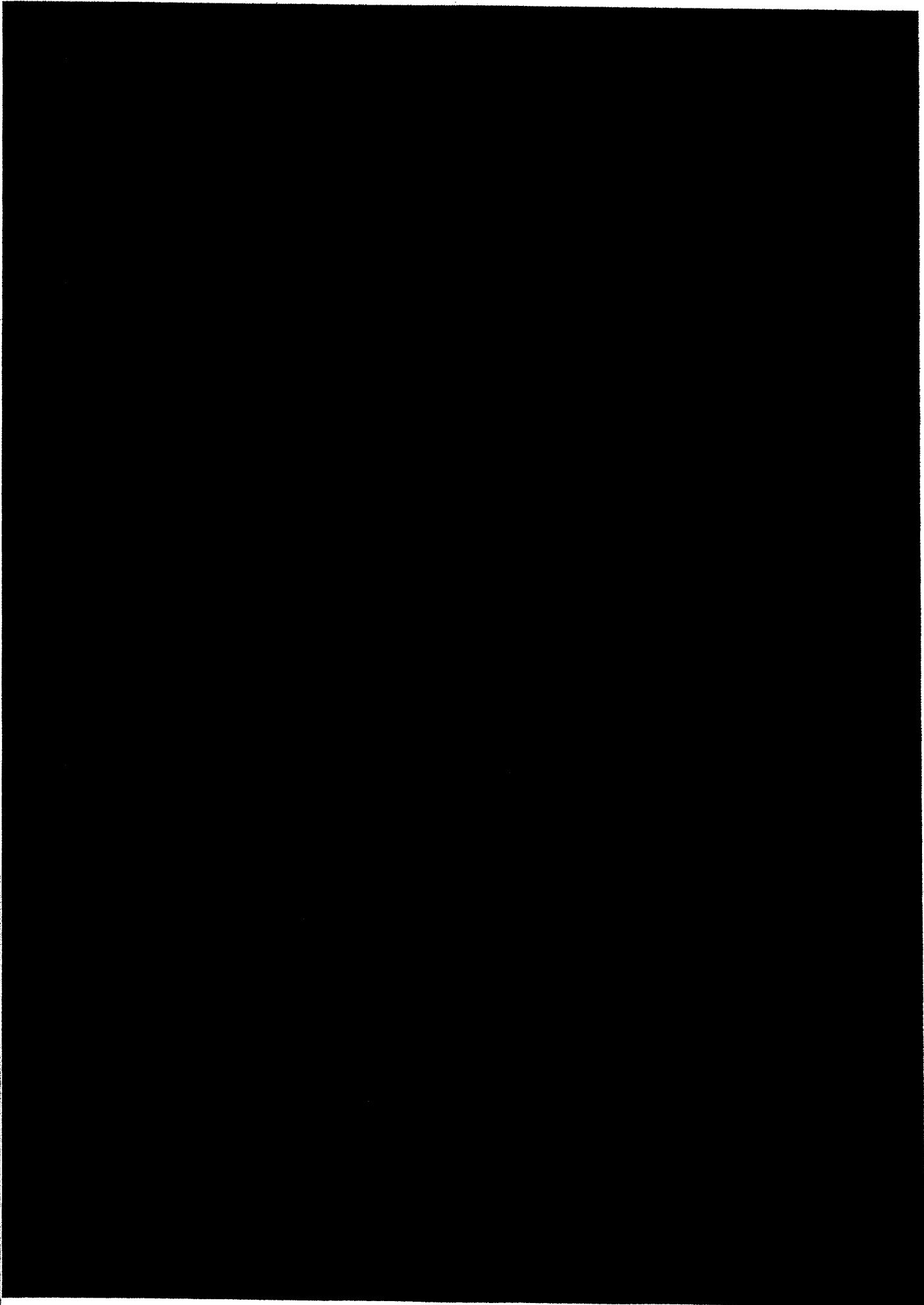
Attachment C Immigration history

Attachment D Letter to MP

Authorising Officer
Cleared by:
Sally Pfeiffer A/g Assistant Secretary Status Resolution Branch
Date:
Ph: [REDACTED]

Contact Officer Christopher De Ruyter, Director, Complex Case Resolution Section, Ph: [REDACTED]

CC Regional Director, NSW
SRO, NSW Status Resolution





Australian Government
Department of Immigration
and Border Protection

DECISION RECORD

Client Name	[REDACTED]
Date of Birth	[REDACTED]
Client ID	[REDACTED]
Waiver Request ID	[REDACTED]

The client's claims

In this decision record, the term 'client' refers to the person(s) requesting waiver of visa condition 8503.

The client has requested a waiver of the no further stay condition 8503 because [REDACTED] passed away and as she was fully dependant [REDACTED] she would like to remain in Australia with [REDACTED]

Information and evidence considered

I am a delegated decision maker under subsection 41(2A) of the *Migration Act 1958*. In reaching my decision, I have considered the following:

- relevant legislation contained in the Migration Act and Migration Regulations 1994
- information contained in the Department's Procedures Advice Manual 3
- documents and information provided by the applicant(s)
- relevant information held on Departmental files.

Findings

Based on the information before me, including the documents and information provided by the client in support of the waiver request, I find that the circumstances for waiver of no further stay condition 8503 are not met by the client.

Reasons

You have made a request for a condition 8503 waiver. I have assessed your request and the reasons for my decision are detailed below. The Minister cannot waive condition 8503 unless the relevant criteria in the Migration Act and the Migration Regulations are satisfied.

The circumstances of subregulation 2.05(4) have not been met by the client on the date I made my decision. Subregulation 2.05(4) states that:

2.05(4):

For subsection 41(2A) of the Act, the circumstances in which the Minister may waive a condition of a kind described in paragraph 41(2)(a) of the Act are that:

- (a) since the person was granted the visa that was subject to the condition, compelling and compassionate circumstances have developed:
 - (i) over which the person had no control; and
 - (ii) that resulted in a major change to the person's circumstances; and
- (b) if the Minister has previously refused to waive the condition, the Minister is satisfied that the circumstances mentioned in paragraph (a) are substantially different from those considered previously; and
- (c) if the person asks the Minister to waive the condition, the request is in writing.

The circumstances must be compelling and compassionate

I acknowledge that the [REDACTED] passed away whilst they were in Australia visiting [REDACTED]. It is stated that as the client was fully dependant on [REDACTED] that she would now like to remain in Australia with [REDACTED]. I accept that the passing of [REDACTED] is highly compassionate, however I must also determine if the client's circumstances are compelling.

The term 'compelling' is not defined in the migration legislation. It must be given its ordinary meaning. 'Compelling' means forceful or driving, especially to a course of action. The circumstances must be sufficiently forceful that they lead the decision-maker to make a decision to waive the condition.

I have considered the client's claims that she was fully dependant on [REDACTED] and that she now has nobody to look after her except [REDACTED] in Australia.

