

Asylum Forum 8 December 2009 Minutes

Definitions for the minutes

Refugee - This term has been used for persons who have been through the Refugee Status Determination Process, and their claim has been approved.

Refugee claimants – This term has been used for persons going through the Refugee Status Determination process and awaiting a decision. Alternatives names for refugee claimant are asylum seekers or claimants.

Failed Asylum Seekers – This term has been used for refugee claimants who have failed in their application for refugee status with either the Refugee Status Branch (RSB) or Refugee Status Appeals Authority (RSAA).

Quota refugees – This term has been used for refugees who come to New Zealand pursuant to the annual quota agreed by the New Zealand government.

Refugee Quota Branch – Refugee Quota Branch has been used instead of Mangere Refugee Resettlement Centre (MRRC) or Mangere Accommodation Centre (MAC) to retain consistency throughout the minutes.

Acronyms

Auckland District Health Board	ADHB
Auckland Refugee Community Coalition	ARCC
Auckland Refugee Migrant Service	ARMS
Auckland Refugee Council Incorporated	ARCI
Auckland University of Technology	AUT
Asylum Seeker	A/S
Department of Internal Affairs	DIA
Department of Labour	DOL
Educational Leadership Programme	ELP
Housing New Zealand	HNZ
Immigration Advisory Authority	IAA
Immigration and Protection Tribunal	IPT
Inland Revenue Department	IRD
Limited Purpose Permit	LPP
Legal Services Agency	LSA
Manukau Institute of Technology	MIT
Ministry of Social Development	MSD
Non Governmental Organisation	NGO
New Zealand Sri Lankan Forced Migrant Group	NZSLFMSG
Refugees As Survivors	RAS
Refugee Council New Zealand	RCNZ
Refugee Migrant Service	RMS
Refugee Quota Branch	RQB
Refugee Status Branch	RSB
Settlement Support New Zealand	SSNS
Tertiary Education Commission	TEC

**Refugee Division Welcome
Tracey Hutching**

Welcome everyone. The Asylum Forum was first held in 2005 and the fact it is still occurring here today is an indication of its success and of specific interest in the area. It also indicates that there are continuous and important issues in the asylum area that need to be addressed.

There have been some practical outcomes since the first forum. For example, new settlement booklets were created, as well as information packs for asylum seekers, health and benefit information have been disseminated and the role of Marta at MAC has been publicised, and the issue regarding permits for school children was resolved.

Thanks to the Asylum Forum Review Group and participants for sending their ideas for today's agenda. The Review Group consists of individuals from various agencies.

Today's forum is all presentations so thanks to today's presenters. Special thanks to Ellen Hansen from UNHCR Canberra. Also thanks to Kailesh Thana from Voice of Asylum Seeker for giving up his spot to enable us to make a presentation on the new Immigration Act and how it affects asylum seekers.

We may hold workshops in the new year specifically regarding the new Immigration Act and how this will affect asylum seekers.

I would also like to thank Dr Toni Wansborough, who will shortly be retiring from the People's Centre. I know she will be sadly missed by all those who work with refugees. She tirelessly works for refugees and asylum seekers and is so passionate about the area. I have personally been grateful to her for her input at the Asylum Forum preparatory meetings.

Thanks to Dougal Ellis for chairing today's forum. Thanks to Geraldine Tew for all the hard work she has done in preparing for the forum. I hope you enjoy today's forum and there are many INZ staff present who you can talk to during the breaks.

Apologies received from Jan Clark Acting Group Manager Service International, and Pamela Anderson Acting Director Refugee Division

**Immigration Act 2009: Refugees and protected persons
Conrad Wright**

The new immigration act is the culmination of a five year process, and it is expected to come into force in November 2010. There remains a lot of work to be done to complete statutory Regulations, affected Immigration policies, and to ensure this change is managed as smoothly as possible.

The purpose of the new act is to manage immigration in a way that balances the national interest with the rights of individuals. It is a complete review of immigration law and covers a wide range of areas, including aspects which impact on refugees and asylum seekers, for example, detention provisions, biometrics and appeals. One particular change to note is that under the new act 'quota' refugees have statutory recognition as refugees in New Zealand.

