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Inquiry into the Migration Treatment of Disability

Submission to the Joint Standing Committee on
Migration

Parliament of Australia

By (Name Withheld)

April 7, 2010

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Mr. Michael Danby MP
Chairman
Joint Standing Committee on Migration
Parliament of Australia
Parliament House
Canberra ACT 2600

Dear Mr. Chairman:

Thank you for giving me an opportunity to make this submission before the Joint Standing Committee on Migration. This issue has been close to my heart since 1996 when I experienced an instance of blatant abuse of power by the Australian Government machinery to cover up and defend what was a fraud on (then) a five year old child. I have divided this submission into four parts: -

- (i) Brief description of my experience.
- (ii) Insensitive, irrational, deaf and blind system.
- (iii) The questions that were never answered.
- (iv) Suggestions for developing a sound public policy on treatment of disability under the Migration Act and regulations.

Brief account of my experience

During the year 1996, I applied for an Australian migrant visa for my family. In 1997, the Senior Visa Officer at the Los Angeles Consulate sent me a letter indicating that the Commonwealth Medical Officer had determined that my daughter was (likely) going to be a burden on the Australian government/community due to her health condition (a milder case of spina bifida).

In October 1997, I wrote a letter to the Immigration Minister and raised some serious concerns about the quality and integrity of the medical assessment done by an Australian government doctor. I asked for a detailed calculation of "significant cost" on the basis of which my visa application was denied. The minister indicated that my daughter was going to be eligible for A\$ 1,950 per year disability allowance. There was nothing on the record to suggest that I was going to apply for the said disability benefit if my application for a migrant visa was approved. My family was not going to qualify for the said benefit due to our financial standing.

In November 1997, I wrote to the Joint Standing Committee on Migration. I was informed that the Committee did not have the power to investigate individual complaints. The said Committee was merely a silent spectator to the Department of Immigration and Multicultural Affairs' (DIMA) abuse of power.

In January 1998, I filed a complaint with the Commonwealth Ombudsman against DIMA. The Ombudsman informed me that it was unable to take any action against the department.

In January 1998, I filed a complaint with the Australian Human Rights and Equal Opportunity Commission. I was informed that the HREOC did not have the power to investigate DIMA even though it found that DIMA had violated my daughter's human rights.

In January 1998, I wrote to the Attorney General asking for his intervention in the matter. My letter was forwarded to the Minister of Immigration with no result.

On January 5, 1998, I spoke to Mr. David Hazlehurst in the Prime Minister's office only to find out that the Prime Minister's office did not want to interfere with the working of the DIMA.

In February 1998, I filed a complaint against the government doctor, who wrote my daughter's health assessment, with the Australian Department of Health and Family Services. No action was ever taken against the doctor for writing a fraudulent medical assessment of my daughter.

In February 1998, I filed a complaint against the government doctor with the NSW Medical Board. The Board took no action against the doctor.

On April 6, 1998, Mr. David Bitel of International Commission of Jurists wrote, "Every year many thousands of people receive similar refusals and make similar representations to members of Parliament most of which usually fall on deaf ears."

In 1998, I filed a complaint with the United Nations Human Rights Committee.

During the period 1997-1999, I had lengthy regular phone conversations with the offices of several members of Australian Parliament. It was becoming increasingly evident that I needed to file a new application for a migration visa because no politician had the guts to challenge the Immigration Minister, Mr. Philip Ruddock. He and his department were above the system and it was tarnishing the image of Australia. It was suggested by the offices of the House Speaker and the Senate President that filing a new application was most likely going to resolve the issue.

In 2000, my family's fresh application for a migrant visa was approved.

In 2003, the UNHRC matter was also concluded. The Australian government was able to convince the UNHRC that my complaint was inadmissible under the Optional Protocol and I had no grievance since my fresh application for a migration visa was already approved in 2000.

Insensitive, Irrational, Deaf & Blind System

I wrote to almost every member of the Australian parliament asking for intervention in this matter. A very few members of the Australian Parliament did express their sympathies with my case. Some members wrote to the minister on my behalf. The minister was neither interested in providing the details of the basis on which health costs were calculated nor was he willing to review DIMA's policy and procedures. The most stunning realization hit me when I found out that the so-called pro-life conservative members of Australian parliament were least sympathetic to my case. It was shocking because instead of preaching they should have been appreciating and protecting life in practice. Even today I wonder what these politicians would have done with disabled Australian citizens if they had their way.

I provided cost calculations by three independent experts. These experts concluded that 5-year health care costs for my daughter were going to be in the range of A\$ 3,100 to A\$ 4,600, not A\$ 16,000 as claimed by Australian bureaucrats. I also provided details as to how a smoker or a person with thyroid or high cholesterol would cost significantly more than what Australian doctor speculated as the health care costs for my daughter. The point I was trying to make is simple – many

so-called healthy people being admitted as migrants were going to cost more than the speculative estimated health care costs for my daughter. Thus, it is not the cost-factor that was used to deny visa to my family. In fact, it was the bias against people with disability that prompted the Australian government to insult a five year old girl.

A response from Mr. Ed Kilesteyn the First Assistant Secretary, Migration and Temporary Entry Division had a minute attached to his letter that read: 'With regard to the costs ... the family would be eligible to receive a child disability allowance (currently about \$1,950 a year) until she reaches the age of 16 years". Mr. Kilesteyn claimed that my case had been reviewed 28 times 'by many (and senior) officers and medical professionals'. A system has to be deaf and blind if all 28 times Australian government officials could not figure it out that my daughter did not qualify for a Child Disability Allowance. They missed the point 28 times, that is a joke. Most importantly, the Australian government claimed that (28) reviews of my case took place (in reality the laws prohibit all reviews and appeals in these types of cases if an applicant does not have a relative in Australia).

