IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND **[2021] NZIPT 505306–307**

RŌPŪ TAKE MANENE, TAKE WHAKAMARU AOTEAROA

Appellants:	**AU (Vietnam)**
Before:	L Moor (Member)
Counsel for the Appellants:	P Kundig
Date of Decision:	15 July 2021

DEPORTATION (NON-RESIDENT) DECISIONS

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[1] These are humanitarian appeals by the appellants, a 70-year-old husband ("the husband") and his 68-year-old wife ("the wife"), both of whom are citizens of Vietnam, against their liability for deportation which arose when they became unlawfully in New Zealand. The couple have a 34-year-old daughter, who is a permanent resident visa holder in New Zealand, and a 38-year-old son who resides in Vietnam. Both of the appellants' children are Vietnamese citizens.

THE ISSUE

[2] The primary issue on appeal is whether the appellants have exceptional circumstances of a humanitarian nature arising from their familial nexus to New Zealand, the best interests of the appellants' four New Zealand-citizen grandchildren, and the support the appellants provide to their New Zealand-resident daughter, New Zealand-citizen son-in-law and grandchildren, particularly in light of the daughter's mental health issues.

[3] For the reasons which follow, the Tribunal finds that the appellants do have exceptional circumstances of humanitarian nature, which would make it unjust or unduly harsh for them to be deported, and that it is not against the public interest

that they remain permanently in New Zealand. It orders both appellants be granted resident visas.

BACKGROUND

[4] The appellants were both born and lived in Vietnam, before coming to New Zealand.

[5] The couple's daughter has lived in New Zealand since 2012. She came here to study English. In 2014, she married her New Zealand-citizen husband. The couple have four New Zealand-citizen children, aged six years, four years, two years and nine months. All the children were born in New Zealand and have only lived in this country, with the exception of five months the eldest child spent in Vietnam as a baby, with the appellants.

[6] The son-in-law has seven siblings who all live in the same New Zealand city, but they have very little contact with him and his wife.

[7] The daughter and son-in-law own and operate a restaurant in New Zealand.

[8] The wife first visited New Zealand in April 2015, prior to the birth of the first grandchild. The wife and daughter, together with the baby returned to Vietnam after the birth. The daughter returned to New Zealand one month later to work, while the baby stayed in Vietnam with the wife for five months, before returning to New Zealand.

[9] In May 2016, the appellants were granted Parent and Grandparent Multiple Entry visitor visas ("grandparent visitor visas") which allowed an overall maximum stay of 18 months over a 3-year period. The wife first arrived in New Zealand on this visa in August 2016 and remained the maximum time of six-months. She visited Australia briefly, before returning to New Zealand for a further six months. The wife travelled back to Vietnam in August 2017. She returned again to New Zealand in August 2018, prior to the birth of the third grandchild.

[10] The husband first arrived in New Zealand, as the holder of a grandparent visitor visa in April 2018. He returned to Vietnam in October 2018, before travelling again to New Zealand in January 2019.

[11] The appellants intended to return to Vietnam, in line with the conditions on their visas and apply for residence. However, in December 2018, while still in

New Zealand, the wife suffered a subarachnoid haemorrhage. She has fully recovered from this. However, during treatment in the intensive care unit, she suffered vocal cord damage, which has required follow-up treatment.

[12] While the wife had travel medical insurance, the Vietnam-based insurance company refused to pay for her treatment. This decision was unsuccessfully challenged by a New Zealand-based insurance lawyer. The wife currently owes the New Zealand District Health Board NZ$208,554. Due to the conditions of her grandparent visitor visa, the daughter is responsible for this debt. She has been making regular payments towards the debt.

[13] Subsequently, the appellants were granted visitor visas under the medical treatment and patient escort categories in April 2019, December 2019 and January 2020. Following the expiration of these visas in May 2020, the appellants were granted extension visas under COVID-19 special regulations. The last of these expired on 25 April 2021 and the appellants became unlawfully in New Zealand. They then lodged this humanitarian appeal against deportation.

STATUTORY GROUNDS

[14] 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.

[15] 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].

[16] To determine whether it would be unjust or unduly harsh for an appellant to be deported from New Zealand, the Supreme Court in *Ye* stated that an appellant must show a level of harshness more than a "generic concern" and "beyond the level of harshness that must be regarded as acceptable in order to preserve the integrity of New Zealand's immigration system" (at [35]).

