

Submission to Immigration Senate Select Inquiry into Ministerial Discretion.

The purpose of this submission is to illustrate that there have been cases deserving of a sympathetic hearing and intervention by the Minister on very strong humanitarian grounds, given the unusual backgrounds to these cases. Such a response has not been forthcoming. I would ask the Inquiry to compare these examples with cases (provided through others' submissions) where ministerial discretion has been sought with a positive outcome.

In some of the cases cited below, there have been applications for ministerial discretion under section 417 but I understand that there are other avenues open to the Minister, even where a 417 application has not been made. There appears to be an unwillingness to intervene positively in the case of Iraqi and Iranian people and I would question what the Minister believes constitutes 'humanitarian grounds' and how much his discretion is affected by matters of policy and politics rather than humanitarian concerns.

Some of these cases are particularly tragic. All are on the public record and have been widely reported by newspapers. I would be pleased to provide further oral information to the Committee if that would be helpful.

- **Those affected by the SIEV-X tragedy**

SIEV-X was the boat that sunk in October 2001 on its way to Australia, almost certainly in international waters. At the time, and since then, there has been little official sympathy or support for those directly affected by this tragedy, which is unprecedented in this country.

353 people died, mainly women and children, many of whom were trying to get to Australia to join their menfolk who had been assessed as bona fide refugees and living in our community with temporary protection visas (TPVs). TPV holders are not allowed to return to Australia once they leave its shores, and their families are not allowed to join them here under a family reunion program. (Families of refugees who hold permanent protection visas can access family reunion programs.)

These restrictions on TPV holders are the reason why many of their wives and children paid people smugglers to take them to Australia.

Whatever view one has about the right or wrong of the border protection policy, conditions imposed on temporary protection visas or the motivation of those who came to this country via people smugglers, surely no-one can deny that the outcome of this particular journey was horrendous. I am asking at this point for considerations about the political implications of the SIEV-X disaster to be put to one side, and instead focus on the human dimension.

Mohammed Alghazzi lost 14 members of his extended family through SIEV-X, including his wife and three young children. Having spent some time with Mr. Alghazzi sixteen months after the tragedy, I do not know how to convey to you the utter desolation and wretchedness he lives with. It overwhelms.

Yet his situation is exacerbated by the fact that he is on a temporary visa and does not know what the future holds; one assumes that at some point pressure will be exerted on him to return to Iraq. Has this man not suffered enough? Is not losing 14 members of your family as bad as it gets?

He is in the meantime establishing friendships and support in this country. The granting of permanent residence would alleviate at least some of his suffering by removing the spectre of forced return to Iraq, a country now in considerable disarray.

Other men in Australia lost their wives and families on SIEV-X and are in similar circumstances to Mr. Alghazzi. They include Ali Mehdi Sobie , Haidar al-Zoohairi and Hazam Al Rowaimi,

There are believed to be seven SIEV-X survivors from five families living in Australia who have temporary visas, subclass XB451. This is a five-year visa that entitles a person to apply for a permanent protection visa after four and a half years *if there is a continuing need for protection*. So there is still great uncertainty for the holders of visa subclass XB451. Generally, these people are living with relatives who have temporary protection visas. The visa review dates are not aligned although I understand that Immigration Minister Ruddock has indicated that he is willing to consider aligning the time frames of TPVs for family members. He remains firmly committed to the TPV policy.

The best-known of the SIEV-X tragedies is that of Sundous Ismail and her three daughters, Eeman, 8 years old, Zahra, 6 years old and Fatima, 5 years old who attempted the journey to Australia on SIEV-X to join with husband and father, Ahmed Alzalimi. The three little girls drowned and Sundous was rescued and taken to Indonesia. For many months, the government refused to grant Sundous a visa to come to Australia to be with her husband and refused to grant permission for Ahmed to re-enter Australia should he go to Indonesia to be with his wife.

This couple had lost three daughters yet this was not considered to be adequate 'humanitarian grounds' for them to be re-united even temporarily, to grieve together. Eventually (after 8 months I believe), Sundous was allowed to enter this country. Surely these very exceptional circumstances would have warranted immediate granting of a visa on humanitarian grounds. If the loss of three daughters does not constitute 'humanitarian grounds', what does?

