

AT AUCKLAND

Appellant: **DHILLON, Jagmeet Singh**

Before: B Dingle

Counsel for the Appellant: T McKinstry

Date of Decision: 29 July 2016

DEPORTATION (NON-RESIDENT) DECISION

[1] This is a humanitarian appeal by the appellant, a 21-year-old citizen of India, against his liability for deportation which arose when he became unlawfully in New Zealand.

THE ISSUE

[2] The primary issue on appeal is whether the appellant's wish to remain in New Zealand and obtain employment gives rise to exceptional humanitarian circumstances that would make it unjust or unduly harsh for him to be deported from New Zealand.

[3] The Tribunal declines the appeal for the reasons that follow.

BACKGROUND

[4] The appellant was born in India and completed his secondary schooling there. The appellant's parents and two sisters live in India.

[5] In March 2013, the appellant travelled to New Zealand as the holder of a student visa. He initially enrolled in a business course but was unable to fulfil the

course requirements. After the expiry of his student visa in October 2013, the appellant made two unsuccessful requests for the grant of a visa under section 61 of the Immigration Act 2009 (“the Act”). A third section 61 request in June 2014 resulted in the grant of a student visa with an expiry date of August 2015. The appellant was thus able to undertake a cookery course and he obtained a Certificate in Hospitality (Cookery) (Level 4). In November 2015, he was granted a work visa with an expiry date of 25 February 2016. During the currency of his work visa the appellant worked as a cook.

[6] On 29 January 2016, the appellant applied for a further work visa. He was granted an interim visa on 18 February 2016. Also on 18 February 2016, Immigration New Zealand wrote to the appellant outlining concerns it had in relation to the sustainability of his employment and offering the appellant an opportunity to respond by 26 February 2016. The appellant did not respond. On 13 May 2016, Immigration New Zealand declined the application. The appellant became unlawfully in New Zealand on 15 May 2016.

[7] On 16 May 2016, before the appellant became aware of the outcome of his work visa application, he made a request under section 61 of the Act for the grant of a work visa on the basis of a new offer of employment. Immigration New Zealand refused the request on 30 May 2016.

STATUTORY GROUNDS

[8] The grounds for determining a humanitarian appeal are set out in section 207 of the Immigration Act 2009 (the Act):

- (1) The Tribunal must allow an appeal against liability for deportation on humanitarian grounds only where it is satisfied that-
 - (a) There are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand; and
 - (b) It would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand.

[9] The Supreme Court stated that three ingredients had to be established in the first limb of section 47(3) of the former Immigration Act 1987, the almost identical predecessor to section 207(1): (i) exceptional circumstances; (ii) of a humanitarian nature; (iii) that would make it unjust or unduly harsh for the person to be removed from New Zealand. The circumstances “must be well outside the

normal run of circumstances” and while they do not need to be unique or very rare, they do have to be “truly an exception rather than the rule”, *Ye v Minister of Immigration* [2009] NZSC 76, [2010] 1 NZLR 104 at [34].

THE APPELLANT’S CASE

[10] The appellant’s case is set out in the appeal form lodged with the Tribunal on 15 June 2016 and the attached submissions (undated and unsigned). Counsel submits that Immigration New Zealand’s delayed response to the appellant’s 29 January 2016 work visa application was in breach of processing times. Furthermore, having declined his work visa on 13 May 2016, the appellant’s request for the grant of a work visa pursuant to section 61 on 16 May 2016 was not fairly considered because Immigration New Zealand would have known of its decision to decline his work visa and would thus have pre-determined the section 61 request.

[11] In addition to counsel’s submissions, the appellant has provided copies of letters which are already on the Immigration New Zealand file and a certified copy of the identity page of his current passport.

[12] Before determining this appeal, the Tribunal gave counsel an opportunity to present any further updated information because she had indicated that she may wish to do so. No further information was received.

ASSESSMENT

[13] The Tribunal has considered the submissions and the documents provided by the appellant. It has also considered his Immigration New Zealand file in relation to his visa applications.

Whether there are Exceptional Circumstances of a Humanitarian Nature

[14] The focus of counsel’s submissions is on the decision-making process of Immigration New Zealand in relation to the appellant’s application for a work visa on 29 January 2016 and his subsequent request for the grant of a work visa under section 61 of the Act.

[15] Clearly the appellant feels aggrieved that Immigration New Zealand did not determine his visa application and section 61 request in a manner favourable to him and, with regard to the work visa, within a shorter time-frame. The appellant has not explained why he did not respond to Immigration New Zealand's letter of concerns in relation to his most recent application for a work visa. In any event, the Tribunal's only jurisdiction in this appeal is to determine whether a person has exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for that person to be deported, and also *L v RRA and the Chief Executive, Department of Labour* (HC Wellington, CIV-2005-485-1601, 3 March 2006)).

Appellant's situation in New Zealand and India

[16] The appellant has been in New Zealand for three years. He came as a student and, after changing from his initial course of study, he completed a Certificate in Hospitality (Cookery) (Level 4). While studying, he undertook intermittent part-time work as a cleaner and a cook. Between November 2015 and February 2015 he worked full-time as a cook.

[17] Beyond his study and employment, there is no information provided to indicate that the appellant has any particular links with New Zealand. He has not disclosed personal relationships or community involvement of any sort in New Zealand. It is accepted that the appellant hoped to find employment and secure a work visa in New Zealand such that he could remain here and then seek an opportunity to obtain residence in this country. Many migrants seek to obtain permanent status in New Zealand in a similar way. That situation does not, on its own, raise humanitarian considerations.

[18] The appellant's family nexus is to India where his parents and two sisters live. The appellant lived there until his travel to New Zealand. There is no reason provided why the appellant cannot now return to India and, with the assistance of his family if necessary, re-establish himself there. He will be returning with a tertiary qualification in cookery and some New Zealand work experience, both of which may assist him in finding employment there should he wish to do so. While the appellant may consider the employment and other opportunities in India to be inferior to those in New Zealand, the desire to take advantage of employment opportunities in this country is not an exceptional humanitarian circumstance (see *Ronberg v Chief Executive of Department of Labour* [1995] NZAR 509 at 529-530).

Conclusion on exceptional circumstances of a humanitarian nature

[19] The Tribunal has considered the appellant's circumstances, both individually and cumulatively. He is 21 years of age and has gained a New Zealand cookery qualification. He has not, however, been able to obtain a further work visa. There is no reason to believe that he would not be able to return to India and take up employment there.

[20] Assessing the circumstances of the appellant, the Tribunal is not satisfied that he has met the high threshold required for exceptional circumstances of a humanitarian nature.

DETERMINATION

[21] The Tribunal finds that the appellant does not have exceptional circumstances of a humanitarian nature in terms of the statutory test.

[22] An appeal must fail if there are no exceptional circumstances of a humanitarian nature. The Tribunal's finding that there are none in this case makes it unnecessary to consider either the "unjust or unduly harsh" or "public interest" stages of the inquiry under the statutory test.

[23] The appellant has failed to meet the requirements of section 207(1) of the Act and his appeal is declined.

"B. Dingle"

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