



Residence Appeal Authority

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ANNUAL REPORT TO 30 JUNE 2000

This report is presented to the Minister of Immigration pursuant to Schedule 3A of the Immigration Act 1987 for the fiscal year ending 30 June 2000.

OVERVIEW

In the past fiscal year, the Authority has been able to reduce its decisions outstanding by 15.7% from 413 decisions outstanding, 30 June 1999 to the current situation of 348.

The number of decisions and assessments found to be incorrect by the Authority in the past year was 169 (34%). This is higher than the 33% figure for the year to June 1999, but below the 38% figure for the 1998 year. A graph of the long-term trend in incorrect decisions – is attached as Schedule 5

The percentage of cases referred to the Minister for consideration of an exception to the Government residence policy in the past year was 73 (15%). Of these, the Minister granted 68 as an exception to policy and rejected 5.

The continuing trend over recent years of receiving a significant number of complex humanitarian, family and medical issues in appeals to the Authority continued in the past year. Because of the serious issues and detailed consideration of these appeals required, the time necessary to complete these decisions, even by experienced members, is significant.

SECRETARIAT

Pursuant to Schedule 3A of the Immigration Act, the Authority is to be serviced by employees of the Department of Labour, but not employees who are currently employed to consider applications for permits under the Act. The Department of Labour is directed to provide such resources as may be necessary to enable the Authority to carry out its functions under the Act. The Authority operates as an independent decision-making body of review. The schedule provides that parliament appropriate fees and allowances to members. The Act makes the Chairperson “responsible for making such arrangements as are necessary or desirable to ensure the orderly and expeditious discharge of the functions of the Authority”.

During the course of the year Mrs Mary Neazor was appointed as Senior Registrar to the Authority, she also being the Senior Registrar for the Removal Review Authority and the Refugee Status Appeals Authority. Since her appointment, Mrs Neazor has, in consultation with me as Chair, developed and implemented procedures and systems to ensure the effective and timely discharge of the work of the Authority.

FUNCTIONS OF THE AUTHORITY

By virtue of section 18C of the Act, any applicant who has been refused an application for a residence visa or residence permit may appeal that refusal to this Authority on the grounds that either:

- (a) the refusal was not correct in terms of Government residence policy applicable at the time the application for the visa or permit was made; or
- (b) the special circumstances of the appellant are such that an exception to that Government residence policy should be considered.

The Act provides that Authority shall not consider an appeal under section 18C unless the appeal is made in the prescribed manner and accompanied by the prescribed fee and is brought within the 42 days after the date the appellant was notified of the refusal.

Under the terms of section 18D of the Act, in determining an appeal under section 18C, the Authority is required to make one of six alternative decisions:

1. to confirm the decision to refuse the visa or permit as having been correct;
2. to reverse the decision as having been incorrect in terms of Government residence policy;

3. to note the correctness of the original decision in terms of Government residence policy, that was applicable at the time the application was made, on the basis of the information provided to the immigration or visa officer before the time of the decision, but reverse the decision, on the basis of information properly made available to the Authority under section 18F of the Act, that reveals that a visa or permit should have been issued;
4. to note the correctness of the original decision in terms of Government residence policy, on the basis of the information provided to the immigration or visa officer before the time of the decision, but to determine the appeal by cancelling the decision and referring it back to the Chief Executive of the Department of Labour for consideration under the Government residence policy, as if a new application had been made, including valid new information properly provided to the Authority;
5. where the Authority considers the decision to refuse a visa was made on the basis of an incorrect assessment in terms of Government residence policy, but it is not satisfied that the appellant would, but for that incorrect assessment, have been entitled, in terms of the policy, to an immediate grant of a visa or permit, it may determine the appeal by cancelling the decision and referring it back to the Chief Executive of the Department of Labour for correct assessment in terms of applicable Government residence policy.

In this situation the Authority is empowered to give directions to the Chief Executive of the Department of Labour as to how it considers a correct assessment of the application should be carried out;

6. to confirm a decision as having been correct in terms of Government residence policy, but to recommend that there are special circumstances of an applicant such that warrant consideration by the Minister as an exception to Government residence policy.

