



Immigration Advice and Rights Centre

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Mr. R Selth
Secretary
Joint Standing committee on Migration
Parliament House
CANBERRA ACT 2600

BY EMAIL

SUBMISSION TO THE JOINT STANDING COMMITTEE ON MIGRATION REGULATION 4.31B

The Immigration Advice and Rights Centre (IARC) is a community legal centre specialising in the provision of advice, assistance, education, law and policy reform. We provide free and independent immigration advice to almost 5000 people a year and a further 1000 people attend our education seminars annually. We also produce the *Immigration Kit*, the only comprehensive plain language guide to Australia's immigration laws, now in its 6th edition and *Immigration News*, a quarterly newsletter covering recent developments in migration law. Clients for whom we provide on-going assistance are low or no income, frequently with other disadvantages including low level English language skills.

IARC's main focus of work is in the immigration rather than refugee area of migration law. We do not act for applicants seeking to lodge primary applications for protection in Australia nor for applicants who have sought review of an adverse decision by the Refugee Review Tribunal or through the courts.

In this submission, IARC seeks to re-address the issues that we previously submitted to the Joint Standing Committee on Migration in its review of this Regulation in 1999. IARC then opposed Migration Regulation 4.31B imposing a post decision fee by the Refugee Review Tribunal (RRT). We continue to affirm that stand.

Previously we explained how the imposition of the post decision fee can have harsh consequences on Australian families who are financially, culturally or otherwise disadvantaged. We provided a specific case study example demonstrating how the post decision fee, if it became an outstanding debt to the Commonwealth, would be a barrier to the grant of a subsequent off shore spouse visa application. As this case illustrated, the effect was significant hardship to an Australian family unit caused by further delay in granting the visa.

As we explained previously, the effect of s48 of the Migration Act, which bars the making of further visa applications in Australia following a visa refusal, means that it is specifically those financially disadvantaged applicants who comply with the law and leave Australia to make a further visa application from offshore who may be adversely affected by the post decision fee. This occurs in the situation where they are unable to afford to pay the fee, and therefore have an outstanding debt to the Commonwealth. More likely than not, these will be offshore spouse applications and therefore an Australian permanent resident or family unit is adversely affected by this provision.

While we acknowledge the Government's concerns to deter abuse of the refugee determination process, we submit that there are other provisions in the migration law that serve this purpose, including the provision to restrict the right to work for applications made outside 45 days of entry, and the bar on subsequent on shore visa applications. We submit that the post decision fee is not necessary, nor effective, to deter non genuine claims.

There are many reasons why people are unsuccessful in their refugee claims. We submit that it is unfair and inaccurate to conclude that all unsuccessful applicants are non genuine refugees who are seeking to abuse the refugee determination process in Australia. Lack of access to legal advice and representation, especially accessible advice in the community about the general non refugee migration program and possible visa options available, together with poor English language skills and cultural barriers to accessing community services may also be relevant factors. IARC has direct evidence of the overwhelming need for free migration advice services in the general community, demonstrated by the excess demand for our services.

Finally, it appears that there continues to be a lack of evidence of the effectiveness of the post decision fee to deter non genuine claimants. This together with the adverse impact that it may have on Australian families in the context described above, lead us to oppose the continued application of the post decision fee.

RECOMMENDATIONS

We affirm our previous recommendation that

- 1) Regulation 4.31B be repealed.

- 2) On the other hand if it is not repealed, then we recommend the introduction of discretion to waive the imposition of the post decision fee in compelling circumstances such as the case study mentioned above and in our previous submission.

IMMIGRATION ADVICE AND RIGHTS CENTRE

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