THE APPELLANTS' CASE

[17] The appellants' case is set out in submissions (9 June 2021) and can be summarised as follows:

(a) The best interests of the appellants' four New Zealand-citizen grandchildren require that the appellants remain in New Zealand. The appellants are an "integral and vital" part of the grandchildren's lives and provide them important emotional and practical care and support. Two of the grandchildren sleep with the appellants at night. The bond between the grandchildren and the appellants is so close that the grandchildren are concerned when their grandparents are not present.

(b) The daughter has an "extraordinary close bond" with her parents, the appellants. She lived with, and slept in the same bed, as her parents until she came to New Zealand at age 25. The bond and attachment continue at a "profound level". The appellants live with the daughter and her family and are "heavily involved" in the daily running of the household and care of the grandchildren. Her mother has assisted greatly, including after the complicated births of the grandchildren. The daughter has no close friends and relies on the appellants for emotional and mental support. The appellants' deportation from New Zealand will cause the daughter significant emotional distress. The family unit will be broken. The daughter will be unable to work in the restaurant, and unable to care for her children when one needs medical treatment, as has occurred recently with tonsils procedures for two children and another with a broken arm.

(c) The appellants' daughter and son-in-law own and operate a busy restaurant in New Zealand. The wife works part time at the restaurant and the son-in-law works full time there. They employ seven staff members. The couple purchased the restaurant from the son-in-law's sister, after the restaurant had been placed into receivership. The couple purchased the restaurant for NZ$30,000. The appellants gave

the daughter NZ$270,000 to assist with the business. However, the sister bullied the couple into paying her the appellants' money.

(d) The restaurant is struggling financially, and the son-in-law is only paid for 42 hours per week but works 65–70 hours per week. The appellants' presence in New Zealand allows the daughter and son-in-law to continue working in the restaurant.

(e) The appellants currently have no pathway to residence in New Zealand. If the restaurant's finances improve in the future, they may be eligible under the Family (Parent) category.

(f) The appellants will be unable to easily return to New Zealand with COVID-19 restricting travel. The daughter will be unable to afford to travel to Vietnam due to the cost and need to work in New Zealand.

(g) The appellants are in an at-risk category for COVID-19 due to their age and health.

(h) The appellants' son remains living in Vietnam, where he operates the dairy shop the appellants' previously operated.

(i) The wife suffered an acute life-threatening medical event known as a subarachnoid haemorrhage while in New Zealand. She was treated in the New Zealand health system and has fully recovered. However, during treatment she suffered vocal cord damage, which has required further treatment. The wife had medical travel insurance, but the Vietnamese insurance company refused to pay her bills. She accumulated a debt of over NZ$200,000 which her daughter, as sponsor, is liable for. Her daughter has been making regular repayments towards this. The daughter needs to continue working to meet these payments, and the appellants care for her children so she can do this.

[18] In support of their appeals, the appellants provide the following documents:

(a) Letter (18 May 2021) from the daughter and son-in-law's New Zealand business mentor and friend, who states that the son-in-law has made poor business decisions which have created difficulties for the family. The daughter is in a vulnerable position and she and the grandchildren are dependent on the appellants for emotional and possibly financial support.

(b) Letter (26 May 2021) from the daughter, explaining the close bond she has with her parents, her need for their ongoing presence in New Zealand for emotional and practical support for herself and her children, including due to the daughter's post-birth medical complications, children's care and treatment, and need to work in the financially struggling restaurant. She also provides information on the harassment by the son-in-law's sister which led to them giving her the NZ$270,000 her parents had gifted her, the debt she is repaying to the New Zealand District Health Board after her mother's treatment, and the daughter's social isolation in New Zealand.

(c) Letter (undated) from the daughter and son-in-law's parish priest, writing in support of the appellants remaining in New Zealand due to their close bond with the grandchildren, and support they provide.

(d) Letter (24 May 2021) from one of the restaurant's part-time employees, describing the daughter's caring and supportive nature.

(e) Documents relating to the daughter and son-in-law's restaurant, including Google reports regarding restaurant searches and webpage visits, registration, positive reviews, menus, the daughter's manager's certificate, company registration and a sales report.

(f) Passports, birth certificates, marriage certificate for the daughter, son-in-law and their children.

(g) The daughter's discharge summary from maternity services (August 2020), showing an elective caesarean and post dural puncture headache.

(h) Report (27 May 2021) from an ENT surgeon regarding the two-year-old grandchild being put on the wait list to have her tonsils removed.