The Authority is directed, pursuant to section 18D(4) of the Act, to notify the appellant in writing of its decision on the appeal, as soon as practicable, and give the reasons for that decision.

A decision of the Authority is final subject only to the provisions of section 115 of the Act, whereby any party to an appeal to the Authority who is dissatisfied with the determination of the Authority may appeal to the High Court on a question of law. The Authority has no jurisdiction to reconsider an appeal after the appellant has been notified of the decision.

Procedures to be followed where an appeal is successful and provisions relating to appeals are set out in sections 18E and 18F of the Act. Of particular relevance is section 18F which sets out the constraints on information or events the Authority may take note of in its decisions. Section 18F provisions significantly limit a *de novo* review.

Section 18F(4A) incorporated by the Immigration Amendment Act 1999 provides that the date of decision by the NZIS is the relevant time from when this subsection applies.

GOALS

The goals set by the Authority for itself have been:

1. to be an independent body of review;
2. to ensure that the Authority's decisions are made objectively, clearly, promptly, correctly, consistently and in an accountable but confidential manner;
3. to ensure that the Authority is sensitive to the predicaments, issues and values of all those with whom it deals;
4. to make it clear that the Authority is part of the overall immigration determination process for New Zealand;
5. to be committed to playing its role in the overall quality improvement of the total immigration determination process;
6. to educate and inform the New Zealand Immigration Service (NZIS), Members of Parliament, appellants, consultants and legal advisors about the Authority and its processes and decisions.

1999/2000 FISCAL YEAR ACTIVITIES

Appeals Received and Processed

Full details of the Authority's statistics are set out in the Schedules to this report.

Schedule 1 sets out the statistics of the six different types of decisions that can be made by the Authority, under section 18D(1) of the Immigration Act.

Schedule 2 sets out the monthly totals of appeals received and determined. It also includes a split of the onshore- and offshore-derived appeals.

Schedule 3 sets out the number of appeals based on the four different categories under which applications for residence may be lodged.

Schedule 4 sets out the percentages of NZIS decisions found to be incorrect by the Authority on a quarterly basis from 1992 to 30 June 2000.

Schedule 5 is a graph of the incorrect decisions by quarter, with a line of best fit over the seven and a half year period superimposed. Schedule 5A includes graphs and tables of the percentage of decisions and assessments incorrect by month, from April 2000.

Membership

Three new members were appointed to the Authority during the fiscal year. Mr Allan Mackey retired as Chairman of the Authority as at 31 December 1999. He had been the Chairman since 1991. Mr Wybrants (Tim) Olphert was appointed Chairman as from 1 January 2000.

Members

Elizabeth Aitken *	Auckland
Annabel Clayton	Wellington
Patricia Fischer	Wellington
Dominic Flatley	Christchurch
Sharyn Joe *	Auckland
Allan Mackey * (Senior Member)	Auckland
Margaret Malaghan	Auckland
Paul Millar *	Auckland
Wybrants (Tim) Olphert * (Chairperson)	Wellington
Carol Parker *	Auckland
David Plunkett *	Auckland
Melissa Poole	Wellington
Shelley Spencer * (Senior Member)	Wellington
Charles Martin Treadwell *	Auckland
Lisa Tremewan *	Auckland
Vivienne Ullrich	Wellington

* Also serve on other immigration/refugee Appeal Authorities.

Information and Communication

The new legislation and a revised Government residence policy were implemented in 1999. It is hoped to put in place some seminars to outline these changes.

Results of Decisions

As will be seen from Schedules 1, 4 and 5, the percentage of cases found incorrect is still at a high level. It has to be recognised that the majority of incorrect decisions are those where section 18D(1)(e) of the Immigration Act applies. These usually result from incorrect processing of applications in terms of Government residence policy by the NZIS and directions are given for re-assessment of the application in accordance with directions from the Authority.

Many of these problems with processing arise in complex Humanitarian, Family or Medical appeals. As stated, these usually require extensive work, not only by NZIS officers, but also by Authority members, and NZIS Medical and Psychiatric referees.

There were 73 appeals referred to the Minister during the year for consideration of whether an exception to Government residence policy should be granted. Of these, 68 were granted a visa or permit by the Minister of Immigration. Since the date of the Authority's commencement, the Authority's statistics show that approximately one in seven eligible appellants have been found to have special circumstances that warranted a recommendation to the Minister for consideration of an exception to Government residence policy.