The [REDACTED] has provided a statement which states the client [REDACTED] have

[REDACTED] The [REDACTED] also states that [REDACTED] is not interested in the client going back to live in [REDACTED] now that she is getting old, and goes on to note that she does have siblings and their families in [REDACTED].

I acknowledge that the client is mourning the death of [REDACTED] and wishes to remain in Australia with [REDACTED]. [REDACTED] have considered however that the client's current visa allows for her to spend several more months in Australia with [REDACTED] and that she has siblings in [REDACTED] and will not be alone when she returns. Furthermore the client's current visa also permits her to return to Australia on multiple occasions until 26 April 2019. There are permanent visa pathways available offshore that the client may wish to explore during which time she would have the opportunity to spend additional time with [REDACTED] utilising the visa currently held by her. Whilst I find the client's circumstances compassionate, I do not find them to be sufficiently forceful to waive the condition, therefore I do not find them to be compelling.

In considering all the information the client has provided to support the request to waive condition 8503, I have assessed these claims against the criteria in Regulation 2.05(4). I am not satisfied the circumstances are circumstances that meet all the criteria set out in the Regulations and therefore the condition 8503 has not been waived under sub-section 41(2A) of the Act.

Decision

As I find that the circumstances in subregulation 2.05(4) are not met by the client, I therefore refuse the request by the client for a waiver of condition 8503.

Position Number:60027132

Email: NoFurtherStayWaiverRequest@border.gov.au

Department of Immigration and Border Protection

20 October 2017

Brisbane No Further Stay Waiver Processing Centre
POSTAL: GPO Box 9984 Brisbane QLD 4001
EMAIL: NoFurtherStayWaiverRequest@border.gov.au
WEBSITE: www.border.gov.au

Sensitive: Personal

Cc Director, Family Migration

Attachment B**CASE SUMMARY –**

Name	
Date of Birth	
Citizenship	
Alias	
Gender	
ICSE ID	
Date Arrived in Australia	
Date Detained	
Current Location	

Date	Event
07/03/2017	arrived in Australia holding a Tourist visa (subclass 676).
16/03/2011	Tourist visa (subclass 676) application lodged.
06/04/2011	Tourist visa (subclass 676) granted.
24/04/2012	Tourist visa (subclass 676) application lodged.
15/06/2012	Tourist visa (subclass 676) granted.
16/04/2013	Visitor visa (subclass 600) application lodged.
15/05/2013	Visitor visa (subclass 600) granted.
15/04/2016	Visitor visa (subclass 600) application lodged.
26/04/2016	Visitor visa (subclass 600) granted.
16/10/2017	8503 waiver request lodged.
20/10/2017	8503 waiver request refused.
09/11/2017	Section 195A Ministerial intervention requested by the Minister's Office.

Sensitive: Personal

To whom it may concern

I am writing this request letter for the Waiver of Visa Condition 8503 on [REDACTED] Visa. Due to a tragic incident [REDACTED] is currently in shock and mourning the death of [REDACTED]

[REDACTED] have been visiting me in Australia every year since 2010 and this year has been their eighth visit.

They used to stay with me on visitor visa every year for approximately six months as they always have followed all the rules and regulations and visa conditions. Both of them was living happily together and they were very much attached to their roots due to which they were reluctant to move to Australia permanently.

During this visit to Australia, they had their final plans for departure from Australia. They had everything in place including the return air tickets to fly back as always on [REDACTED]. But unfortunately this time during their visit [REDACTED] has turned the world upside down for our whole family resulting which my mother is in grief and shock.

[REDACTED] was dependent on [REDACTED] for everything which includes Financial dependency, all official and non official work in [REDACTED]. She has never been done any thing outside home and always been a [REDACTED] was responsible for arranging everything for both of them. Now my mother wont be able to do anything outside home chores and things. She has never been to anywhere without [REDACTED]. After the death of [REDACTED] she is now totally dependent on me for all her requirements.

[REDACTED] is getting old now which makes her even more vulnerable to diseases and incapability to do many things.

I have lost [REDACTED] and now I am very much concerned about [REDACTED] wellbeing and health. She is not very confident lady as she has been [REDACTED] all her life and therefore she is very much in lack of confidence in doing lot of things like living and traveling on her own, the authenticity of this statement can be judged by looking at her last eight visits to Australia where she was always accompanied by [REDACTED]

Therefore it is a humble request from my side to let her live with me and I can assure that I will look after her and get her medically covered.

The copy of air tickets, visa, [REDACTED] death certificate and coroners court certificate is attached herewith.

Regards & thanks
[REDACTED]

Reg 2.05 Conditions applicable to visas

(4) For subsection 41(2A) of the Act, the circumstances in which the Minister may waive a condition of a kind described in paragraph 41(2)(a) of the Act are that:

- (a) since the person was granted the visa that was subject to the condition, compelling and compassionate circumstances have developed:
 - (i) over which the person had no control; and
 - (ii) that resulted in a major change to the person's circumstances; and
- (b) if the Minister has previously refused to waive the condition, the Minister is satisfied that the circumstances mentioned in paragraph (a) are substantially different from those considered previously; and
- (c) if the person asks the Minister to waive the condition, the request is in writing.

(4AA) For subsection 41(2A) of the Act, a further circumstance in which the Minister may waive condition 8503 in relation to a visa is that the holder of the visa has a genuine intention to apply for:

- (a) a General Skilled Migration visa; or
- (b) a Subclass 132 (Business Talent) visa; or
- (c) a Subclass 186 (Employee Nomination Scheme) visa; or
- (d) a Subclass 187 (Regional Sponsored Migration Scheme) visa; or
- (e) a Subclass 188 (Business Innovation and Investment (Provisional)) visa.

(4AB) For subsection 41(2A) of the Act, further circumstances in which the Minister may waive condition 8503 in relation to a visa are that the holder of the visa:

- (a) either:
 - (i) holds a safe haven enterprise visa; or
 - (ii) is a lawful non-citizen who has ever held a safe haven enterprise visa; and
- (b) satisfies the requirements of subregulation 2.06AAB(2).

(4AC) For paragraph 41(2B)(b) of the Act, the following visas are prescribed:

- (a) a Subclass 400 (Temporary Work (Short Stay Specialist)) visa;
- (b) a Subclass 457 (Temporary Work (Skilled)) visa.

Sensitive: Personal



Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number MS18-001733

To Minister for Home Affairs
Minister for Immigration and Border Protection

Subject Ministerial intervention under section 195A of the *Migration Act 1958* in relation to [REDACTED]

Timing Not applicable. Please note that this is a second stage submission.

