

Immigration New Zealand unreasonable to proceed with deportation when inadequate reasons were given for decision

Legislation	Ombudsmen Act 1975, Immigration Act 2009
Agency	Immigration New Zealand
Ombudsman	Chief Ombudsman Peter Boshier
Case number(s)	390848
Date	October 2016

Whether INZ gave adequate consideration of interests of deported person and of his New Zealand partner and their New Zealand citizen child before work permit declined and deportation order put in place—also whether partner received adequate information about deportation and if deportee had a reasonable opportunity to consult lawyer—Chief Ombudsman found INZ failed to consider the deportee’s section 61 requests following the issue of a deportation order, under s177 of the Immigration Act 2009 and proceeded with the deportation on the basis of an assessment by a Compliance Officer who did not record reasons for his decision, nor the matters required by s177 of the Act

The complainant was the wife of the deported person.

The Ombudsman noted that the deportee’s immigration file had indicated that he had been advised properly about accessing a lawyer, and that INZ had provided information relating to the process of deportation, to the complainant. In light of these conclusions, the Chief Ombudsman did not take these aspects of the complaint further. With regard to the work permit application, the Chief Ombudsman finally concluded that INZ acted unreasonably in failing to outline specific concerns throughout the potentially prejudicial information (PPI) process and failing to consider or document matters raised by the complainant particularly with respect to her reasons for repeated withdrawals of support.

However, with regard to the complaint about the deportation, the Chief Ombudsman concluded that INZ had acted unreasonably in proceeding with the deportation on the basis of the assessment undertaken by the Compliance Officer (CO). This is because the CO did not make a record of why the decision to proceed with deportation was made. The Chief

Ombudsman concluded that in the absence of recorded reasons, he was not satisfied that the CO considered all matters required by section 177 of the Immigration Act, nor all information relevant to the deportee's circumstances. While a Record of Personal Circumstances interview (ROPC) was undertaken, the associated documentation did not adequately demonstrate how the CO took account of the matters raised in that interview and by the immigration file, or why this and relevant international obligations were seen to be insufficient to warrant cancellation of the deportation order.

Although the decision may have been one open to the CO to make, the omission of those recorded reasons renders the subsequent decision not to cancel the deportation procedurally unsound.

The Chief Ombudsman also formed the final opinion that, when this client purported to make section 61 requests while subject to the deportation order, those requests should have been considered in terms of section 177 of the Act, rather than immediately refused.

In light of the findings made, the Chief Ombudsman recommended that INZ: reconsider the deportation decision with appropriate documentation, and, if it is determined that the deportee ought not to have been deported, take steps to remediate the consequences of INZ's decision to deport. This would mean the removal of the five year ban on re-entry to NZ; remitting the amounts owed for deportation; and providing for the deportee's return to NZ. If it is determined that the deportee should have been deported, INZ should consider the provision of reasons for that decision to the complainant. The Chief Ombudsman considered that there should be an amendment made to the ROPC template to include a requirement for the officer to record how the identified factors were dealt with. It was also recommended that INZ should take immediate steps to institute a practice of recording reasons for all decisions involving the exercised of absolute discretion to ensure that good administrative practice is observed consistently.

INZ accepted the recommendations which would all be implemented in due course.

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