


Submission No 27

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SUBMISSION TO THE JOINT STANDING COMMITTEE ON MIGRATION

Inquiry into the migration treatment of persons with disabilities

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**Submission to the Joint Standing Committee on Migration
Inquiry into the migration treatment of persons with disabilities**

Introduction

I write with reference to our recent Visa Application Rejection dated 4th September 2009 regarding our son Samuel, aged 6 1/2 years old with a speech and language delay and mild learning difficulties, he does not have a diagnosis, he attends a Special School with a Statement of Special Educational Needs, however he does not require medical intervention. My fiancé John Attwood is a General Electrician aged 37 and myself, Jacky Lawley who is a Personal Secretary also aged 37.

This is our story. Our dreams and hopes for our future was that the three of us Attwood's/Lawley, my sister, her husband who is a Plumber, their two young children and our widowed mother would immigrate together to South Australia in the near future and we set out to find an Migration Agent to assist with the long process back in January 2008.

I will answer two out of the six informal questions which the Committee has provided and these are set out below:

1. Is the current process for assessing a visa applicant against the health requirement fair and transparent?
5. Do you have personal experience of this?

Question 1

Is the current process for assessing a visa applicant against the health requirement fair and transparent?

1. The current process is anything but transparent.

If the MOC has any up to date Guidelines, they are not in the public domain. All that is in the public domain is the poorly drafted and vague Form 1071i, coupled with an equally vague description on the DIAC website.

2. The process is definitely not fair either.

I comment on the experience on our Medical Checks.

The MOC makes the decision on meeting the health requirements by only documentation being supplied by the Panel Doctor in the UK – the Panel Doctor does not personally know the applicant and this should not be the case.

We found that when we undertook our Medical Health Check in May our own Panel Doctor did not manage to the job correctly as I had to contact him after our Medical to ask him what is the next procedure and does he have to "comment" on our son after meeting him - to which he stated no, I asked if he would and he said there is no room on the form for him to do so, I therefore asked how much room on the form was available and he replied not enough to write an essay! I quickly responded that although he had only met Samuel for five minutes (and that was generally talking to us) that we needed him to make a statement regarding his health - he stated that he had 2 lines and that he would pick out wording from the 9 documents I had attached - I quickly advised that I wanted him to take down notes from me in that case, I am his mother and I know my son, this doctor was not helpful or professional in his manner. He agreed and read it back to me and he then said it would be sent off directly to the MOC, and we could track it.

This doctor collected a very high fee for conducting the most brief and cursory of examinations and we were very displeased by his service. Handsworth Medical Centre, Handsworth, Birmingham is the Practice and he did not understand the reasoning behind our medical if I had not disclosed to him that our son had a disability and did not know that the MOC would require any additional information!

Us, the applicant, paid for this hopeless service only to find that a week later our Agents emailed us asking us to provide extra information - this was clearly given to the Panel Doctor at our appointment! Weeks were ticking by until I actually contacted the MOC direct myself one evening as our Agents could not understand what was required of us, they had been totally inefficient and unreliable in this type of situation as they obviously had no experience in dealing with such an important and tender issue of "disability".

The telephone call to the MOC confirmed that they had received my 9 documents and we breathed a sigh of relief. Yet more confusion and chaos was to come over the next three weeks.

It was perceived that the MOC simply makes a decision on the basis of the half-information provided, without asking for anything more that is vitally important.

How can this possibly be "fair and transparent" to submit a visa applicant to a system which is so

incomplete and confused that nobody including the MOC knows what parameters the MOC should be dealing with when presented with a visa applicant who has a disability of some sort?

I found that the "information" which is available to visa applicants is inadequate and very vague. It is partly contained in Form 1071i on the immigration website:

<http://www.immi.gov.au/allforms/booklets/1071i.pdf>

1071i confirms vague information about a "significant cost." and states nothing about what level of cost is considered to be "significant.". The figure of \$21,000 is stated in other information but why is it concealed from visa applicants? We were not tested for our contributions to this? We were refused our visa.

I submit that it is remotely "transparent" and nor "fair" to place us visa applicants through the whole process without providing us with all the correct and in an easily understood format for us to read to make our application stand up in court. It costs a tremendous amount of money not to mention the emotional turmoil of undertaking through the various stages of the visa process and we found to be rejected at the last hurdle to be grossly unfair.

Currently no attempt is made to consider what contributions a person with a disability could make if permitted to migrate. The only consideration that the legislation allows is consideration of cost and \$21,000 is deemed to be the threshold at which cost is considered to be excessive, leading to visa refusal.

Question 5

Do you have personal experience of this?

Yes. We started the visa process in January 2008 with our chosen highly recommended Migration Agents, Go Matilda. My fiancer John Attwood, undertook his Vetassess for General Electrician in July 2008 and passed, we lodged our visa on 5th September 2008.