Changes for asylum seekers

Under the new law, a claim will be assessed against immigration related obligations under three Treaties:

1. The Refugee Convention
2. Article 3 of the Convention Against Torture ("CAT"), and
3. Articles 6 and 7 of the International Covenant on Civil and Political Rights ("ICCPR").

The idea is to reduce administrative delays so if a person is deserving of international protection they receive such protection as soon as possible.

New Zealand considers its obligations under CAT and ICCPR as non-derogable. In other words no-one will be returned to a place where they are at risk of suffering torture, even if that person was involved in atrocities. There is no 'exclusion' cause under CAT and ICCPR. However, this is not to say that there are not exceptions, the new law confines the scope of complimentary protection to treatment suffered other than as a result of lawful sanctions (i.e. legitimate criminal punishment) or the inability of the home country to provide medical care.

Under the Act there will no longer be visas and permits, everything will be called visas for clarity.

The current policy is that refugees may be granted permanent residence, and there is no intention to change that under the Act, but the type of visa to be issued to recognised refugees is yet to be decided by Cabinet. It is important to note that recognition as a refugee does not automatically result in a permit being issued, although it guarantees protection from removal from New Zealand. The issue of permits for protected persons who are not refugees (i.e. at risk of torture) is yet to be decided.

A new appeal authority, the Immigration and Protection Tribunal ("IPT"), will be created. The IPT will be a general appeal body combining the Refugee Status Appeals Authority, the Removal Review Authority, the Deportation Review Tribunal and the Residence Review Board. The IPT will have a wide mandate to consider all of these issues and will make a three part assessment plus consider any other humanitarian or other issue that arises in relation to a person's immigration status.

Refer diagram in power-point presentation regarding IPT appeals

Classified information

The Act allows refugee and protection officers to use classified information in decision making and for such information to be used on appeal. There are special safeguards to the use of such information, including the requirement that the affected person is provided with a summary of the allegations in the classified information during the potentially prejudicial information process. The Minister must be satisfied that it is a releasable summary of the information. That person may then make a response to the summary of the classified information before a decision is issued.

Special advocates

There is provision for special counsel to view classified information if it arises during an appeal.

Bad faith

There is a provision for people who claim refugee status that the claim must be based on actions undertaken in good faith. There must be a lack of bad faith for both first and subsequent claims.

Protection elsewhere

Under the existing Immigration Act a refugee claim can be refused if the claimant can access protection elsewhere. Under the new Act, the provision of non-consideration of a refugee claim on the basis that the person has, or had the opportunity to lodge a refugee and protection claim in another country with which NZ has an international agreement concerning processing of refugee claims, still exists. However, the law required that any such agreement can only be entered into if the signatory states are parties to the relevant international protection treaties and have an appropriate system for dealing with claims against the Convention, CAT and ICCPR.

This is effectively future-proofing as New Zealand does not currently have any such agreements with any countries.

Questions and answers

Q: Will the RSAA still exist?

A: No

Q: Does the Act address the issue of removal to an unsafe country?

A: Yes, the idea is that there will be no such removal of a person facing torture, persecution, cruel inhuman or degrading treatment, or exceptional humanitarian cases

Q: Is person removed to previous port of entry?

A: This is not specifically addressed in the Act, the issue to be addressed is whether or not a person faces persecution in their home country, international protection issues relate to the person's home country, not third countries.

Q: Does the Act guarantee that there will be a refugee expert sitting on the IPT?

A: This is not guaranteed under the Act, and there is nothing in law requiring members to have knowledge of refugee law. However, it goes without saying that there will need to be members with knowledge of refugee law, and there are provisions for the qualifications of members, for example, the head of the IPT will be a District Court Judge, sitting members will need to have five-years practising certificate.

Q: Use of classified information particularly relating to Sri Lanka?

A: All information received when deciding a claim is weighed, the decision-maker takes into account the origin of the information i.e. accusations of crimes against humanity say by certain governments would be treated with appropriate caution.

UNHCR – Ellen Hansen

UNHCR's Asia-Pacific Region encompasses a wide range of countries, including: Australia & New Zealand, Indonesia, Malaysia, Iran, Pakistan, Sri Lanka, Uzbekistan.

Globally, as at end 2008, there are 31.7 million persons of concern to the UNHCR, this includes an increasing number of internally displaced persons, as opposed to refugees.