(i) Copy of the wife's Vietnamese-purchased travel insurance policy, correspondence from a New Zealand District Health Board regarding her "acute life-threatening medical problem" and treatment, invoices for a total of NZ$197,487.70, and correspondence between the appellants' New Zealand insurance lawyer and the insurance company.

(j) Copies of the wife's medical records in relation to her subarachnoid haemorrhage and subsequent vocal cord damage.

(k) Copies of documents from the District Health Board showing the daughter's payments of NZ$150 per week towards the wife's debt.

(l) Copies of the appellants' New Zealand visas.

(m) Family photographs.

(n) An article from Stuff.co.nz: H Dinh "COVID-19: Vietnam Says Latest Virus Outbreak Caused by Hybrid of UK and Indian Variants" *Stuff.co.nz* (30 May 2021), stating that prior to May 2021, Vietnam had been a "standout" country in relation to its handling of the pandemic with relatively low cases and deaths. However, in May 2021, there had been a "recent surge" of cases and 12 deaths.

(o) Psychological report (10 March 2021) prepared by Dr Sarah Drummond, clinical psychologist regarding the daughter. Dr Drummond states:

> [The daughter] is clearly part of a close-knit family of origin and naturally as she started her own family, in keeping with typical cultural/family values in Vietnam her parents have continued to provide support. The extent of this support has meant that they are now an integral part of [the daughter's], her husbands' and their children's lives in [New Zealand]. The near loss of [the wife] in 2018, meant that [the daughter] has already had to contemplate a life without her mother, which produced intense distress. With the physical/neurological symptoms that [the daughter] seems to be experiencing since the delivery of her youngest child, it would seem that her parents have provided the safety net, that not only [the daughter] has needed but also to ensure that the children have received a consistency of care, love and support that it would have been difficult for [the daughter and son-in-law] to provide on their own. The removal of [the daughter's] parents to Vietnam would be devastating for this family, as [the daughter] mentioned at interview, 'it would break our lives.' Certainly, from the description of early family relationships right through to the present day, this comment makes sense as they are the main emotional and psychological support for the [daughter], who is now the lynchpin of her family. She is already operating on limited resources emotionally and psychologically at present and to suffer a loss like this at this time would be devastating and detrimental to her wellbeing and ongoing functioning.

ASSESSMENT

[19] The Tribunal has considered all the submissions and documents provided by

the appellants. It has also considered the appellants' Immigration New Zealand files in relation to their temporary visa applications.

Whether there are Exceptional Circumstances of a Humanitarian Nature

[20] The appellants are a married couple from Vietnam, aged 70 and 68 years old, respectively. The husband has spent a total of three years living in New Zealand, since 2018. The wife has lived here for a total of four years and nearly eight months, since 2015. The appellants spent periods here after the birth of their grandchildren, as the holders of grandparent visitor visas. Following the wife's medical emergency, they remained on visas for medical treatment, and as a patient escort. In 2020, the appellants were granted extensions to their visitor visas under special regulations issued due to the COVID-19 pandemic. After the expiry of their last such visa, they became unlawfully in New Zealand and lodged this appeal. Prior to this, they have adhered to their visa conditions and maintained a lawful status during their time in New Zealand. Due to circumstances beyond their control, namely a medical event and COVID-19, they have remained in New Zealand longer than intended.

[21] During the time the appellants have lived in New Zealand, they have formed strong and close bonds with their grandchildren. The appellants wish to remain in New Zealand to maintain these close bonds, and that which they have with their daughter. The appellants are providing essential emotional and practical support to their daughter and grandchildren and wish to continue to do so. However, the appellants are currently not eligible for residence under any other immigration pathway. The daughter states on appeal that they do not meet the financial support criteria for the Family (Parent) category at present.

Best interests of the New Zealand-citizen grandchildren

[22] The appellants' four grandchildren are New Zealand citizens, aged six, four, two and nine months. In relation to them, the 1989 *Convention on the Rights of the Child* provides at Article 3(1) that, in all actions concerning children, the best interests of the child shall be a primary consideration – see also *Puli'uvea v Removal Review Authority* (1996) 14 FRNZ 322 (CA), (1996) 2 HRNZ 510 at p329. The High Court has stated that the best interests of the child are neither paramount nor the primary consideration, but they are to be given important and genuine assessment – see *O'Brien v Immigration and Protection Tribunal* [2012] NZHC 2599 at [32].