We applied for South Australia Sponsorship in March 2009 (as we had wanted to settle there as my mother has friends there) and we were granted it in April 2009. It was then that I contacted the Department of Education and Childrens' Services in South Australia for advice into Samuel's schooling and future education, I forwarded the relevant reports that I had obtained over the last six months (including current medical and full educational) and had a very positive reply that since Samuel has early literacy, numeracy and speech he will not qualify for a place in a special school in South Australia. They advised that they would place him into a special unit/class in a mainstream school to start with and then work forward to move him to a mainstream class. SA DECS said that accommodating Samuel would put no strain on their resources, nor would it be unduly expensive as far as they were concerned. This was clearly included in our reports - all 9 of them - fact.

We then received a Case Officer, Cosimo Donati on 14th May. We then undertook our Health checks as detailed under "Question 1" and also undertook our Police Checks as required.

The DIAC contacted our Agents who again required more information - I irratly again had to telephone the Department one evening as our Registered Migration Agents were a little confused as to what he required! The telephone call clarified that they requested further information as they had no paperwork, but looked into our application further and realised that they had received all of the information that was sent from the Panel Doctor.

The cost of the process was now in excess of \$12,000 AUD .

At the end of June we had the terrifying ordeal of receiving an "Invitation to Comment" as Samuel was to represent "a significant cost" to the Australian Government and therefore he "does not meet" the health requirement for migration. Also they worded it a "moderate severity"- what does that actually mean?

We then gladly obtained several more reports to assist with our application - a further 6 reports (including both medical and educational) ie. Psychological Report Testing, Paediatrician Reports, Head Teachers and Class Room Teacher Report to name but a few, (these reports actually stated that there is no reason why Samuel should not lead a perfectly normal, independent adult life in the future).

We emailed over the extra reports - to make it clear and concise I typed a "Contents Page" and visibly listed ALL the reports 1-16 in date order etc etc. I emailed 4 separate emails to enable this to be received correctly and I also received a reply to advise they had been received - but I also telephoned them that evening just for clarification.

After a series of to-ing and fro-ing over the months of April - August, I had very high telephone costs which I am still very angry about. This was due to the Migrations Agents, the DIAC and the MOC's inability to communicate correctly to us the visa applicant. It was at this point that we had to cut ties with our Agent as they had let us down in the most unprofessional manner. We signed two forms to "go it alone" and advised the DIAC, once again I telephoned them one evening to confirm that they had received this email confirmation.

We had submitted the "Invitation to Comment" on 23 July along with an email detailing the enclosures, a general overview and mentioned the problems we had encountered regarding our Agents and the MOC requiring further information.

We had no contact from our Case Officer, I decided to contact him at the end of August only to be told that he was no longer assisting with our case and were assigned a different Officer, B Kilpatrick. I was not allowed to speak to the new Officer and the admin clerk sternly advised me that the application was now being dealt with and we would hear very soon.

It was on 3rd September when we received an email advising that we had been rejected due to Samuels Health Requirement was not met on the grounds of "moderate severity" - this word had been used once in the "Invitation to Comment" in June and again this was being used the second time. Why? Is this the general terminology that they use? Hadn't they read the extra 6 documents I had provided? Other than taking Samuel into to see them to show that he is a healthy, young personable and bright boy then what more could we have done with proving our application?? The migration treatment of disabilities is appalling.

We were advised that we could take our grievance to the Migration Tribunal within 70 days at a high cost. Having taken advice, it would clearly have amounted up to \$12,000 AUD and could take in excess of a year to be heard at the Tribunal. Also we would not be guaranteed a "win".

I am in the mind that the wrong decision was clearly made based on the information we provided to the MOC, nobody had investigated into our application in the correct procedure. Unfortunately we are no millionaires, John is only an Electrician, so we therefore require a fair and humane second chance and am looking for that in writing to you.

I confirm that I tried to direct my unanswered questions to the DIAC but their response was that if we needed information then we would have to contact the Migration Tribunal direct, we do not have the kind of money that is require to attend the Tribunal. I still require clear answers and these are still not answered – why should we have to take this to Tribunal when we believe we did everything we could

and more (provided a full and thorough visa application) right from the start when coincidentally the new "announcement" on 23rd September changed the guidelines?? Were we just a scapegoat to the new guidelines that were being implemented?

I am now hoping that writing to you with my experience will shed light on the terrible outcome and emotional 18 months torment we have endured as a whole family and which the result was truly unfair plain discrimination. Our whole family circle has now "shifted" as my sister and her husband are still in the middle of the visa process; the impact this rejection has caused is horrific, as it will now break our family up, our future dreams of two families living a more fulfilling life are shattered. I understand that this debate is to deal with discussions relating to experiences of treatment of families with Disabilities, but whilst writing can I request that a professional, who will look favourably into our visa rejection, can possibly investigate the matter further?

Conclusion

I am very grateful to this Committee for taking the time to read and to consider my contribution to this debate.

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(Please do not publish my name or contact details)