Recommendation

That you:

- intervene under section 195A of the *Migration Act 1958* (the Act) to grant [REDACTED] a Visitor visa that is valid for 12 months with multiple entries permitted, with condition 8501 (must have health insurance) and without condition 8503 (no further stay/application);
- if agreed, please sign the decision documents at Attachment A.

intervene / not intervene

Minister for Home Affairs
Minister for Immigration and Border Protection

Signature [Handwritten Signature]

Date 24/05/2018

RECEIVED

18 MAY 2018

Minister for Home Affairs

Sensitive: Personal

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 10 May 2018, you agreed to consider intervening under section 195A of the *Migration Act 1958* (the Act) to grant [REDACTED] a Visitor (subclass 600) visa. Submission MS18-001555 at **Attachment B** refers.
2. [REDACTED] is an [REDACTED] year old [REDACTED] with an ongoing Contributory Parent (subclass 143) visa application that is likely to be assessed in [REDACTED]. [REDACTED] last arrived in Australia on a Visitor visa, with condition 8503 (no further stay/application) imposed. Due to her [REDACTED] and the imminent expiry of her Visitor visa, [REDACTED] requested a waiver of condition [REDACTED] which was refused by a delegate on [REDACTED].
3. There have been no changes in [REDACTED] case. This second stage submission is being referred to you for your final decision.

Background

4. [REDACTED] case is outlined in submission MS18-001555 at **Attachment B**.

Ministerial intervention under section 195A

5. Section 195A of the Act provides you with the power to grant a visa to a person in immigration detention or in the community, where there are compassionate and compelling circumstances. Your section 195A power is non-compellable which means you are under no obligation to exercise or to consider exercising your power. You may consider it in the public interest to grant [REDACTED] a visa using your power under section 195A of the Act.

Sensitive: Personal

6. If you are inclined to intervene in [REDACTED] case, the Department considers the grant of a Visitor visa that is valid for 12 months with multiple entries permitted and without condition 8503 to be the most appropriate. As the holder of a Visitor visa with multiple entries permitted, [REDACTED] would be able to depart and re-enter Australia. This visa would allow [REDACTED] to remain in Australia for 12 months while [REDACTED] Contributory Parent visa application is being processed.
7. If [REDACTED] satisfies the criteria and requirements for the grant of a Contributory Parent visa while [REDACTED] Visitor visa is in effect, [REDACTED] could depart Australia on [REDACTED] Visitor visa to enable the Department to grant the permanent visa. The Department notes that [REDACTED] does not need to return to [REDACTED] to be granted the permanent visa. [REDACTED] departure from Australia would also render condition 8503 imposed on her previous Visitor visa ineffective.
8. As a Visitor visa holder, [REDACTED] would not have access to Medicare or Centrelink benefits. The Department proposes to impose condition 8501 (must have health insurance) as this condition was imposed on [REDACTED] last Visitor visa.
9. If you agree to intervene under section 195A of the Act to grant [REDACTED] a Visitor visa, please sign the decision documents at **Attachment A**.

Decline to intervene

10. If you decline to intervene under section 195A of the Act, the Department will manage [REDACTED] until her immigration status is resolved.

Consultation – internal/external

11. Family Migration Program Management Section and WA Status Resolution.

Consultation – Secretary

12. The Department's Secretary was not consulted on this submission.

Client service implications

13. There are minimal client service implications.

Sensitivities

14. This case may attract media interest given [REDACTED] circumstances.

Financial/systems/legislation/deregulation/media implications

15. There are negligible financial/systems/legislation/deregulation/media implications.

Sensitive: Personal

Attachments

Attachment A Section 195A decision documents

Attachment B MS18-001555

Authorising Officer
Cleared by: Tom Kirkpatrick A/g Assistant Secretary Status Resolution Branch Date: 15/05/2018 Ph: [REDACTED]

Contact Officer Chris de Ruyter, Director, Complex Case Resolution Section, Ph: [REDACTED]

CC WA Status Resolution

Sensitive: Personal

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

DECISION INSTRUMENT

Name:
Date of Birth:
CLIENT ID:



1. The above named person is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered his case under section 195A of the Act.
2. I have determined that it is in the public interest to grant the above named person a Visitor (subclass 600) visa for a period of 12 months.
3. I therefore exercise my power under section 195A of the Act to grant a Visitor (subclass 600) visa for a period of 12 months.

A handwritten signature in black ink, appearing to read 'Peter Dutton'.

THE HON PETER DUTTON MP
Minister for Home Affairs
Minister for Immigration and Border Protection

24 / 05 / 2018

Sensitive: Personal

STATEMENT TO PARLIAMENT

EXERCISE OF MINISTERIAL DISCRETION UNDER SECTION 195A OF THE *MIGRATION ACT 1958*

Exercising my power under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. This person is detained under section 189 of the Act as an unlawful non-citizen.
2. Having regard to all the circumstances and personal characteristics, I have decided to exercise my discretionary power under section 195A of the Act as it would be in the public interest to grant this person a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant this person a Visitor (subclass 600) visa for a period of 12 months.



THE HON PETER DUTTON MP

Minister for Home Affairs

Minister for Immigration and Border Protection

24/05 / 2018

Sensitive: Personal



Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number MS18-001555

RECEIVED

To **Minister for Home Affairs** 03 MAY 2018
Minister for Immigration and Border Protection Minister for Home Affairs

Subject **Possible Ministerial intervention under section 195A of the**
Migration Act 1958 in relation to [REDACTED]

Timing *Not applicable.*

Recommendation

That you:

1. indicate whether you are inclined to consider intervening under section 195A of the *Migration Act 1958* (the Act) to grant [REDACTED]


- a Visitor (subclass 600) visa; consider / not consider
- OR
- a Former Resident (subclass 151) visa; consider / not consider
- OR
- a Contributory Parent (subclass 143) visa; consider / not consider

If you are inclined to consider the grant of a Former Resident visa or a Contributory Parent visa, please indicate whether:

- health and character checks are required; required / not required
- an Assurance of Support is required. required / not required

If you are inclined to consider intervening under section 195A of the Act, the Department will refer a further submission for your final decision.

Minister for Home Affairs
Minister for Immigration and Border Protection

Signature.....  Date: 10/05/2018

Sensitive: Personal

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

- On 24 April 2018, your office requested that [redacted] case be referred for your consideration under section 195A of the *Migration Act 1958* (the Act). [redacted] is an [redacted] year old [redacted] national who last arrived in Australia on [redacted] on a Visitor (subclass 600) visa. [redacted] current Visitor visa has condition 8503 (no further stay/application) imposed and will cease on [redacted]
- [redacted] has an ongoing offshore Contributory Parent (subclass 143) visa application, which is yet to be assessed. Due to [redacted] in Australia and the [redacted] expiry of [redacted] Visitor visa, [redacted] requested a waiver of condition 8503, which was refused by a delegate on [redacted]. A client brief prepared for your office is at **Attachment A**.
- Given the current processing timeframe of approximately 40 months, [redacted] Contributory Parent visa application is likely to be assessed in [redacted]. If [redacted] satisfies the criteria for a Contributory Parent visa, including the health and character requirements, before [redacted] can be granted the visa, [redacted] must (a) have an approved Assurance of Support, (b) pay the second visa application charge of \$43,600 and (c) be outside Australia at the time of visa grant.
- Your office requested three options for [redacted] a Visitor visa, Former Resident (subclass 151) visa and Contributory Parent visa.