[23] The appellants provide necessary and important daily support, care and practical assistance to the family. The Tribunal acknowledges that the grandchildren have strong attachments to their grandparents. As noted in Dr Drummonds report, based on information from counsel and interviewing the daughter:

> [The daughter] sees the relationship between her parents and her children on a daily basis and notes that they are very close. It appears that her parents are an integral part of her children's lives, to the extent that there is concern or distress if the grandparents are not present.

[24] The evidence from Dr Drummond identifies that the support provided by the appellants to the daughter is essential in ensuring that she is able to effectively care for her children. She has suffered post-natal depression, complicated births and has a history of adolescent mental health issues. She is socially isolated and is dependent on her parents for emotional and practical support to provide a stable and loving home for her children. As Dr Drummond states, the daughter is "already operating on limited resources emotionally and psychologically". For her parents to be deported and her to suffer their loss "would be devastating and detrimental to her wellbeing and ongoing functioning". An inability on the part of the daughter to cope without the presence of her parents, as suggested in the psychological report, would be detrimental to the children. The Tribunal is satisfied that the appellants' deportation would negatively impact on the four New Zealand-citizen grandchildren's wellbeing, and not be in their best interests.

[25] The Tribunal also notes the evidence of the business mentor and friend, that the daughter and son-in-law's relationship is under pressure. Without the support provided by the appellants in the home in New Zealand, the possibility exists for the relationship to not survive. In such a circumstance, the daughter would be under even more pressure and may consider a return to Vietnam to access family support. This would result in the New Zealand-citizen children being unable to live in the country of their citizenship, and access education, health and other services to which they are entitled.

[26] The Tribunal finds that the best interests of the grandchildren will be served by them remaining in their current living arrangement, with the love, support and care of their parents and grandparents.

Family unity

[27] In New Zealand, the appellants live in a family unit with their 34-year-old daughter, who is a permanent resident of New Zealand, along with her

New Zealand-citizen husband and four New Zealand-citizen grandchildren, aged six, four, two and nine months.

[28] As submitted by counsel, Articles 17 and 23(1) of the 1966 *International Covenant on Civil and Political Rights* (ICCPR) providing for protection of the family unit and are a relevant consideration for the Tribunal in its assessment of the appellants' circumstances.

[29] The appellants have been living in New Zealand with the daughter, son-in-law and grandchildren since 2015 and 2018, respectively. This constitutes the majority, or totality, of the lives of the grandchildren. Over this time, the appellants have grown to form a central part of the daughter, son-in-law and grandchildren's family unit. This is confirmed by the evidence of Dr Drummond who describes the appellants are integral to the family. As noted above, the importance of the relationships to the lives of the grandchildren is seen through their response when separated from their grandparents, as one of concern or distress according to Dr Drummond.

[30] The practical support provided by the appellants ensures that the daughter and son-in-law are able to work in their owner/operated business, and attend to the health and care needs of the children. Perhaps most importantly, their presence allows the daughter, who is mentally fragile, to cope. As stated by Dr Drummond in her report, the appellants' support has provided the daughter a safety net after issues arising following the birth of her last child. They are her primary emotional support and their removal would severely impact her ability to continuing functioning in the way she is currently.

[31] Dr Drummond advised in her report that the daughter should seek further medical follow-up with her general practitioner, and possibly by a neurologist, in relation to some of the post birth symptoms she has been experiencing. She also states:

> Given past mental health concerns for [the daughter], both in adolescence and post-natal, I would be very concerned about this again for her should her parents not be able to remain as a support.

[32] The Tribunal accepts that separation from her parents will, most likely, result in significant distress to the daughter and could exacerbated underlying mental health concerns. While she can access New Zealand's public health system, this would not be able to replace the level of support and care provided by her parents.

[33] While the Tribunal also notes that protections for family unity do not require that this occur in a specific location, in light of the current and foreseeable COVID-19 restrictions, the appellants' departure from New Zealand would most likely end any in-person contact for the family in the foreseeable future. The appellants would not be able to make regular visits to New Zealand as they previously did. In addition, it is not practicable for the daughter and four grandchildren to make regular visits to Vietnam, due to the cost of such travel, restaurant responsibilities and due to the global pandemic and re-entry manged isolation requirements.

Restaurant business

[34] The appellants' presence in New Zealand has facilitated the daughter and son-in-law in the running of their business, a busy restaurant, which seats up to 120 customers and has 7 staff. The husband works full time as a chef, and the wife is currently working there part time.