Regionally, the largest group of asylum seekers in Asia-Pacific region are Afghans. Approximately 83% of boat arrivals are Afghani and their numbers

increased exponentially in 2009. The most affected countries are Australia and Indonesia.

UNHCR is concerned about complimentary protection in Asia-Pacific region because Australia and New Zealand are surrounded by countries that have not signed the Convention and do not have legal safeguards surrounding refugees. In addition, there is an uneven quality of asylum in the region, for example, Australia and New Zealand versus Papua New Guinea, which is a signatory to the Convention but has only rudimentary safeguards in place, versus Fiji where the political situation has led to a delay in the implementation of the convention, versus Pulau, which has a few asylum seekers but no procedures in place such that the UNHCR was required to conduct refugee status determinations and is looking for resettlement outcomes for all approved refugees.

UNHCR has legitimate concerns surrounding people smuggling, nevertheless there is a need to maintain a humanitarian space in combating trafficking efforts.

The Bali Process, where Australia and New Zealand are active, is meeting next week in Perth with a focus on Sri Lanka. During 2009 a number of countries have interdicted people at sea, for example, the 200 Sri Lankans recently interdicted by Indonesia following a request from Australia.

Internal displacement is growing in the Asia-Pacific region and environmentally-based displacement is a growing phenomenon. New Zealand needs to consider this issue in a forward-looking way.

It was noted that the European Union, Australia, North America and New Zealand are imposing rigorous border controls, offshore as well as onshore, and that airline liaison officers ("ALO") are a reality designed to ensure people travel with proper documentation. It is difficult for UNHCR to assess these programmes. UNHCR wants people in need of protection to receive it and are not sure if people are being prevented from boarding flights in particularly countries and particular airports. Another concern is that UNHCR is uncertain if ALOs operate within specified codes of conduct.

UNHCR notes that the quality of refugee status determination in New Zealand is extremely high and hopes this is maintained under the new Immigration Act. UNHCR is concerned that the RSAA is disappearing as it was looked to by the world for jurisprudential guidance. It is hoped these standards are maintained by the IPT.

Resettlement

New Zealand has maintained its quota of 750 refugees per year. UNHCR have encouraged the New Zealand government to increase its quota for a number of years, but it is also recognised that resettlement is not a legal obligation. Arguably there is a moral obligation to resettle refugees and UNHCR relies on New Zealand to take its annual quota. The United States is increasing its quota in 2010 to 80,000, but that is a totally different situation to New Zealand. In New Zealand there is a high quality resettlement programme that maintains a protection focus. Nevertheless, there is a constant tension because people want family reunion and have asked for the quota to be used to bring family members to New Zealand. UNHCR has mixed feelings about this because it is vital to protect the diversity of the quota. The purpose of the quota is to bring the most vulnerable refugees to a safe place. There are 750,000 refugees in acute need of resettlement, of whom only 100,000 will be resettled. It is hard to meet these people's needs so UNHCR appreciates all resettlement programmes, including Japans of 30 people per year, a small amount but still worthy contribution.

Nevertheless, it is noted that voluntary repatriation is the preferred permanent solution for the vast majority of refugees.

The UNHCR would like to see New Zealand play a role in capacity building in Asia-Pacific and further afield.

Each November the UNHCR holds consultations with lawyers, community groups and NGOs. Based on these discussions in 2009 a number of people reminded UNHCR to remember Africa. Other issues raised were access to services and documentation, as well as concerns regarding interdiction and barriers to entry.

With regard to the new Immigration Act, the UNHCR feels that the impacts of these changes must be monitored, particularly the use of classified information in decision-making. It was noted that UNHCR had made submissions on the concept of effective protection and the good faith issue.

UNHCR continues to hear concerns relating to delays in granting refugees residence and about cancellation. There is a continuing level of angst regarding why refugees have their status cancelled, if it is to do with returning to the country of origin. UNHCR is unable to comment on this matter and looked to the Department of Labour to answer such queries.