I took the matter to the United Nations Human Rights Committee due to three reasons. Firstly, I wanted the Australian government to know that not every person in this world accepts the injustice lying down. Secondly, I wanted to use this complaint as a mechanism to discover the prejudices of the Australian policy makers against people with disability. I felt that it was a unique opportunity for me to make the use of legal discovery process. Thirdly, I wanted to create a suitable environment for public scrutiny of Australia's immigration policy.

I was not interested in seeking any monetary compensation from the Australian government. I asked the Australian government to admit its wrongdoing and consider my family as residents in Australia during the period 1997-2000 for the purpose of Citizenship. The Minister did not want to use his discretion and correct the mistakes made by his department. I made an application for Citizenship in 2003 which was denied since the minister was not willing to use his discretion. I feel even today the Minister has the power to use that discretion, if there is a willingness to admit what was wrong, deceitful and discriminatory.

The questions that were never answered

- (1) What was the basis for A\$ 16,000 costs to be incurred on my daughter's health care over the period of five years?
- (2) What was the basis for health care assessment of smokers, drinkers, and people who have weight problem and still were approved for a migrant visa?
- (3) What were the credentials and specialization of the doctor who completed my daughter's healthcare assessment?
- (4) What were the rules or code of conduct for Australian doctors who wrote health care assessments under the Migration Act?
- (5) Why I was not given an item-by-item summary of costs calculations (speculated) in my case?

Suggestions

I feel that the Australian government needs to add compassion to its public policy on treatment of people with disability under the Migration Act and regulations. In this Internet era, lack of transparency, lack of integrity and writing bogus health assessments would simply not work. The following steps would lead to a sound public policy in this regard: -

- ❖ When an applicant is denied migrant visa, the denial letter must indicate legal remedies available to these persons. It should include information about appeal procedure and requirements. The package should include necessary forms and fee information.
- ❖ The denial letter must include the detailed decision if the denial is based on health reasons. One-sentence denials do not provide enough information to the applicants to enable them to evaluate the possibility of taking a legal action. A full report should be provided to the applicant. The applicant should be able to seek the review of the health assessment by a panel of independent non-government doctors who specialize in that particular condition.
- ❖ The only way to check the abuse of power by the Immigration Dept is to allow offshore applicants to file an appeal with Migration Appeals Tribunal if the visa was denied on health grounds.
- ❖ The visa application must have full details about health requirements. Application must indicate what the policy is and how the policy is applied.
- ❖ Migration Act and Regulations should be reviewed by HREOC for compliance with United Nations treaties. My request for review never materialized, despite assurances, due to shortage of funding and the clash of political egos.
- ❖ Allow at least 120 days to file appeal in federal court as opposed to 28 days if an application is denied on health grounds. It would be good if a family member is granted a temporary visa to come to Australia to file a legal case, if needed.
- ❖ Make a provision in the regulations to ensure that Immigration Dept can't recover (inflated) legal costs if the applicant loses the case in the Federal Court. Alternatively, a cap should be placed so that Australian Government can't claim UNLIMITED legal costs from the applicant.
- ❖ If the Immigration Dept is found to have done a health assessment wrongly, the applicants should be granted a migrant visa effective the date of denial. Furthermore, the period lost in appeals or to file a new application should be counted as period during which the applicants are deemed to be resident in Australia for the purpose of making the application for citizenship. This is the only way to ensure that bureaucrats in the Immigration dept would use common sense while making health assessments.
- ❖ If the Australian government is so serious about the healthcare costs of migrants and their families, it should take a hard look at how health assessments are done for smokers, obese people, and alcohol consumers. I can assure you that a smoker would most likely put more burdens on the health care system than someone born with a disability. The current system of health assessment for disabled people is nothing but an expression of prejudice against the people who don't look perfect in the eyes politicians who make laws and public policy. It is very unfortunate that we fail to recognise that a person can become disabled at anytime in his/her life due to a disease or an accident.
- ❖ Considering only the cost is not fair. A detailed analysis should be performed to arrive at the benefit Australia stands to gain from the parents of a disabled child.
- ❖ The policy should be to promote inclusion of disabled children not finding ways to unfairly exclude them by writing unsubstantiated health assessments. A bad public policy may not

negatively impact the flow of immigrants who come to Australia for materialistic gains. However, I am not sure if you are accepting migrants who love your country for reasons other than living a comfortable life and making material gains.

In the end, I would like to thank you for considering a change in the current government policy. By the grace of God, my daughter has proved that disability cannot deter a person from achieving what a person aims for. By her hard work and exemplary performance, she now attends America's top (No. 1) liberal arts college. Australia indeed missed an opportunity to call my daughter hers and feel proud of what a country can do if it focuses on people's abilities not disability. Till this date, we have not asked for any special favors for her because she has the ability to compete with anyone at any time. I would like the members of your committee to meet with her someday while she is visiting Australia. It is my hope that after meeting with your committee, she would fully understand that the bad public policy of the day should not in anyway be linked to what a country offers to intelligent, free thinkers and democracy lovers. She will definitely appreciate that bad public policy can only be changed with persistence and determination like Nelson Mandela did.

Sincerely yours

(Name Withheld)