[35] It is submitted that the restaurant is struggling financially. While it is acknowledged that running an owner operator restaurant in the current climate with COVID-19 restrictions, is a challenging situation, no evidence of financial difficulties has been provided to the Tribunal. Despite the challenges of operating the business, the daughter and son-in-law continue to operate the business and draw an income.

[36] However, the appellants' departure from New Zealand will most likely impact on the daughter's ability to assist working in the restaurant. This may result in additional pressure on the business, the daughter and son-in-law's relationship, and daughter's emotional wellbeing. Most likely, this will have negative consequences on the children's wellbeing.

Circumstances in Vietnam

[37] Despite the appellants wish to remain living in New Zealand to maintain the close presence to their daughter and grandchildren, they also have a strong connection to Vietnam. The appellants lived in Vietnam throughout their lives, before they came to New Zealand. Their 35-year-old son remains living in Vietnam, as do the wife's four brothers and two sisters, and one of the husband's brothers and sister.

[38] In Vietnam, the appellants owned and operated a store, which is now run by their 35-year-old son, with the assistance of an aunt.

[39] However, the Tribunal notes that the appellants are considered at-risk individuals in relation to COVID-19, due to their age and possibly due to the wife's medical history. The Tribunal also acknowledges the anxiety felt by the daughter in this regard, particularly due to her mother's medical events in New Zealand, as reported in Dr Drummond's report.

[40] The Tribunal also is cognisant of the recent upsurge in cases in Vietnam. Since late April 2021, the numbers have been increasing exponentially. On 2 July 2021, it recorded a total of 17,576 cases of COVID-19 and 81 deaths ("Vietnam Seeks to Boost Testing As Coronavirus Cases Hit Record" *Reuters* (2 July 2021)), and on 8 July 2021, it recorded 24,385 cases and 105 deaths (Worldometer *Vietnam COVID* at www.worldometers.info) While viewed relative to Vietnam's population size, approximately 96 million, this remains a limited number. However, cases continue to increase despite a conscientious response by the Vietnamese government with testing of the 9 million residents of Ho Chi Minh City and restrictions of movement, gatherings and the shutting down of non-essential business ("COVID-19: Vietnam to Test All 9 Million Residents in Ho Chi Minh City Amid Surging Outbreak" *Stuff.co.nz* (1 June 2021)).

[41] The appellants are elderly and the wife has had a serious medical condition. Deporting them to Vietnam, at the time of an exponential surge in COVID-19 cases, raises humanitarian concerns.

Conclusion on humanitarian circumstances

[42] The Tribunal has considered all the appellants' and their family's circumstances as disclosed to it. Their extended time living in New Zealand arose from factors outside their control, namely the wife's medical issues and COVID-19. During this time, the appellants have formed strong bonds and provide important support to their New Zealand-citizen grandchildren. Their New Zealand permanent-resident daughter has developed a significant dependency on them. It accepts that the daughter will suffer significant emotional and mental distress if the appellants are required to leave New Zealand. This will impact on the wellbeing of the daughter, and of the four young New Zealand grandchildren. It also acknowledges that the appellants' departure from New Zealand will result in the end of the practical and in-person emotional support they provide to their grandchildren. Further, given the current COVID-19 pandemic, the family's ability to regularly visit each other at the present time will cease. Considered cumulatively the Tribunal finds that these amount to exceptional humanitarian circumstances.

Whether it would be Unjust or Unduly Harsh for the Appellants to be Deported

[43] Where, as in this case, exceptional humanitarian circumstances are found to exist, the Tribunal must go on to assess whether those circumstances would make it unjust or unduly harsh for the appellants to be deported. According to the Supreme Court in *Guo v Minister of Immigration* [2015] NZSC 132, [2016] 1 NZLR 248 at [9], this assessment is to be made in light of the reasons why the appellants are liable for deportation and involves the balancing of those considerations against the consequences of deportation.

[44] The appellants are liable for deportation as they are unlawfully in New Zealand. Prior to this, both appellants have lived in New Zealand as the holders of lawful visas. Initially, they held grandparent visitor visas. The wife visited New Zealand to assist with the care and support of her daughter and grandchildren on multiple occasions, consistently adhering to the conditions of her visa. Subsequently, the appellants were unable to depart New Zealand due to circumstances outside their control. Firstly, the wife's life-threatening medical event and treatment, for which they were granted medical and escort visas. Secondly, the global pandemic, for which they received a series of visa extensions. Accordingly, while they are currently here unlawfully, this is predominately due to circumstances outside their control.