Zainab, a 12 year old, was orphaned in the tragedy. Her uncle and aunt were Australian citizens, living in this country since 1995. Again, after some delay and considerable lobbying, she was allowed to enter Australia to live with her relatives. Surely the circumstances warranted an immediate response. One hopes that she will be allowed to remain with her aunt and uncle.

These 'SIEV-X families' have suffered enough. These are mainly Iraqi families, whose country of origin is in disarray. These are families dreadfully scarred and still grieving who are likely to be forced to return to a country that does not have basic infrastructure, let alone the services to help them overcome the horrors they have survived. I understand that the Minister has received requests on behalf of the SIEV-X families but has not responded favourably.

We are talking about relatively low numbers and circumstances that are as unique as they are tragic. Surely these merit a humanitarian and sympathetic response.

- **Nadar Sayadi-Estahbanati**

Nadar and his brother Nasser stowed away on an Iranian ship in August 2000 and applied for protection in Australia on political grounds but were turned down. Unable to cope with indefinite detention any more, Nasser left detention & Australia voluntarily in August 2001 and has not been heard of since. Amnesty International have tried to locate him.

Nadar's condition deteriorated. As a result of his attempts to self-harm, he was placed on 24-hour suicide watch at Perth Immigration Detention Centre. Despite this, he managed to throw himself onto the razor wire resulting in severe lacerations. His psychological state continued to deteriorate as greater pressure was placed on him to leave Australia.

Despite submissions to the Minister, he was finally and forceably deported in June 2002.

An Iranian living in Melbourne on a temporary protection visa said the last contact with Nadar Sayadi-Estahbanati had been by phone when Nadar said that he had been interrogated for several days on his return. That is the last known contact with either him or his brother.

Apart from the very genuine fear for his safety as a result of the disappearance of his brother, there had been another aspect to this case. The two brothers travelled to Australia with two friends. The four men were denied asylum by the DIMIA and by the subsequent RRT hearing. However, there was some irregularity with the RRT hearing for all four men. The lawyer representing the two friends applied to a higher court for the RRT to be instructed to review the initial finding. DIMIA advised that they would not contest this, and so the case of the two friends was returned to the RRT who found in their favour. As there were

similar circumstances, it was very likely that the same outcome would have been achieved for the brothers, however their lawyer missed the deadline for filing an application with the higher court. So their case was never re-heard by RRT.

The favourable outcome at the second RRT for their friends, which would indicate there is the possibility that the brothers did not get a fair hearing, in conjunction with the disappearance of his brother surely are grounds for Ministerial intervention on behalf of Nadar. Since he has now disappeared, it would seem in retrospect that this would have been the correct action to take.

- **Iranian Ebrahim Sammaki and his children Safda, seven, and Sara, three**

This is the man whose Indonesian wife was killed in the Bali bombings. He is detained in Baxter detention centre. His children are in Indonesia. Immigration Minister Philip Ruddock has rejected applications for the children to have visitor visas so they can visit their Dad.

The Indonesian government has refused to grant a visa to Mr Sammaki to visit his children there. Mr Sammaki could return home to Iran but would not be able to take his children, who are Indonesian citizens.

Mr Sammaki, who has exhausted all legal avenues to secure his own visa for Australia, has lodged an appeal to Immigration Minister Philip Ruddock to remain in Australia on compassionate grounds, so that he can care for his children.

This is an extremely sad situation, brought about by a very unusual combination of circumstances. The end result is effectively two orphaned children who do have a dad who wants to care for them but is prevented from doing so by Kafkaesque bureaucracy and red-tape.

Concluding comments

Having worked with refugees in Australia under both the offshore and onshore programs, I am aware that one of the biggest obstacles to settling well here is continued separation from loved ones. The arguments are always emotional and compelling. Most people from a refugee background have lost family members who have 'disappeared' or have been killed in conflict, and so are exceptionally driven to reunite with their remaining family.

Applying ministerial discretion on humanitarian grounds is therefore inherently problematic as almost all applicants can argue a strong case. But why are there so many appeals to the minister? Is it because the visa system is in itself inherently flawed and many legitimate claims are denied? Surely the idea of ministerial discretion is so that there is the capacity to intervene in those rare

occurrences that could not possibly have been anticipated when the legislation was drawn up.

SIEV-X was exceptional. Children losing their mum in the Bali bombings is exceptional. One brother disappearing must raise serious concerns around the principle of refoulement for the remaining brother.

These would appear to be exactly the types of cases where ministerial discretion could be appropriately applied.

Sue Hoffman