

New Zealand Immigration Service must provide opportunity to comment on potentially prejudicial information

Legislation	Ombudsmen Act 1975, Immigration Act 1987
Ombudsman	Anand Satyanand
Case number(s)	W37697
Date	1997

Application for extension to visitor's permit—application declined on basis of an assumption about the applicant—assumption prejudicial to applicant—applicant entitled to opportunity to comment on prejudicial information before decision—NZIS agreed to review application

The complainant had applied unsuccessfully to the New Zealand Immigration Service (NZIS) for an extension to his visitor's permit. He stated that the decision had taken into account an incorrect assumption as to his actions which was prejudicial to his application but on which he had not been asked to comment before the decision was made.

Although it was not possible as a result of the investigation to form a conclusive view as to whether the assumption was 'incorrect', had the complainant been given the opportunity to provide comments he may have been able to refute the assumption. As the assumption had been a factor in the decision, the view was formed that it had been unjust or unreasonable not to provide the complainant with an opportunity to address it before the decision on the application was made.

Having formed that view it was necessary to consider whether to recommend that the decision be reconsidered. It seemed unlikely, on the basis of the circumstances at that time, that a further permit would be granted to the complainant. Notwithstanding this, to leave things as they stood would have compounded the complainant's sense of injustice. In the event, the NZIS agreed to reconsider the application and so the investigation was concluded on the basis that the complaint was resolved.

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