With regard to detention, in some senses New Zealand is a role model, the Mangere Accommodation Centre is a model for an open reception centre, and is far superior to the detention centre of Christmas Island. There was only a small number of asylum seekers detained in prison in New Zealand and UNHCR was keen for them to be detained only as a matter of last resort and for the shortest time possible. During the November 2009 consultations, NGOs raised the issue of asylum seekers having access to advocates upon arrival at Auckland International Airport.

With regard to settlement, the early assessment of needs and a whole of government approach was important. UNHCR is strongly in favour of a rights-based approach to settlement, for example, the right to housing, education and other fundamental services necessary to the well-being of individuals. There should not be delays in granting permits to recognised refugees, and people should have access to family reunification. There were a number of groups in New Zealand actively promoting refugees as benefits, not burdens to society.

Questions and answers

Q: Neville Kay – thanks for your availability and for the help given to NGOs in New Zealand. I would like to raise the issue of asylum seekers being called queue jumpers by our Minister. In addition, it seems easier to get refugee status through UNHCR than through New Zealand's Refugee Status Branch, would you care to comment on these issues?

A: The issue of asylum seekers being called queue jumpers is a problem in many countries. UNHCR tries to dispel that myth, that there is no orderly queue in the world, it is clear that people who come spontaneously are not jumping any queue. Another myth is that people who come by boat are the people who can afford it, but on many occasions these asylum seekers have begged, borrowed and stolen to get where they are - often it's a family effort. Countries have finite resources so resettlement needs to be kept open for people that cannot beg, borrow and steal to get here i.e. people in refugee camps in Africa. There are over 30 million refugees and only 100,000 can be settled in a year. Therefore if one had to wait - it would take a lifetime. Therefore it can hardly be called queue jumping.

Q. Is it not true that it's easier to get Refugee Status with the UNHCR than it is in New Zealand?

A. With regard to obtaining refugee status, it's a myth that it is easier to obtain it through UNHCR. A lot of UNHCR operations make prima facie determinations, but where individualised determinations are done, UNHCR is not more generous than the New Zealand government. UNHCR does 26% of determinations worldwide, and simply do not have the resources to do individualised determinations everywhere. However, when Australia and UNHCR performed determinations side-by-side, Australia was more generous than UNHCR.

Q: John Petris, Wellington: Has the change in legal aid for practitioners to assist asylum seekers come to your attention?

A: This issue has come to the attention of UNHCR. It is clear there is a crisis in New Zealand with regard to legal assistance. There are a small number of legal advocates that work for minimal pay. It has been mentioned that the criteria is onerous to be able to practice in this field, for example, lawyers have to do a certain number of cases at each stage. This issue is on the agenda, it might have been because of the numbers of claims in New Zealand for the last couple of years but the numbers are increasing this year.

Geraldine Tew noted that Veve Bloomfield from the Legal Services Agency was present and people could discuss this issue with him at morning tea.

**Detention Decision Making
Bernard Maritz**

Asylum seekers may be detained when they are unlawfully in New Zealand and there are no grounds for regularising their status, there are justifiable reasons for their detention, and they cannot be removed from the country.

Guiding principles for Immigration New Zealand are: if the freedom of asylum seekers is to be restricted, it should be to the least degree and for the shortest duration possible. UNHCR guidelines are operationalised. There are discretionary powers as opposed to mandatory detention. It is not automatic that all asylum seekers will be detained on arrival; a small minority of asylum seekers are detained in some way shape or form. Detention in prison is only considered after all other alternatives have been excluded.

The decision to restrict a person's freedom of movement is only made at the end of a rigorous process, which entails analysis of all the available information. The first consideration is if restriction on their freedom of movement is necessary. Everything is taken into consideration to try to ensure that the level of restriction on movement is at the lowest possible level.

With regard to a group arrival, this can be linked to people smuggling/criminality and it may be appropriate to restrict the group's freedom of movement.

Review: the decision to restrict a person's movement is subject to safeguards and is administratively and judicially reviewed regularly to ensure that the decision remains appropriate.

When a decision is made to restrict a person's movement there are a range of possibilities: they may be granted a permit under Section 35 (can lodge application under Section 25); they may be granted a permit under Section 35a; they may be released into the community without a permit; they may be detained initially for the purpose of release (at Takanini); they may be detained initially for the purpose of obtaining a warrant (at MAC); and, they may be detained at a penal institution.