Background

Immigration history

- On [redacted] the Department granted [redacted] a Visitor (subclass 600) visa. From [redacted] [redacted] entered Australia [redacted] and spent a total of [redacted] onshore.

Sensitive: Personal

6. On [REDACTED] the Department granted [REDACTED] a further Visitor (subclass 600) visa. From [REDACTED] to date, [REDACTED] has entered Australia [REDACTED] and spent almost [REDACTED] onshore. During one of [REDACTED] periods offshore, [REDACTED] applied for a Contributory Parent visa with [REDACTED] as [REDACTED] sponsor.
7. On [REDACTED] the Department received a request from [REDACTED] representative to waive condition 8503. The delegate refused [REDACTED] request on [REDACTED].
8. Details of [REDACTED] immigration history are at Attachment B.

Condition 8503 (no further stay/application)

9. The purposes of condition 8503 are to provide greater assurance that a temporary entrant will depart Australia before the expiry of their visa and to maintain the integrity of certain visa programs such as the Visitor program. Condition 8503 will stay in effect while the visa holder remains in Australia unless it has been waived or the visa holder departs Australia.
10. Condition 8503 is a discretionary condition. Imposition of condition 8503 is seen as a desirable safeguard in circumstances where an applicant appears to satisfy the criteria for the grant of a visa but residual concerns exist.
11. Subregulation 2.05(4) of the Migration Regulations 1994 (the Regulations) provides circumstances in which condition 8503 can be waived (Attachment C refers). The power to exercise subregulation 2.05(4) of the Regulations has been delegated to the Department.
12. On 10 April 2018, the delegate refused [REDACTED] request to waive condition 8503. As the exercise of the waiver power by the delegate is deemed to have been exercised by you, this restricts the circumstances in which you can personally exercise the power. In this situation, you can personally exercise the power if you are satisfied that substantially different compelling and compassionate circumstances from those previously considered have developed. [REDACTED] has not advised the Department of other compelling and compassionate circumstances since the delegate's decision of [REDACTED].

Visa pathway

13. [REDACTED] has an ongoing Contributory Parent visa application. As [REDACTED] lodged an offshore visa application, [REDACTED] is not eligible for an associated Bridging visa and [REDACTED] must be outside Australia to be granted a Contributory Parent visa.
14. As [REDACTED] cannot make a further substantive visa application in Australia, [REDACTED] must depart Australia when [REDACTED] current Visitor visa ceases on [REDACTED]. It is open to [REDACTED] to depart prior to [REDACTED] and apply for a further visitor visa offshore. The Department notes that [REDACTED] would need to satisfy all of the relevant criteria to be granted a further Visitor visa.
15. If [REDACTED] remains in Australia after her current Visitor visa ceases [REDACTED] could apply for a Bridging E (subclass 050) visa (BVE) to regularise her immigration status. A BVE is intended to allow an individual to remain in Australia temporarily for a specific purpose.

Sensitive: Personal

16. If [REDACTED] holds a BVE when [REDACTED] departs Australia for purposes other than to enable the Department to grant [REDACTED] a Contributory Parent visa, [REDACTED] may be affected by exclusion periods. In such circumstances, it would be open for [REDACTED] to apply for a waiver. The Department notes that if [REDACTED] departs Australia as a BVE holder [REDACTED] may only be able to travel to [REDACTED]

Links in Australia

17. [REDACTED] has family and relatives in Australia. [REDACTED] adult children, [REDACTED] grandchildren and their respective family have either acquired Australian citizenship or permanent residence. In a letter dated [REDACTED] [REDACTED] advised the Department that [REDACTED] has no family or relatives outside Australia and separated from [REDACTED]
18. Most of [REDACTED] family and relatives in Australia migrated under the [REDACTED] program. One of [REDACTED] initially relocated to Australia with [REDACTED] under the [REDACTED] visa scheme before applying for and being granted [REDACTED] Contributory Parent visas.

Identity, health and character

19. [REDACTED] was immigration cleared when [REDACTED] entered Australia on her [REDACTED] passport on [REDACTED]. In this regard, [REDACTED] identity has been established in accordance with *Identity, Biometrics and Immigration Status instructions*.
20. [REDACTED] was not required to undertake health and character assessments prior to being granted a Visitor visa. In letters dated [REDACTED] and [REDACTED] [REDACTED] advised the Department that [REDACTED]
- [REDACTED]
21. In conjunction with [REDACTED] ongoing Contributory Parent visa application, [REDACTED] will be required to satisfy the health and character requirements before [REDACTED] is able to be granted a permanent visa by the Department.

Options for future management

22. Your power under section 195A of the Act is sometimes applied to community cases, where there are compassionate and compelling circumstances. Your section 195A power is non-compellable which means you are under no obligation to exercise or to consider exercising your power. You may consider it in the public interest to grant [REDACTED] a visa using your power under section 195A of the Act.

Sensitive: PersonalTemporary option

23. If you are inclined to temporarily resolve [REDACTED] immigration status, the Department considers the grant of a Visitor (Tourist stream) (subclass 600) visa that is valid for 12 months with multiple entries permitted and without condition 8503 to be the most appropriate. As the holder of a Visitor visa with multiple entries permitted, [REDACTED] would be able to depart and re-enter Australia. This visa will also allow [REDACTED] to remain in Australia for 12 months while [REDACTED] Contributory Parent visa application is being processed.
24. If [REDACTED] satisfies the criteria and requirements for the grant of a Contributory Parent visa while [REDACTED] Visitor visa is in effect [REDACTED] could depart Australia on [REDACTED] Visitor visa to enable the Department to grant the permanent visa. The Department notes that [REDACTED] does not need to return to [REDACTED] to be granted the permanent visa. [REDACTED] departure from Australia would also render condition 8503 imposed on [REDACTED] previous Visitor visa ineffective.
25. As a Visitor visa holder, [REDACTED] would not have access to Medicare or Centrelink benefits. The Department proposes to impose condition 8501 (must have health insurance) as this condition was imposed on [REDACTED] last Visitor visa.

Permanent option*Former Resident (subclass 151) visa*

26. If you are inclined to resolve [REDACTED] immigration status permanently, the Department considers the grant of a Former Resident visa to be the most appropriate option. This visa is typically used where a Minister wishes to grant permanent residence through the exercise of the relevant public interest power. There is a specific allocation of Former Resident visas for Ministerial intervention purposes in the annual migration planning.
27. As the holder of a Former Resident visa [REDACTED] would be permitted to remain in Australia permanently. [REDACTED] would have immediate access to Medicare and access to social security payments, where deemed appropriate by Centrelink.

