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CLOTHIER ANDERSON & ASSOCIATES *mlg*

BARRISTERS & SOLICITORS

Submission No 98.1

Partners

Michael J. Clothier LL.B.

Accredited Specialist in Immigration Law
(Registered Migration Agent No. 74433)

Karyn Anderson BA., LL.B., LL.M. (Hons)

Accredited Specialist in Immigration Law
(Registered Migration Agent No. 85990)

Senior Associate

Don Lucas B.A., LL.B.

Accredited Specialist in Immigration Law
(Registered Migration Agent No. 9501008)

29 Argyle Place South, Carlton 3053

PO Box 227, South Carlton 3053

Telephone: (03) 9347 4022

Facsimile: (03) 9347 5066

E-mail: info@clothieranderson.com.au

ABN No: 76 463 833 253

Our Ref:

Your Ref:

17 February 2010

Committee Secretary
Joint Standing Committee on Migration
House of Representatives
P.O. Box 6021
Parliament House
CANBERRA ACT 26000

By email: jscm@aph.gov.au
original to follow by mail

Dear Sir/Madam,

Re: Submission to the Joint Standing Committee on Migration
Inquiry into Immigration Treatment of Disability

I wish to add a further submission to supplement submissions that were sent to the Inquiry on 28 October 2010. The submission comments further on the application of the schedule 4 health criteria of the *Migration Regulations 1994*. Specifically, this will focus on the application of criterion 4005 of schedule 4 and how this particular provision can also lead to manifestly unfair and unreasonable results.

I have been granted the permission of my client, Ms Simran Kaur, to directly comment on the application of this criterion in her particular matter. Ms Kaur lodged a subclass 886 Skilled – Sponsored (Full Fee) visa as primary applicant on 25 August 2009. This visa was refused on 2 February 2010.

She was subject to health criterion 4005 which states that the applicant:

- (a) *is free from tuberculosis; and*
- (b) *is free from a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community; and*

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- (c) *is not a person who has a disease or condition to which the following subparagraphs apply:*
- (i) *the disease or condition is such that a person who has it would be likely to:*
- (A) *require health care or community services; or*
- (B) *meet the medical criteria for the provision of a community service;*
- during the period of the applicant's proposed stay in Australia;*
- (ii) *provision of the health care or community services relating to the disease or condition would be likely to:*
- (A) *result in a significant cost to the Australian community in the areas of health care and community services; or*
- (B) *prejudice the access of an Australian citizen or permanent resident to health care or community services;*
- regardless of whether the health care or community services will actually be used in connection with the applicant; and*
- (d) *if the applicant is a person from whom a Medical Officer of the Commonwealth has requested a signed undertaking to present himself or herself to a health authority in the State or Territory of intended residence in Australia for a follow-up medical assessment, the applicant has provided such an undertaking.*

Ms Kaur, was refused a skilled visa merely because she has a vision impairment affording her future eligibility for receipt of a blind or disability pension.

Ms Kaur is a highly skilled individual in her field, being the area of Community and Welfare work. She has successfully obtained both undergraduate and post-graduate qualifications and has also undertaken community welfare studies in Melbourne. She has undertaken a number of work experience placements as part of her recent qualification in Australia, and also worked as a social worker with children with disabilities (as well as their families, schools and teaching staff) with Action for Ability Development and Inclusion, a non-Government organisation formally known as the Spastic Society of Northern India. She then worked as a HIV counsellor for the prevention from parent to child transmission of HIV with the Punjab States Aids Control Society.

Simran has much to offer the Australian community and is more than willing and able to work in such a community, for the benefit of Australians. However, she has not been given the chance, merely because the Medical Officer of the Commonwealth has concluded that she will be entitled to a pension that she has no intention of claiming, potentially at a cost to the community of over \$21,000.00 over the next five years.

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If the application of the *Migration Act 1958* and *Migration Regulations 1994* were subject to the Commonwealth Disability Act 1992, it is clear that the decision made by the Department would be unlawful.

The refusal of Ms Kaur's visa was solely on the basis of her disability and sends a clear message to the Australian community and internationally that the Government supports the view that applicants with a disability are costly and cannot provide a valuable contribution to the Australian community. What value people with disabilities do provide cannot and will not offset potential costs to the community, even if these costs are unreasonable and unjustifiable because will not likely be utilised.

I enclose a copy of Vision Australia's letter of support with respect to Ms Kaur's application, dated 11 November 2009.

Should you have any queries or require further information please do not hesitate to contact us. / /

Michael Clothier
Clothier Anderson and Associates

Encl.