Post border claims: warrant of commitment granted by Judge, internally reviewed by case officers and DOL legal, take raft of factors into account: safety/criminality/length of detention

Current statistics: as at end November 2009, only two asylum seekers were detained in a penal institution, the others were released to MAC or into the community. Of post-border claimants, only one was detained in custody.

Questions & Answers

Q: Toni Wansborough: How are people released into the community supposed to maintain themselves without a permit?

A: It is usually determined that such people have someone they know in the community, they prefer that option and can provide for themselves. We cannot provide them with money, we can only work within the legislative boundaries. Usually they know someone and can make their own way in the community

Q: I come across numbers of people for whom life has become very difficult, previously there was a temporary permit issued pending their decision, is there anything like that in the new legislation?

POINT OF ACTION – Bernard Maritz to look into this matter.

Q: Rowland Woods: What legal representation should people have at the border when they seek asylum?

A: The border is a difficult work environment, it's an operational environment which is Customs and INZ controlled. There are restrictions on movements. At no stage do they make decisions at the border that impact on refugee status determination. The process is of refusing entry and making a quick assessment based on the facts available, all of which is available post-border to their legal representation. There is no question that the border will be opened such that people can come and go while the New Zealand government is going through that process.

Comment: Carole Curtis: I disagree with what you said, what happens at the border has an influence on the asylum seeker's claim. A report is made which goes on their file, it's part of their file when it's heard. The problem counsel has is that people at the border are asking claimants detailed questions about their claim which we don't believe you're able to do. The person interviewing this person is an immigration officer, not a RSO - the problem is later on that this raises credibility issues. I know of someone who came in on a genuine passport but was put in prison and then released to MAC, but each time he went to court INZ incorrectly said he used false documentation. There are checks and controls at border and everything you do in court has a direct application to the person's refugee claim.

A: The initial contact and interview conducted at the border is only to help the officer set the level of detention, to make the decision if refusing entry. All that information goes on file, RSOs take that into consideration, and it's important they have access to all the information while looking at the person's claim. I can't see anyway around that. The first process is the right of the New Zealand government to make a decision on who comes through its borders. For this we need a large amount of information, this information is passed to RSOs and quite often a lot of information gathered at border will be discarded later by RSOs when they receive an explanation. This is not to say that all of the information from the border will impact on the final outcome of the person's claim.

Q: (Carole Curtis) If a claimant says I didn't tell you this because of XYZ, the RSO says the claimant is uncooperative and queries them why they didn't say this and that. There are some particularly sensitive claims where the person is

embarrassed to reveal what their problems were. This issue went away a while ago when we complained about it, but now it's crept back in. I am expressing my concerns, that border interviews are "tell me about your refugee claim", not necessarily just about how they got to New Zealand.

A: I will leave it to the RSB to explain their process to you. We gather information to make a decision about whether the person should be allowed to enter NZ

Q: (Ioana Uca) They ask about the claim at the border and they make an assessment if it's a good faith claim

A: (Dougal Ellis) Sometimes they ask questions about the person's refugee claim, not to decide if that person is a refugee, just to help them make a decision about detention.

IPG. Timeframes in processing Permanent Residence. Craig Little

Role in Refugee Process

- Work permits for asylum seekers
- Residence applications for people granted refugee status
- Residence applications under Refugee family support category

Note: IPG are not the only INZ branch to process applications, we process about 40% of all refugee status applications

Process

An application is lodged at the normal receiving office, then transferred to the IPG in Wellington. A detailed assessment is conducted in a small minority of cases. All cases are required to be assessed for normal INZ risk factors eg bona fides, health, character. Generic policy needs to be met and we have no discretion with this. We follow usual policies not specific to IPG.

Residence for approved refugees

- 63 applications on hand as at 1 Dec 2009 for people approved refugee status in NZ. All apps allocated to case officers
- 17 Decided for 2009/2010 so far. 46 last year. Same officer who processed work permit will process relevant residence application.

This is a new change to the process because of recommendations taken on board from previous meetings. Frustrations were noted when different officers were dealing with different applications. This speeds up process. Process still not as fast as had hoped, but we are hoping to improve on this.

Work Permits for asylum seekers

- 4 applications on hand as at 1 Dec 2009.