Contributory Parent (subclass 143) visa

28. If you are inclined to resolve [REDACTED] immigration status permanently, you may consider the grant of a Contributory Parent visa. The Department notes that granting a Contributory Parent visa under section 195A of the Act will reduce the number of available places for this visa program. Should you wish to grant [REDACTED] a Contributory Parent visa under section 195A of the Act, [REDACTED] will not be compelled to pay the second visa application charge of \$43,600.
29. As the holder of a Contributory Parent visa, [REDACTED] would be permitted to remain in Australia permanently. [REDACTED] would have immediate access to Medicare, but [REDACTED] may have to wait two years before she can access social security payments.

Sensitive: Personal

- 30. Obtaining an Assurance of Support is a mandatory requirement for a Contributory Parent visa, but not for a Former Resident visa. The Assurance of Support scheme is a response to concerns that certain persons settling permanently in Australia are potentially substantial users of Australia's health and welfare system. The scheme ensures that, for these persons, private individuals rather than the general community bear some of the financial cost that may be incurred by the health and welfare system. The scheme does this by obliging assurers to repay the Australian Government some of the health and welfare costs incurred in providing support to these persons during their first two years of settlement in Australia. It is open to you to consider whether an Assurance of Support is required prior to the grant of a Former Resident visa or a Contributory Parent visa.
- 31. The Department notes that [REDACTED] has not undertaken health and character assessments. It is open to you to consider whether [REDACTED] is required to undertake the health and character checks before the grant of either a Former Resident visa or a Contributory Parent visa.
- 32. If you are inclined to consider intervening under section 195A of the Act in [REDACTED] case, the Department will refer a further submission to you for your final decision.

Decline to intervene

- 33. If you decline to consider intervening under section 195A of the Act, the Department will manage [REDACTED] until her immigration status is resolved. If [REDACTED] remains in Australia after [REDACTED] Visitor visa ceases, [REDACTED] could apply for a BVE.

Consultation – internal/external

- 34. Family Migration Program Management Section

Consultation – Secretary

- 35. The Department's Secretary was not consulted regarding this submission.

Client service implications

- 36. There are minimal client service implications.

Sensitivities

- 37. This case may attract media interest given [REDACTED] circumstances.

Financial/systems/legislation/deregulation/media implications

- 38. As discussed in paragraph 26, if [REDACTED] is granted a Contributory Parent visa under section 195A of the Act, this will affect the availability of places for this visa program and revenue.

Sensitive: Personal

Attachments

Attachment A MB18-000614

Attachment B Immigration history

Attachment C Subregulation 2.05(4) of the Regulations

Authorising Officer
Cleared by: Sally Pfeiffer A/g Assistant Secretary Status Resolution Branch Date: 03/05/2018 Ph: [REDACTED]

Contact Officer Adam Tonkin, Complex Case Resolution Section, Ph: [REDACTED]

CC WA Status Resolution

Sensitive: Personal



Australian Government
Department of Home Affairs

Submission

For information

PDMS Ref. Number MS18-001780

To **Minister for Home Affairs**
Minister for Immigration and Border Protection

Subject **Ministerial Intervention under section 195A of the Migration Act 1958 in relation to [REDACTED] and [REDACTED]**

Timing *Please note that this is a second stage submission.*

Recommendations

That you:

- Intervene under section 195A of the *Migration Act 1958* to grant Visitor visas (subclass 600) to [REDACTED] for a period of three months.
 - If agreed, please sign the decision documents at **Attachment A**.

Intervene / not intervene

Minister for Home Affairs
Minister for Immigration and Border Protection

Signature [Handwritten Signature]

Date 24/05/2018

RECEIVED

22 MAY 2018

Minister for Home Affairs



Sensitive: Personal

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 10 May 2018, you agreed to consider intervening under section 195A of the *Migration Act 1958* (the Act) to grant [REDACTED] Visitor visas (subclass 600) for a period of three months. Submission MS18-000526 at **Attachment B** refers.
2. [REDACTED] arrived in Australia in [REDACTED] as the holders of [REDACTED] Passports issued in [REDACTED] and Tourist visas (subclass 500) valid for one month. They remained in Australia unlawfully until [REDACTED], when they initiated contact with the Department to resolve their immigration status.
3. [REDACTED] have resided in Australia for over [REDACTED] years and have substantial ties to the community. They have [REDACTED] adult children and [REDACTED] grandchildren, all of whom are Australian citizens. The grant of visitor visas for a period three months will enable [REDACTED] to apply for Contributory Parent visas.

Background

4. [REDACTED] case is outlined in submission MS18-000526 at **Attachment B**. There have been no changes to their circumstances since your decision on 10 May 2018.

Options for Management

5. Section 195A of the Act provides you with the power to grant a visa to a person in immigration detention, if you think it is in the public interest to do so. Your section 195A power is non-compellable which means you are under no obligation to exercise your power.
6. Your power under section 195A of the Act may be applied to community cases, where there are compassionate or compelling circumstances identified and no other resolution option available. This process requires that any visa held by the clients be cancelled and they be detained by the Department under section 189 of the Act, in order to enliven your intervention power under section 195A of the Act.

Sensitive: Personal

- 7. The grant of a Visitor visa (subclass 600) to [REDACTED] for a period of three months would allow them to lodge a valid onshore combined Contributory Parent visa, which would be assessed through departmental processes.
- 8. If you agree to intervene in [REDACTED] case, please sign the decision documents at Attachment A.

Decline to intervene

- 9. If you decline to consider intervening under section 195A of the Act, [REDACTED] will be required to depart Australia. It is open to [REDACTED] to lodge a visa application offshore.

Consultation – internal/external

- 10. Status Resolution South Australia and Family Migration Program Management.

Consultation – Secretary

- 11. The Department’s Secretary was not consulted regarding this submission.

Client service implications

- 12. There are minimal client service implications.

Sensitivities

- 13. N/A

Financial/systems/legislation/deregulation/media implications

- 14. There are negligible financial, systems or legislation implications for the Department.

Attachments

Attachment A Decision documents

Attachment B MS18-000526

Authorising Officer
Cleared by:
Tom Kirkpatrick Acting Assistant Secretary Status Resolution Branch
Date: 21/05/2018 Ph: [REDACTED]

Contact Officer [REDACTED] Director, Complex Case Resolution Branch, Ph: [REDACTED]

Through

CC SA Community Status Resolution

Sensitive: Personal

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- DECISION INSTRUMENT -

**Name:
Date of Birth:
Client ID:**



**Name:
Date of Birth:
Client ID:**



1. The above named people is in immigration detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their case under section 195A of the Act.
2. I have determined that it is in the public interest to grant the above named people Visitor visas (subclass 600) for a period of 3 months;
3. I therefore exercise my power under section 195A of the Act to grant a Visitor visa (subclass 600) in favour of the above named people.

