

Submission No 73

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Inquiry into immigration treatment of disability

**Submission of comment on the migration health
requirement**

This submission is prepared by

Richard "A"

For and on behalf of the "A" family

26th October 2009

Requirement of the submission:

The Committee invites submissions to the inquiry by Wednesday 28th October 2009. Please refer to our brochure called [preparing a submission](#) for more information.

The Committee would welcome submissions from people with a disability, employers, business organisations, disability and community services providers, and any other interested individuals or organisations who would like to make comment.

If you, a family member or a friend have had issues with the health requirement due to a disability, disease or condition, the Committee is also interested your story. Submissions can be of any length or format, and it doesn't matter if you're not Australian or not in Australia.

Overview

The long term ambition of the "A" family was to migrate to Australia before the 45th birthday of Richard "A" (father of the referenced family).

Key drivers for migration were quality of life for the family, to join the mothers' (Kim "A") family unit, and to continue to live and support professional careers in Australia.

Understanding the opportunity of migration, and undertaking the requirements to migrate were carried out in the late 1990's and up to 2002. At the same time we had two daughters born in 1997 and 1999.

The family, originally from the United Kingdom, have lived and worked in Hong Kong since the late 1980's.

Both parents qualified and surpassed the migration requirements defined at the point of considered application.

Richard "A" being a Licensed Aeronautical Engineer with significant overseas experience in both the technical and commercial disciplines of Aircraft Engineering and Maintenance. Employed at the time as a Technical Services Manager for Cathay Pacific Airways, Hong Kong.

Kim "A" being a practicing Primary and Secondary school teacher holding a number of management roles within the International Schooling System. Employed at the time as Lower School coordinator for a Junior School, English Schools Foundation, Hong Kong.

"R", the first of two daughters is a healthy, well child.

"C", the second daughter suffered a major trauma during birth due to medical negligence. This trauma has caused "C" to suffer from quadriplegic Cerebral Palsy. Legal action was taken against the attending doctor, with admission of liability, through the Hong Kong legal system in 2002. Resolution of damages and costs would not be concluded until "C" reached a stabilized condition and age which would allow experts to qualify and quantify all life costs associated through this negligence.

The family sought advice from the Australian Consulate in Hong Kong, with respect to immigration, and were advised that it would be extremely unlikely that the family would be accepted as "C" would not meet the medical criteria for migration.

Additional advice was taken through "C"'s lawyer. Through his discussions with a number of lawyers in Australia, their advice resulted in the same anticipated outcome.

The family was also advised at the time not to apply under the current rules as a rejection would have a negative impact on any further application.

Family Background

Kim "A" – Mother

Kim, a degree holder, is a professional teacher with extensive experience in UK domestic and overseas international schools.

After a number of years teaching in the United Kingdom, Kim moved to Hong Kong in 1988 pursuing a successful teaching and management career within the Hong Kong English Schools Foundation.

Kim married Richard in 1995.

Kim's family have lived in Australia for over 30 years and are all naturalized citizens of Australia.

Family members are:

- "J" (father) resident Frankston, Victoria
- "I" (Step mother) resident Frankston, Victoria
- "M" (sister) resident Wyndahmvale, Victoria
- "MB" resident Frankston, Victoria
- "L" (sister) resident Glenroy, Victoria

Kim's sisters now all have extended families through two generations.

Kim did not join her family when they migrated to Australia as she was completing the final year of her degree course.

It was Kim's life goal to take her own family to Australia before the age of 45.

Richard "A" – Father

Richard is a professional, apprenticed, Licensed Aeronautical Engineer with significant experience across multiple disciplines within the Aviation Industry. Richard has gained extensive exposure within the international aviation environment having held positions in the United Kingdom, Saudi Arabia, Ireland and the Philippines and having held a number of positions within his current airline, Cathay Pacific in Hong Kong.

Richard has held negotiations on accepting position's with Qantas, but in both instances was unable to overcome the inability of his family being able to migrate to Australia (due to "C"'s disability) with him.

"R" – Eldest daughter

"R" is a well child who leads a normal and active life in Hong Kong. She is a committed, active, and strong student within her Senior School.

"C" - Youngest daughter

"C", suffered a major trauma at birth due to medical negligence. This had left her with quadriplegic cerebral palsy. She is wheelchair bound, is unable to talk but is fully cognitive and attends mainstream school. "C" requires 24/7 full time care. The extent of her cognitive ability is yet to be determined with respect to academic achievement and the opportunity to pursue a full or part time career.

Negligence of the attending doctor at "C"'s birth was admitted through the Hong Kong High Court in 2002.

Admission of negligence within Hong Kong allows the plaintiff to seek nominal damages and the recovery of full life time costs against her disability.

These life time costs are assessed and determined against a full spectrum of criteria. The key drivers within the determined costs are:

- Continuous and full time life management (dependent on self sufficiency)
- Continuous and full time care in the proposed country of residence
- Continuous fully assisted and adapted housing
- Continuous and fully supported disability support (wheelchairs, adaptive technology, augmentative communication technology)
- Continuous and fully assisted transportation needs (domestic and international travel with Carer's)
- Continuous and fully supported medical coverage
- Loss of lifetime earnings (dependent on career capability)

Whilst "C"'s life has been severely affected through her disability, her health to date has not been compromised. The costs, to date, of "C"'s needs due to her disability have been fully covered by monies paid into the court by the defendants insurer. It is anticipated that the costs of all of her future needs, due to her disability, will be born from a permanent court settlement from the defendants' insurer.

Original application timings:

The family's original expectation to submit an application to migrate to Australia was 2002, with the intent to migrate (if the application was successful) in the time window of 2004 to 2008. This timing was driven by relevant schooling age for the children and the ability to secure relevant careers within Australia for both Kim and Richard.

The application to migrate was not submitted due to advice obtained from the Australian Consulate in Hong Kong and through legal sources within Australia.

Outstanding options:

There is still a strong desire within the "A" family to migrate to Australia. Whilst the timing for the children's schooling is now less than optimal, the ability to pursue a full and active career and family life is still very real. The implication of receiving "extended family" support for a disabled child is also significant.

Whilst both Kim and Richard are now above relevant age, they could actively pursue continued careers within the relevant disciplines. The family is financially self sufficient with owned properties in Hong Kong, the United Kingdom and Thailand. The family also has strong financial assets through savings and private pension plans.

"C"'s life cost requirements will be available through the Hong Kong High Court administered settlement. Wherever "C" lives she will actually be contributing significantly to the local economy through employment of life managers and full time 24/7 care givers.

Conclusion:

Whilst our application to migrate has been put on hold due to the implications of meeting medical requirements for migration, it is hoped that this current exercise will expose some of the issues with the current migration requirements.

It seems anomalous that a well educated, professional, financially secure family, with a disabled child whose disability costs will be covered through a legally binding settlement should not be allowed to migrate to Australia. To be able to fulfill one of their life dreams, and to join and receive the family support of their immediate family!

We hope that the findings of this Inquiry asks deeper questions of the immigration policy and the rules by which it is guided. Flexibility within these rules, where the impact to all parties will result in a positive contribution, need to be available for consideration.