The average processing time this financial year is 12 days, down from 20 days for 2008/09. Good progress has been made and we are moving in the right direction. This compares well with other branches in NZ. Feedback about our processes has been taken on board. Refugee cases are given priority in allocation to Immigration Officers

- 50 apps decided this financial year

We have received a number of repeated applications where residence has not been applied for. This is quite frustrating when they could have applied for residence. This is for temporary status applications.

Delays

Yes, they do occur. If the identity of an applicant is not established including their arrival into NZ, then it causes problems with residence applications. How a person arrived in NZ should be conclusive given our distinct borders. Policy is very clear that ID needs to be established. Sometimes this cannot be established, eg. no docs or evidence of arrival. But we still need to operate within realms of policy

Health and character.

There have also been frustrations with this —with the availability of panel doctors etc. We have been working in last 2 months to get more panel docs on board. A list of countries has been provided to Service Design as to where we would like to see more panel doctors. IPG is open to suggestions for where panel doctors could be needed. Sometimes there is a need to send doctors or health assessments to medical assessors. The system of giving priority to refugee claims is being addressed so that this happens more efficiently. There have been 3 new medical assessors appointed in Auckland and in Wellington so this will speed process up.

Incomplete applications

Need to get extra documents which all takes extra time. We are working on this with representatives and claimants. Ensure that applicants take the time filling out forms correctly. They should get advice if needed. If an applicant is not sure, they should contact the IPG. Be proactive and get info up front.

Family links need to be established under RFSC (need to DNA test). Some applications can have from 5-20 family members in some cases. So determining family links can be difficult. DNA is necessary and must be performed if there is no documentation available. This can cause significant delays but it is an important part of the process.

Non declaration of family members

When applicants want to sponsor family but this not declared on their Residence application, it causes difficulties. We make sure that we cross reference all applications to clarify the correct number of family members.

Applications need to inform INZ of any change in circumstances and especially address. Sometimes we cannot locate the sponsor or the applicant and we need this for application to progress. This causes unnecessary delays.

Communication

IPG are trying to be more publicly available for those with questions.

You should expect us to:

- Acknowledge receipt of application. If this not happening then we are failing
- Once IPG allocate the application to an Immigration Officer an acknowledgement letter is sent to the contact person.

Timeframes are now implemented so that clear and timely responses are kept to and upheld. We are working towards providing a better service to applicants. This will take time to improve. Please let us know how we are doing.

We have taken steps to improve clear and timely responses. Attempt to use plain English. Reinforcing that writing to people where English is second language. Hopefully this will improve written communication. ctively progress all applications towards a decision;

If we don't: please let us know your concerns! This is what we expect as managers and we acknowledge that we are not always 100% and we want to hear when this is the case. If the application is not progressing, talk first to the Immigration Officer, then escalate the issue. We would sooner discuss it than let it fester and grow.

Craig.little@dol.govt.nz

Lisa.gould@dol.govt.nz

Summary

Refugee related applications continue to be a priority. This is people's lives. We need to move older applications on hand – and get decisions out. This is our focus over next couple of months. We will continue to engage with applicants

Questions and Answers

Q. When delays happen, do you have a timeline: one year, two years?

A. Yes, generally, Refugee applications—6-12 months timeline. Some over, some under. But this guideline.

Q. Santino Deng (RAS) Health Checks. If an application is found to have an unacceptable disease, are they rejected? This is for family reunification. Medical checkups which quota do not go through. Are they still accepted?

A. We can process for medical waiver but need the testing completed. With health testing, it is for family as much as anything, so they can get treatment. Just because they may have something wrong does not mean they will be automatically ruled out, but it is up to medical assessor as to whether they meet the standard, but we make final decision. Most cases granted.

Q. Offshore family of convention refugees?

A. Same process

Q. What if you couldn't find the people you are looking for because the couple were not granted residence and one got a visitor permit and other partner can't sustain them, and therefore have to go wherever they can find somewhere to live. They can't assume normalcy in NZ. And yet INZ asks for them to prove they can live together for a year. So the requirement can be a self fulfilling failure.

A. There are 2 parts to this answer. If we are unable to contact because some are on temporary permits, and separated etc. Im thinking of people who have left NZ. AMS shows us if people in NZ, but if leave NZ, then this is where the problem could be.

