

16 April 2021

Education and Workforce Committee
Parliament Buildings
Wellington
By email: ew@parliament.govt.nz

Tēnā koe

IMMIGRATION (COVID-19 RESPONSE) AMENDMENT BILL

The ADLS Immigration and Refugee Law Committee (the “Committee”) welcomes the opportunity to make written submissions on the Immigration (COVID-19 Response) Amendment Bill (the “Bill”). The Committee is comprised of lawyers who specialise in immigration and refugee law who are primarily based in the Auckland region.

Safeguards

In making a submission on this Bill, we consider it important to ensure that migrants do not experience any loss of rights as a result of the proposed legislation. We also consider it desirable to ensure that decisions made as a result of the powers granted do not negatively impact on New Zealand businesses or New Zealanders.

We are, to a degree, satisfied that the Bill as drafted has sufficient safeguards in ensuring that the Minister of Immigration is unable to delegate the majority of the special direction powers, and that Parliamentary scrutiny will apply where such powers are exercised. Further, the Bill provides safeguards in respect of temporarily suspending the ability of persons outside of New Zealand to make applications, by making this power subject to an Order in Council.

Family Reunification

While satisfied that in the main the powers previously granted to the Minister have been used to the benefit of visa holders, concerns, remain in relation to the reunification of family members of migrants. Current policy settings effectively necessitate New Zealand based migrants to make unsafe countries around the world so that they can travel with their family members back to New Zealand. It cannot be maintained that preventing family members of migrants to be safely reunited is beneficial to the migrant. Further, it calls into question New Zealand’s commitment to its international obligations. Primarily, making decisions with a primary focus on the welfare and best

interests of the child, in accordance with Article 3.1 of the Convention on the Rights of the Child, and ensuring fulsome protection to families, and that right should not be subject to arbitrary or unlawful interference under Articles 17 and 23 of the International Covenant on Civil and Political Rights, and Article 10.1 of the International Covenant on Economic, Social and Cultural Rights.

Extension Length

The powers to be extended in this Bill are wide ranging, especially the power conferred to suspend the ability of persons outside of New Zealand from making visa applications. The powers granted were never envisaged to be held on a long-term basis. We, therefore, do not support a 2-year extension to the powers conferred on the Minister. It is not overly burdensome to require Ministers to account for emergency powers on an annual basis.

We submit that the repeal date set should be for a further 12 months.

Regularise status of persons unlawfully in New Zealand

It is submitted that a humanitarian and pragmatic response to COVID-19 includes the temporary regularisation of undocumented persons in New Zealand (or those unlawfully residing in New Zealand). Everyone in New Zealand has to some extent or another been affected by COVID-19. Many of those currently undocumented in New Zealand will be unable to leave New Zealand due to border restrictions around the world. Making these people liable for deportation or issuing them with deportation orders is unrealistic at this time. In particular, our Pacific neighbours who are COVID-free would be placed at risk of transmission, were New Zealand to deport undocumented persons. Some have recent cyclone impacts. New Zealand has accepted a special responsibility for our Pacific neighbours. Public health imperatives, including the wellbeing of New Zealand family members and dependants outweigh normal immigration requirements during this unprecedented time. There is a further risk to those undocumented in New Zealand at this time, of being at risk of exploitation by unscrupulous employers.

While it is appreciated that the Minister has exercised his powers to extend groups of visas in certain situations, this has not been without its issues. Migrants who qualify for such extension, but Immigration New Zealand has inadvertently failed to grant the extension currently fall through the cracks in the system. There is no automatic process to correct Immigration New Zealand's processing oversights. Meaning such persons must make requests for visas to be granted pursuant to s 61 of the Immigration Act 2009 to regularise their status in the country. Any response to regularise the status of undocumented person in New Zealand would also benefit this group.

We regularly hear of businesses and sectors desperate for workers but due to border restrictions and MIQ availability they are unable to meet their recruitment needs. Regularising the visa status of persons inside New Zealand who are undocumented would allow those with the necessary skills to take up employment where there is a demand.

It is submitted that the Bill should include specific provisions to ensure that all persons in New Zealand that are undocumented should be granted a temporary visa for six months. This will provide

an avenue for those eligible to apply under other immigration avenues, either temporary or resident. For those ineligible to apply, the regularisation of their visa status in New Zealand would allow them the opportunity to lodge an appeal to the Immigration and Protection Tribunal to test out their ability to remain in New Zealand on humanitarian grounds, pursuant to section 207 of the Immigration Act 2009.

Alternatively, provision should be made for the temporary suspension of deportation liability under section 154 of the Immigration Act 2009. Further that a temporary amendment is made to section 154 of the Act to allow humanitarian appeals to be lodged to the Immigration and Protection Tribunal during the Epidemic Notice period outside of the normal 42-day period.

Conclusion

Thank you for the opportunity to make submissions on the Bill.

Ngā mihi



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