[45] Against this must be weighed the exceptional humanitarian circumstances that have been found to exist in this case. These are the integral role the appellants play in providing essential support for their daughter and four minor grandchildren, and circumstances they would face on return to Vietnam as at-risk individuals during an upsurge in COVID-19 cases. Deporting the appellants to Vietnam, would cause significant emotional distress to the daughter and grandchildren. This would impact on the wellbeing of the grandchildren, both directly and as a result of their mother's potential inability to care for them without emotional and practical support.

[46] In considering whether it would be unjust or unduly harsh for the appellants to be deported, it is necessary to weigh the interests of the appellants, their New Zealand-citizen grandchildren and son-in-law and New Zealand-permanent resident daughter, against their failure to depart New Zealand before the expiry of their last visa. Having regard to the important and necessary role the appellants play in the lives of their New Zealand family unit, the impact on them of the appellants departure and the current restrictions on international travel due to the COVID-19 pandemic, the Tribunal finds that it would be unduly harsh for the appellants to be deported from New Zealand.

Public Interest

[47] In cases where the Tribunal has determined that the appellants have exceptional humanitarian circumstances which would make it unjust or unduly harsh to deport them, the Tribunal must also be satisfied, in all those circumstances, it would not be contrary to the public interest to allow the appellants to remain in New Zealand. This involves the weighing of those factors which would make it in the public interest for the appellants to remain against those which make it in the public interest that they leave: *Garate v Chief Executive of Department of Labour* (HC Auckland, CIV-2004-485-102, 30 November 2004) at [41].

[48] In the present appeal, there is a public interest in upholding New Zealand's international obligations with regard to family unity and the best interests of children pursuant to Article 23(1) of the ICCPR and Article 3(1) of the 1989 *Convention on the Rights of the Child*. It is accepted that there is a public interest in the protection of the family unit that includes the appellants, their daughter, son-in-law and four young grandchildren, and protecting the best interests of the New Zealand-citizen grandchildren.

[49] In New Zealand, the wife suffered from a life-threatening subarachnoid haemorrhage. She has fully recovered from this. However, during treatment in the intensive care unit, she suffered vocal cord damage, which has required follow-up treatment.

[50] The wife has a debt with a New Zealand District Health Board of close to NZ$200,000. While she purchased private medical travel insurance in Vietnam to cover her in New Zealand, for reasons that are unknown to the Tribunal, her claim was declined. A New Zealand-based insurance lawyer has sought to challenge this decision but has been unable to proceed further due to jurisdictional limitations. However, the daughter has been making regular repayments of the debt to the District Health Board and when travel to Vietnam becomes possible, wishes to pursue legal action against the insurance company there.

[51] Immigration New Zealand have found both appellants to have acceptable standards of health when applying for their temporary visas. The medical reports note that the wife has diabetes and hypertension, and the husband had tuberculous approximately 50 years ago. It does not appear that such conditions would give rise to costs that would amount to being a burden on the public health system in the medium term (either financially or in terms of depriving New Zealand citizens of access to scarce resources) and so be contrary to the public interest.

[52] The appellants do not have any convictions or charges in New Zealand. On 13 July 2021, the Tribunal received clear New Zealand police certificates for both appellants.

[53] Weighing the competing public interest considerations regarding the appellants' health, the integrity of the immigration system and the protection of family units and the best interests of New Zealand-citizen children and daughter's health, the Tribunal finds that, in all the circumstances, it would not be contrary to the public interest for the appellants to remain in New Zealand permanently.

DETERMINATION

[54] For the reasons given, the Tribunal finds that there are exceptional circumstances of a humanitarian nature which would make it unjust or unduly harsh for the appellants to be deported from New Zealand.

[55] The Tribunal also finds that it would not in all the circumstances be contrary to the public interest for them to remain in New Zealand on a permanent basis.

[56] Pursuant to section 210(1)(a) of the Act, the Tribunal orders that the appellants be granted resident visas.

[57] The appeals are allowed on those terms.

Order as to Depersonalised Research Copy

[58] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellants' and their family members' names and any particulars likely to lead to the identification of the appellants or their family members to protect the privacy of the daughter whose health information is discussed in the decision.

"L Moor"
L Moor
Member

Certified to be the Research Copy released for publication.

L Moor
Member