The second issue is Partners and dependents. Residence policy requires evidence of genuine stable relationship including proof of living together for 12 months. This is part of policy. We have no discretion over this. If this cannot be proven (ie arranged marriages) then we will grant a temporary permit.

Q. But this is not going to work because only one of the asylum seekers will have been here seeking asylum?

A. Well that's not the case we do have people who can show this. It is government policy.

Settlement Support Co Ordinator—Manakau City

Vimbai Mugadza

I will talk about Settlement Support NZ (SSNZ) and the initiative and what services we offer specifically to asylum seekers.

Who is a newcomer to NZ?

Sometimes we forget we are talking about people! Not just a word or policy.

Migrants who voluntarily decide to come and live in NZ and their families (up to 2 years). These people bring skills NZ is looking for.

Refugees Who are forced to leave their home country and come to NZ to seek refuge. Both Convention and quota refugees and their families (up to 3 years)

Why settlement support is needed?

Provide a central point where newcomers, those waiting for processing of applications and those granted refugee status and service providers can access all settlement related info.

Forum for identification settlement needs and gaps and ways to address those gaps.

I came as skilled migrant from Zimbabwe. Coming to new country, there are many things to learn, and basic information is not available and so when things change, such as policies within govt, we (SSNZ) can anticipate the needs that people coming to country will need. These are things we know, when policy changes or shifts, the needs will not be met in particular way and we identify these needs and bring to DOL.

So we identify local needs.

How does SSNZ operate?

Face to face contact. Walk into office. Speak to person. Sit and talk through settlement issues for someone new to country. Where they come from, and advise on individual situation. If looking for jobs, give advice. Orientation workshops. How to live in NZ

Telephone contact. We respond quickly.

E mail ssnzmanukau@arms-mrc.org.nz

www.arms

Support

From 2005 to 2009 - the need and desperation has changed. We receive referrals mostly from friends and family or from the workplace.

The education range of Asylum Seekers is from secondary to Masters degree. So stigma not true that they have nothing to offer

Reason to visit—English assessment, finding employment, housing and business set up. Some people come from street, living in car, presenting other social problems and because we are not trained social workers, we refer on to institutions we know who provide a holistic service. Often we have to find friends within institutions so that the claimant is able to access without the usual fears of an institution. We also have asylum seekers who have arrived in country and read the booklets and have connections in community and we treat them like all others.

Co-ordinators' Role

- **Connecting**

Newcomers to providers of services. Aim of initiative is to provide local knowledge. We refer to individuals, not organisations.

- **Identity**

Settlement needs, local services to meet needs. Local map of services.

- **Facilitating**

- **Reporting**

On issues to DOL. Those that cannot be addressed by us or service providers. Always looking at what are the issues.

- **Joint planning to meet local settlement needs**

Locations

19 locations. These initiatives housed under lead agencies. Within Auckland region, five initiatives. We also have national contacts:

0800 SSNZ4U (0800 776 948)

www.ssnz.govt.nz

Some of our offices say we do not have funding to do this. The processes are arduous, often. It is often an interrogation. It is in the interests of the country. But it can produce trauma. And they have just come from a situation of trauma. So often, even if have booklet, they may not read it. And then go to an office and the person says, 'We don't do this'. So we try to say locally that providers should indicate what options are available. So we don't say, 'We don't know'. We always find someone who can help.

CAB Language Link

Sherryl McKelvie & Durga Ray

We are a charitable organisation funded through the Department of Labour. We have responsibility for overall role of CAB language link. We are 6 years young. We give service where language is a barrier. There are 91 CAB branches. Ours is specialised. All staff have police clearance. We are the only service not run by volunteers.

- All staff CAB trained and qualified. Interpreting service. Confidential. Free.
- Can directly assist asylum seekers and assist community organisations to support their clients.
- Face to face. Also, e-mail service.
- Also have National interpreting service.
- Communications/Telephones

The telephones are answered in an ethnic language and then followed by English language. All messages are recorded and the call is returned.

We are able to have several parties on line. We try to resolve issues collectively.