A handwritten signature in black ink, appearing to read 'Peter Dutton'.

THE HON PETER DUTTON MP
Minister for Home Affairs
Minister for Immigration and Border Protection

24/05/2018

Sensitive: Personal

**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. These two people are detained under section 189 of the Act as unlawful non-citizens.
2. Having regard to all the circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant these people a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant these people Visitor visas (subclass 600) for three months.



THE HON PETER DUTTON MP
Minister for Home Affairs
Minister for Immigration and Border Protection

24/05/2018

Sensitive: Personal



Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number MS18-000526

To **Minister for Home Affairs**
Minister for Immigration and Border Protection

Subject **Possible Ministerial Intervention under section 195A of the *Migration Act 1958* in relation to [REDACTED] and [REDACTED]**

Timing *At your convenience.*

Recommendations

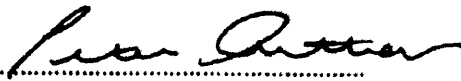
That you:

1. indicate whether you are inclined to consider intervening under section 195A of the *Migration Act 1958* (the Act) to grant Visitor visas (subclass 600) to [REDACTED] for three months.

consider / not consider

- if you are inclined to consider intervening under section 195A of the Act, the Department will refer a further submission for your final decision.

Minister for Home Affairs
Minister for Immigration and Border Protection

Signature: 

Date: 10/05/2018

Received
04 APR 2018
Minister for Immigration and Border Protection

Sensitive: Personal

Sensitive: Personal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. [REDACTED] are being referred for your consideration under section 195A of the *Migration Act 1958* (the Act) as (a) they have substantial ties to the Australian community, (b) their removal from Australia would impact Australian citizens, (c) they do not have access to post-review Ministerial intervention powers (c) there are no onshore visa options available to them.
2. [REDACTED] arrived in Australia in [REDACTED] as holders of [REDACTED] Passports issued in [REDACTED] and Tourist visas (subclass 500) valid for one month. They remained in Australia unlawfully until [REDACTED] when they initiated contact with the Department to resolve their immigration status.
3. [REDACTED] have resided in Australia for over [REDACTED] years and have substantial ties to the community. They have [REDACTED] paid taxes and have raised a family in Australia. They have [REDACTED] adult children and [REDACTED] grandchildren, all of whom are Australian citizens.
4. [REDACTED] and their [REDACTED] have written to the Department requesting that they be considered for the grant of a permanent visa on compelling and compassionate grounds.
5. Your office requested that a Visitor visa option be provided to enable [REDACTED] to apply for a Contributory Parent visa.

Background

Immigration history

6. An immigration summary for [REDACTED] is at **Attachment A**.
7. [REDACTED] were born in [REDACTED]. They have [REDACTED] children and [REDACTED] grandchildren born in Australia.
8. On [REDACTED] [REDACTED] arrived in Australia on Tourist visas (subclass 500) valid for one month.

Sensitive: Personal

9. [REDACTED] have claimed that they attended the Department's [REDACTED] office in [REDACTED] to enquire about visa options available to them. [REDACTED] stated that she wanted to resolve her status [REDACTED]. She stated that she was informed that there were no appropriate forms and she left the office as an unlawful non-citizen. [REDACTED] has provided a copy of a completed immigration form (form 690 – application to remain permanently in Australia) dated [REDACTED] and a letter to the Department dated [REDACTED] from her local church. Whilst documents provided indicate that [REDACTED] considered resolving their immigration status at that time, there is no evidence that they applied for a visa. [REDACTED] remained in the community as unlawful non-citizens.
10. [REDACTED] also claim that in [REDACTED] they sought legal advice on resolving their immigration status. They were advised that they did not have any options onshore and would need to apply for a visa offshore. They stated that on [REDACTED] they decided to apply for an offshore Contributory Parent visa. They claimed to have instructed their migration agent to delay lodgement of the visa application until they had travelled offshore. They stated that they commenced planning for their departure, including enquiring about travel documents and [REDACTED].
11. On [REDACTED], [REDACTED] migration agent lodged an offshore Contributory Parent (Migrant) visa (subclass 143) application and listed [REDACTED] as a dependant applicant. [REDACTED] claimed that at the time, they were not aware that the application had been lodged. They stated that it was lodged in error and they had not travelled offshore due to difficulties obtaining a travel document.
12. The International Organisation for Migration (IOM) has confirmed that [REDACTED] first contacted them in [REDACTED]. IOM stated that [REDACTED] had experienced difficulties in obtaining travel documents to return to [REDACTED].
13. On [REDACTED] [REDACTED] presented to Status Resolution in [REDACTED] in order to resolve their immigration status. Their case was referred to the Department's Legal Opinion Help Desk to establish whether they are absorbed persons.
14. On [REDACTED] departmental legal advice confirmed that [REDACTED] were not absorbed persons. On [REDACTED] they were granted Bridging E visas (subclass 050) with condition 8510 (to show a valid passport).
15. On [REDACTED] [REDACTED] migration agent withdrew the application for a Contributory Parent (Migrant) visa on their instruction.
16. [REDACTED] are currently cooperating with the Department's direction to obtain passports and have had regular contact with IOM. IOM have made some enquiries on behalf of [REDACTED] and have advised the Department that there have been significant delays. They stated that this is due to changes to administrative processes in [REDACTED] since their expired passports were issued.

Family

17. [REDACTED] have [REDACTED] Australian citizen children [REDACTED] years old. They also have [REDACTED] Australian citizen grandchildren [REDACTED] years old. They have provided birth certificates for all family members.

Sensitive: Personal

18. [REDACTED] has written a letter to the Department regarding [REDACTED] circumstances and contribution to the Australian community. [REDACTED] stated that [REDACTED] had decided to approach the Department again as all of [REDACTED] [REDACTED] stated that [REDACTED] have close relationships with their [REDACTED] grandchildren and regularly care for them. [REDACTED] reported that they will have a [REDACTED] grandchild this year. This letter is at Attachment B.

Links to the community

19. [REDACTED] have provided a number of documents to the Department to support their substantial ties to the Australian community.
20. [REDACTED] stated that they have [REDACTED] in Australia. [REDACTED] they have provided evidence of the [REDACTED]
21. [REDACTED] stated that they are involved with their local church. They provided documents from the church indicating that they are of good character and have been involved in church programs.
22. [REDACTED] stated that they [REDACTED] and [REDACTED] that they may be required to leave Australia. They have provided evidence of their financial circumstances indicating their ability to support themselves.
23. [REDACTED] have stated that they have made a significant contribution to the Australian community. They have provided a variety of documents confirming that they have been involved in volunteer work and donations to charities over the years. They have written a letter requesting to remain in Australia permanently and detailing their ties to the Australian community. This letter is located at Attachment B.