Appeals/Judicial Reviews of Authority Decisions

Schedule 6 sets out the status of appeals lodged under section 115(2) of the Immigration Act and Judicial Reviews of Authority decisions. There have been two appeals and one judicial review lodged in the past twelve months. As at 30 June 2000 there was one appeal still to be decided. During the twelve months to 30 June 2000, one judicial review and one appeal was settled, one judicial review was dismissed, and one appeal was discontinued.

Wybrants (Tim) Olphert
Chairperson
Residence Appeal Authority

1 August 2000

SCHEDULE 1

BREAKDOWN OF DECISIONS BY TYPE

Decision Type	To 30 June 2000		Explanation of decision type
	N	%	
18D(1)(a)	225	45	Confirms NZIS decision as correct
18D(1)(b)	33	7	Reverses NZIS decision as incorrect
18D(1)(c)	7	1	Reverses NZIS decision on more information
18D(1)(d)	22	4	Refers back to NZIS with more information
18D(1)(e)	136	27	Refers back to NZIS as assessment incorrect
18D(1)(f)	73	15	Refers to Minister as an exception to policy
Total	496	100	

SCHEDULE 2

RAA WORKFLOW

MONTH	Appeals Lodged	Appeals Decided	Appeals Withdrawn	Appeals at Close
Jul-99	42	22	1	425
Aug-99	38	37	1	425
Sep-99	29	42	2	410
Oct-99	48	36	4	418
Nov-99	23	47	3	416
Dec-99	47	53	3	407
Jan-00	40	46		401
Feb-00	24	48	3	374
Mar-00	51	21	2	402
Apr-00	40	42		400
May-00	26	41	3	382
Jun-00	28	61	1	348
TOTAL	436	496	23	348

RAA Appeals – onshore/offshore – 12 months to 30 June 2000

	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
Onshore Appeals	12	24	23	18	19	25	24	18	9	23	23	30	248
%	55%	53%	55%	49%	38%	47%	52%	35%	39%	55%	58%	49%	48%
Offshore Appeals	10	21	19	19	31	28	22	33	14	19	17	31	264
%	45%	47%	45%	51%	62%	53%	48%	65%	61%	45%	43%	51%	52%

SCHEDULE 3**RAA APPEALS BY CATEGORY 12 MONTHS TO 30 JUNE 2000**

Category	Percentage
General	26%
Family	38%
Business	1%
Humanitarian	34%
TOTAL	100%

SCHEDULE 4

PERCENTAGE OF DECISIONS AND ASSESSMENTS INCORRECT (Section 18D(1)(b) and (e)) BY QUARTER 1992 TO 30 JUNE 2000

Quarter	Number of Decisions	Number Incorrect	Percentage Incorrect
To Jun 1992	35	6	17.14
Sep-92	77	14	18.18
Dec-92	54	16	29.63
Mar-93	48	5	10.42
Jun-93	117	20	17.09
Sep-93	113	23	20.35
Dec-93	109	16	14.68
Mar-94	146	17	11.64
Jun-94	125	22	17.60
Sep-94	136	18	13.24
Dec-94	147	32	21.77
Mar-95	141	26	18.44
Jun-95	169	27	15.98
Sep-95	161	35	21.74
Dec-95	189	33	17.46
Mar-96	175	20	11.43
Jun-96	140	27	19.29
Sep-96	213	43	20.19
Dec-96	220	56	25.45
Mar-97	159	39	24.53
Jun-97	245	56	22.86
Sep-97	133	47	35.34
Dec-97	140	39	27.86
Mar-98	110	25	22.73
Jun-98	162	62	38.27
Sep-98	194	83	42.78
Dec-98	229	93	40.61
Mar-99	160	57	35.63
Jun-99	227	72	31.72
Sep-99	101	37	36.63
Dec-99	136	42	30.88
Mar-00	115	39	33.91
Jun-00	144	51	35.42
Total	5214	1198	22.98

Schedule 5

Percentage of decisions and assessments incorrect by quarter - March 1996 - June 2000

