

Immigration New Zealand reasonable to decline section 61 Visa request

Legislation	Ombudsmen Act 1975, Immigration Act 2009
Ombudsman	Peter Boshier
Case number(s)	402162 (previously unpublished)
Date	2017

Immigration New Zealand (INZ's) decision to refuse complainant's request for a visa under section 61 of the Immigration Act 2009, reasonable in the circumstances—issue concerned 'shared care' arrangement and whether INZ took this into account—complaint not upheld

The complaint concerned INZ's decision to refuse to grant a visa under section 61 of the Immigration Act 2009. The complainant believed it should not have been declined and that in making that decision, INZ failed to factor into the decision, that the requester had shared care of his son.

The Chief Ombudsman noted the Court of Appeal decision (on which the complainant had relied to remain in New Zealand) simply stated that the applicant needed to 'request a visa' from INZ, pursuant to section 61, in order to obtain lawful status. While the order gave the complainant responsibility for his son for more days of the week than his mother, the terminology used in the Family Court Order of July 2014 is '*shared care*'. Therefore, the Chief Ombudsman considered it reasonable that the Immigration Officer used this terminology when recording their consideration of this issue.

Furthermore, the Ombudsman noted that the Court did not convey any expectation that INZ would grant this request, and it is important to note that it is a request and not an application. It was noted that the applicant's request in August 2008 had been granted in order to enable him to remain in New Zealand pending the outcome of Family Court proceedings and his Deportation Order had been cancelled in June 2013 as he had applied for judicial review of the decision of the Immigration Protection Tribunal (IPT). According to the Ombudsman, these

decisions by INZ lend no support to the suggestion that INZ later acted unreasonably in refusing his further requests.

Further, the Chief Ombudsman was satisfied the documentation demonstrated that the Immigration Officer considered all of the information and reports presented in the section 61 request. The information contained in the record of decision does not suggest that INZ's decision to refuse the request was inconsistent with the wide discretion conferred on it by the Immigration Act. It is clear that the submissions made were taken into account by the Immigration Officer and that the officer recognised obligations engaged under the United Nations Convention on the Rights of the Child (UNCROC), in relation to the complainant's New Zealand citizen child, but considered this factor did not outweigh the complainant's obligation to depart New Zealand.

The Ombudsman considered the decision to refuse these requests were decisions reasonably open to INZ to make and the complaint was not upheld.

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