Identity

24. [REDACTED] have provided photocopies of their [REDACTED] issued in [REDACTED] and their [REDACTED]. The names recorded on the documents are [REDACTED] and [REDACTED].
25. [REDACTED] have provided a variety of documents issued in Australia under the names of [REDACTED]. These documents include; Medicare cards, tax statements and driver's licenses. They stated that they were [REDACTED] and that [REDACTED].
26. [REDACTED] has provided a copy of her marriage certificate dated [REDACTED] and a [REDACTED] dated [REDACTED] in the name of [REDACTED].

Character and security

27. The Department is not aware of any character concerns in relation to [REDACTED]. Their character has not been formally assessed by the Department in relation to a permanent visa.

Sensitive: Personal

28. There is no information in departmental systems to suggest any security concerns in relation to [REDACTED]

Health

29. The Department is unaware of any health concerns in regard to [REDACTED]. They have not been required to undergo health assessments.

National Returns and Removals Taskforce

30. The National Returns and Removals Taskforce reviewed this submission on 22 February 2018.

31. [REDACTED] are currently residing lawfully in the community on BVEs valid until 19 April 2018. They have no ongoing matters before the Department or the courts and are available for removal, pending issuance of their travel documents.

Options for future management

Ministerial intervention under section 195A of the Act

32. Section 195A of the Act provides you with the power to grant a visa to a person in immigration detention, if you think it is in the public interest to do so. Your section 195A power is non-compellable which means you are under no obligation to exercise or to consider exercising your power.

33. Your power under section 195A of the Act may be applied to community cases, where there are compassionate or compelling circumstances identified and no other resolution option available. This process requires that any visas held by the clients be cancelled and they be detained by the Department under section 189 of the Act, in order to enliven your intervention power under section 195A of the Act.

34. Should [REDACTED] be granted a substantive temporary visa, such as a Visitor visa (subclass 600) with work rights for three months, they would be able to lodge a valid onshore combined Contributory Parent visa, which would be assessed through departmental processes.

35. If you are inclined to consider intervening in [REDACTED] case, under section 195A of the Act to grant them Visitor visa (subclass 600), the Department will refer a further submission for your final decision.

Decline to consider

36. Should you decline to intervene in the [REDACTED] case under section 195A of the Act, they will be required to depart Australia. It is open to [REDACTED] to lodge a visa application offshore.

Consultation – internal/external

37. Status Resolution South Australia, National Returns and Removal Taskforce and Family Migration Program Management.

Consultation – Secretary

38. The Department's Secretary was not consulted regarding this submission.

Sensitive: Personal

Sensitive: Personal

Client service implications

39. There are minimal client implications.

Sensitivities

40. N/A

Financial/systems/legislation/deregulation/media implications

41. There are negligible financial, systems or legislation implications for the Department.

Attachments

Attachment A Immigration summary

Attachment B Letters to the Department

Authorising Officer
Sally Peiffer A/g Assistant Secretary Status Resolution Branch
Date: 04/04/2018 Ph: [REDACTED]

Contact Officer [REDACTED] Director, Complex Case Resolution Section, Ph: [REDACTED]

CC SA Community Status Resolution

Sensitive: Personal

Immigration Summary

Name	
Date of Birth	
Citizenship	
Other Names	
Gender	
ICSE ID	
Date Arrived in Australia	
Date Detained	
Current Location	

Name	
Date of Birth	
Citizenship	
Other Names	
Gender	
ICSE ID	
Date Arrived in Australia	
Date Detained	
Current Location	

Date	Event
	Arrived in Australia as the holders of Tourist visas (subclass 500) valid for one month.
7 July 2016	lodged a Contributory Parent (Migrant) visa (Subclass 143) and was listed as a dependant applicant.
28 June 2017	present to Status Resolution in order to resolve their immigration status. Their case was referred to the Legal Opinion Helpdesk to determine whether they were considered to be
17 October 2017	Legal advice confirmed that are not
27 October 2017	were granted Bridging E visas with condition 8510 (show a valid passport)
28 October 2017	withdrew the application for a Contributory Parent (Migrant) visa and requested a refund of the visa application charge (VAC)
9 November 2017	request for a refund was refused as it did not meet mandatory refund criteria.
19 January 2018	were granted a further BVE as they have an outstanding Ministerial intervention (s195A) and are cooperating with the International Organisation for Migration (IOM) to obtain travel documents.

To Whom It May Concern,

[REDACTED]
[REDACTED] Based on misinformation, they were naively led to believe that they could arrive in Australia on a tourist visa and would be granted residency after a time. [REDACTED] arrived [REDACTED] on tourist visas, in search of a better life for themselves and their future family. [REDACTED]
[REDACTED]

Realising that they would not be granted residency, they wanted to right their wrongs, and in [REDACTED] they decided to approach the Immigration Department of NSW regarding their circumstances. At this time, [REDACTED] and they believed it would be less disruptive if they would have to be removed from Australia. However, the Immigration Department said they couldn't help them, yet also didn't ask them to leave the country. Not knowing what to do, and wanting to stay, they continued working and raising their family in Australia [REDACTED]

