



Senator Chris Evans

Leader of the Government in the Senate
Minister for Immigration and Citizenship

Ms Julia Irwin MP
Chair
Standing Committee on Petitions
Parliament House
CANBERRA ACT 2600

Dear Ms Irwin *Julia*

Thank you for your letter of 11 February 2010, concerning a petition submitted on 8 February 2010 to the Standing Committee on Petitions regarding a request to allow a Chinese orphan to migrate to Australia on compassionate grounds.

The petitioners, Mr Raymond and Mrs Suzanne Dousset, wish to allow an 18 year old orphan to remain permanently in Australia and have previously attempted to adopt her. Under Chinese law, a non-relative cannot adopt a child once that child turns 14 years of age and the Doussets have already been advised of this restriction by the Chinese authorities.

My Department is not directly involved in adoption arrangements; it provides advice on how adopted children can be granted a visa to enter Australia once they meet all the requirements for a visa. When Australians are seeking to adopt a child from overseas, the adoption must first meet the legal requirements of the child's country of residence. Consequently, as the Chinese authorities will not permit the adoption of the orphan by the Doussets, she cannot be regarded as a member of their family and so she does not qualify for any family visa category. Unfortunately, there is no provision in migration legislation to consider waiving these restrictions, no matter how compassionate the circumstances.

Immigration requirements are set out in the *Migration Regulations 1994* (the Regulations) and are determined by Australia's status as a signatory to the *Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption* (the Convention). Under the Convention, there are certain requirements that must be met to ensure Australia is upholding its obligations regarding intercountry adoptions. Along with other responsibilities, signatory countries must ensure that each other's laws are respected and complied with in relation to adoptions.

In the absence of a visa option, as previously advised to the Doussets, in accordance with the *Migration Act 1958*, I can only personally intervene in limited circumstances. This is where a person has had a visa application refused, or a visa cancelled, and this decision has been considered by a review tribunal such as the Migration Review Tribunal. As the orphan has not been the subject of a review decision, I have no legal power to consider the case at this time and neither the Prime Minister nor any other government officials have the legal power to intervene in migration cases.

I note that the tourist visa issued to the orphan, which enabled her to travel to Australia and which ceased on 11 February 2010, was subject to condition 8503, a 'no further stay condition'. While provision exists, under clause 2.05(4) of the Regulations, to waive the 8503 condition, the circumstances for this are limited to where, since the visa was granted, compelling and compassionate circumstances have developed over which the person had no control and that resulted in a major change to the person's circumstances. As the Doussets have stated, the appeal they made to my Department to waive this condition was unsuccessful and any subsequent request must refer to circumstances that are substantially different from those previously considered.

Unless waived, the 8503 condition precludes the orphan from applying for most types of substantive visas. However, she has made an application for a visa for which she is permitted to apply and she is currently lawfully in Australia while the Department is considering this application.

For further information, the Committee may wish to contact [REDACTED], Acting Director of the Department's Family and RRV Section on [REDACTED].

I trust the information provided is helpful and I thank you for bringing this matter to my attention.

Yours sincerely

CHRIS EVANS

16/3/10