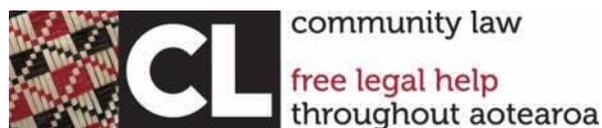


MEDIA RELEASE



November 23, 2021

High Court Win for Community Law Afghan Nationals Clients

Community Law Waikato clients in fear of their lives in Afghanistan have won a landmark case to have their New Zealand residence visas promptly determined by Immigration NZ.

In the judgment released yesterday, Justice Francis Cooke said that decisions of INZ not to complete the processing and grant of Refugee Family Support Category residency visas because of the “closure” of the border have been unlawful. INZ had wrongly assumed that if they were granted visas, the applicants would not be permitted to enter New Zealand.

He also ruled that Community Law’s clients were wrongly denied Critical Purpose Visitor Visas because of a misinterpretation of the humanitarian exception contained in the Immigration Instructions for that type of visa.

The Judge directed INZ to progress the applicants’ residence applications without further delay, and to assess applications for Critical Purpose Visitors Visas again applying the correct approach to the humanitarian grounds, as determined by the Court. He also said that to the extent the immigration instructions allowed INZ to take into account the later border restrictions, they were inconsistent with the Immigration Act and invalid.

The case was brought by two applicants, but they represented a wider group of 70 clients represented by Community Law Waikato. The judgment may be applied to clients of other advocates and also to visa applicants in similar situations from other countries.

“While we are disappointed that we have had to fight this injustice in the High Court, we are pleased with the outcome and now expect Immigration NZ to respond with urgency to the plight of those fearing for their lives who have a legitimate pathway to New Zealand,” said Community Law Centres O Aotearoa CEO, Sue Moroney.

“Community Law clients were represented in court by Wendy Aldred and Monique Van Alphen Fyfe of Stout Street Chambers. The team was assisted by Community Law Waikato lawyers, Angela Smith and Ellen Hockey and received pro bono support from other barristers who were keen to help, as well as law firm Simpson Grierson. This was a great combined effort to achieve justice for these vulnerable clients with family in New Zealand.”

Ms Aldred says that the judgment will have wider implications for other applicants for New Zealand residence whose applications were wrongly suspended. “Immigration New Zealand will now need to get on and apply the legislation correctly and without further delay, given the serious consequences for these applicants of its refusal to progress their applications. Every day wasted is a day our clients remain in danger as a result of their association with the New Zealand government.”

Ms Smith, who is in touch with the applicants’ family sponsors in New Zealand, says “our clients are incredibly relieved to hear the Court’s decision. Family members here are distraught at the danger their families face in Afghanistan under Taliban rule. Every day they hear tragic stories and worry their families will not survive. It was hard to fathom Immigration could stop processing residency

applications and decline humanitarian reasons even in the face of a humanitarian crisis in Afghanistan. This decision has renewed our clients' hopes of a safe reunification in New Zealand."

In deciding residence applications, Justice Cooke said INZ was required under immigration legislation to apply the border entry rules that applied at the time the residence applications were made, not at the time that permission to enter was sought. The Judge said that to the extent the immigration instructions allowed INZ to take into account the later border restrictions, they were inconsistent with the Act and invalid. Therefore the COVID-19 restrictions would not apply to the applications for entry.

As well as applying for residence visas, the applicants also applied for "Critical Purpose Visitors Visas" which were a special category of temporary visa created to provide an exception to the COVID-19 related border restrictions. INZ had decided that none of the applicants had established humanitarian reasons for being granted a CPVV.

Justice Cooke said that INZ had wrongly taken the approach that the humanitarian circumstances needed to have arisen in New Zealand, but the exceptions were not limited in this way and "clearly applied to the circumstances raised by the applicants." Further, INZ had failed to address key aspects of the applicants' connections with New Zealand: "the fact that the peril is faced at least in part because of the applicants' families' assistance to New Zealand forces in Afghanistan, and that they were in the process of being granted residency when the borders were closed."

Background

Twenty-four Community Law Centres work out of over 140 locations across New Zealand to provide free legal help and advice to those who are unable to pay for a private lawyer or who do not have access to legal aid. This advice covers all aspects of New Zealand's legal system, including family law, employment issues, housing problems, consumer advice and criminal law. As well as around 250 staff, Community Law's services are boosted by over 1,200 volunteer lawyers who run clinics and deliver free advice and assistance.