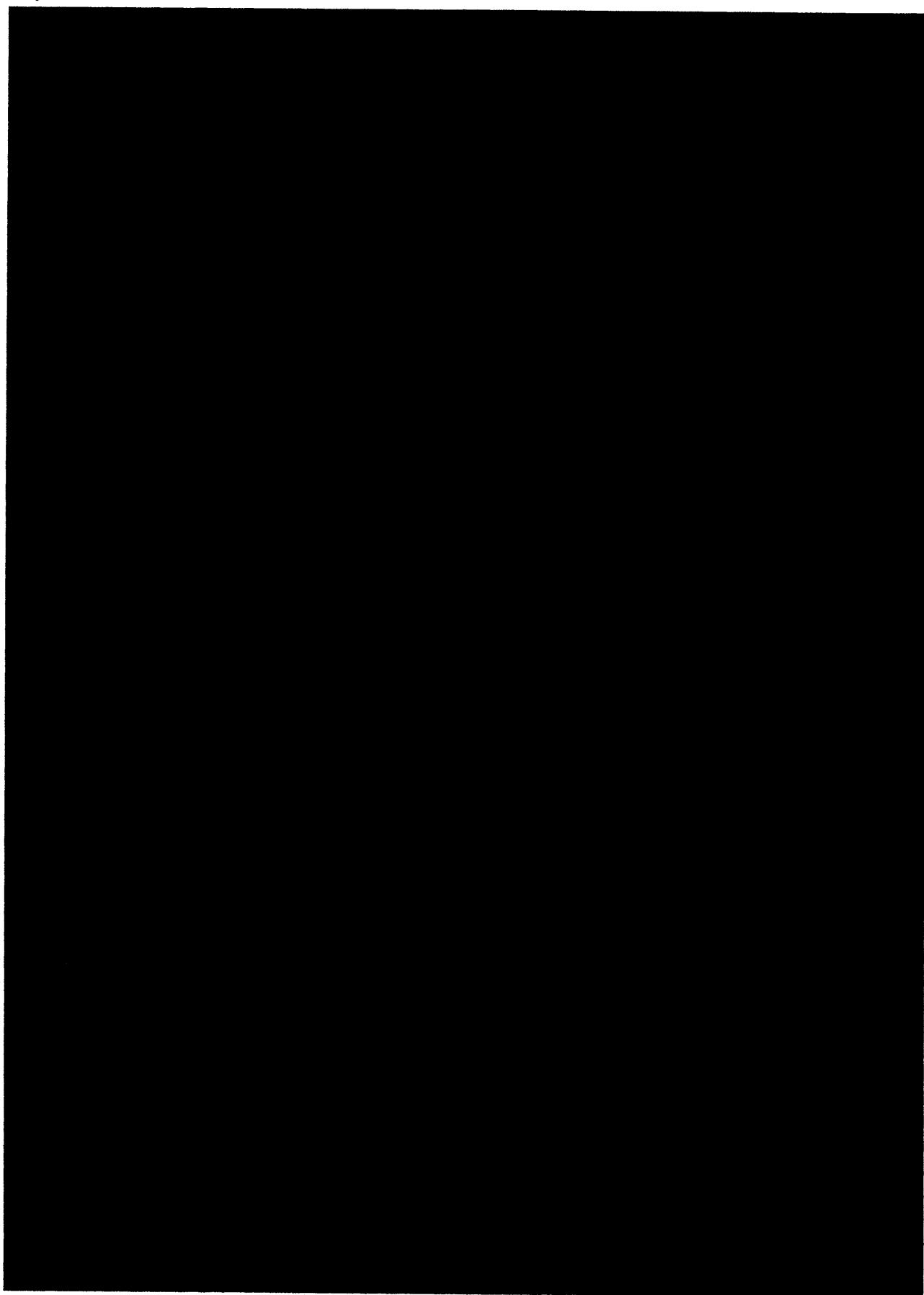
[REDACTED] In search of more work opportunities and [REDACTED] they wanted to apply for residency but were afraid of what would happen to [REDACTED] if they had to leave Australia. They loved living in Australia and [REDACTED]

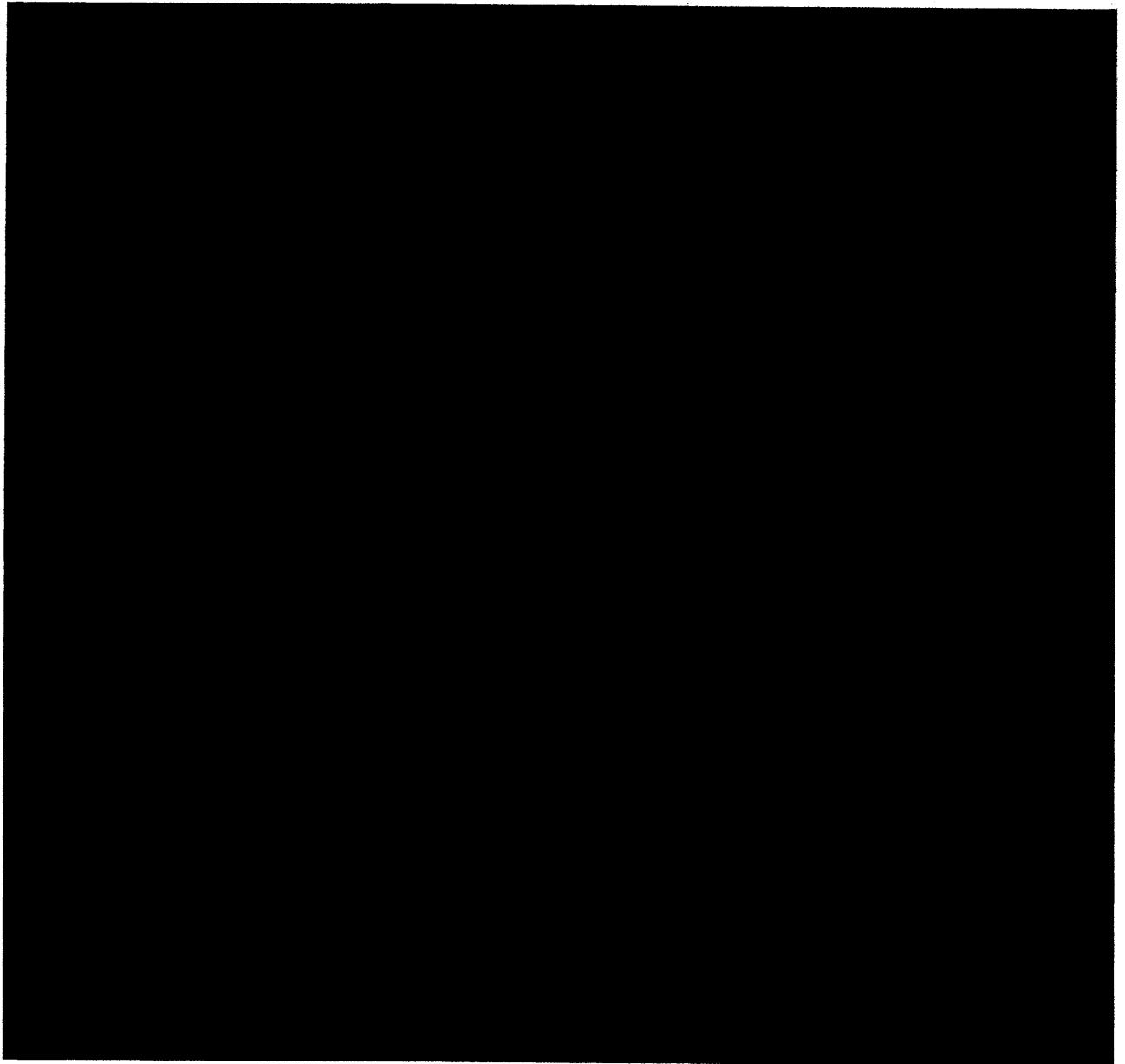
[REDACTED] Finally in [REDACTED] and so [REDACTED] once again decided to approach the Immigration Department.

They are both dedicated [REDACTED] and have applied themselves in the community, both at [REDACTED] events, and volunteering with their [REDACTED] multiple times a week. They love living here and haven't left Australia [REDACTED] They wouldn't know [REDACTED] anymore, it's changed so much. In [REDACTED]

[REDACTED] It would be our greatest wish for them to be able to stay in Australia.

Sincerely
[REDACTED]





Sincerely,

A small, solid black rectangular redaction covers the signature area, obscuring the name of the sender.

To Whom It May Concern,