Durga Ray

Case study. A family from Baghdad claimed asylum in NZ. Placed in MAC. Eventually rented a house. Their status declined by RSB and RSAA. Sought CABL assistance. Interpretation, translation, advocacy. Took a Judicial Review case to the high court and the judge found that they were genuine refugees. During this time they had tenancy issues etc. Language link assisted with, for example, ESOL classes. Now settled in NZ. Involved in Iraqi community.

Statistics

2008-09:

29,741 enquiries from 20,908 people

New ethnic e-mail addresses and responses.

Q. Hannah Brodsky-Pevzner

How many interpreters are members of NZ Society of Interpreters and Translators?

A. Only about 10 have this qualification. They are with the CAB standards. We don't see whether they are qualified in this way. Not sure I understand this

Housing NZ (HNZ) Linda Kelm-Handley

Government policy requires HNZC to allocate state housing to those in greatest need. We allocate scarce resources through the social allocation process, and interview people to determine eligibility.

Govt policy for housing eligibility

- all persons must be lawfully and ordinarily resident in NZ
- income threshold
- assets testing
- housing need

Spontaneous refugee/asylum seeker policy

Under Part B of HNZ procedures.

The instructions state that both during the process of applying for recognition as a refugee, and after status has been recognised, asylum seekers/spontaneous refugees, are eligible to apply for housing assistance, if they are also eligible to receive a W & I benefit.

When INZ confirm a refugee application is pending and eligibility confirmed for W&I:

The person is eligible when in process of applying for refugee status, but ineligible when declined.

Eligible when appeal pending, ineligible when appeal declined.

Eligible if approved.

The complication arises because people are constantly 'falling in' and 'out' of eligibility.

Requirement to qualify for income assistance

Asylum Seekers, who can provide evidence of a pending application for asylum in New Zealand and who qualify for income assistance or hold a Work Permit, are eligible to apply for housing assistance.

Question & Answers

Q. Geraldine Tew: I have heard from some people that they are given inconsistent advice when dealing with HNZ staff.

A. Linda: All we can say is we are working on trying to get staff upskilled in this area. For anyone working with people – for any service HNZ has, there is a review process

Phyllis Nicol (from HNZ): Quite difficult to administer because of the nature of the policy – fall 'in' and 'out' all the time. A lot of checking needed – when apply and when allocated a house.

Linda: This doesn't change the fact that people should be getting a consistent service. People should take it up/review if not consistent

Q: Tertiary students who apply for housing, declined because not enough income for housing. Is there a policy for students who can't afford housing?

A. No special processes or policies for any individual groups of people. There is just a social allocation process that assesses family's need and eligibility. HNZ can

only decline application if ineligible. But at other times, if people have a very low priority for housing, they are told. With available resources, can only house people with very high need.

Q. Neville Kay: What happens in the case of an asylum seeker who is declined, but is allowed to remain in NZ with work permit and eligible for benefits – would such a person be eligible for housing?

A. If they are Work and Income approved, then they should be eligible to apply for housing.

Q. Neville Kay: If we do have complaints about staff – who do we go to?

A. If want to review a decision made – review process, just contact office and information will be sent. First reviewed locally then go up. If unhappy with staff, report to me 1st as direct manager then it goes up. HNZ are quite strong about customer service. People have the right to expect good customer service.

Q. Sometimes people are given a negative reply after abiding by application process, but they have not explicitly been told that they are on the waiting list.

A. After a family is assessed and put on waiting list – they have the right to know what level of priority they have. Once on waiting list, they should receive a letter confirming this is the case. They should be periodically sent a letter to update the circumstances.

Q. Elizabeth: Similar to Geraldine's question. About training of front line staff – asylum seekers only eligible if getting emergency benefit. One of the front line staff was obviously confused—it is easy to be confused between asylum seekers and refugees.

A. I am fortunate in that I have people in Hamilton who have been there for 20 yrs, but people still get confused. It can be quite complex.

Phyllis: We have just had training for all staff about this issue, so hopefully there will be no more problems.

Q: With the 750 mandate refugees – is there a special allocation of HNZ houses for these people?

A: No

Q: Why not? Is this something that would be looked at in the future? A housing quota that should be set annually for them?

A. People need to be assessed against exact same as domestic market, the allocated according to priorities. Quota refugees assessed as highest priority, go straight to top of waiting list. Go to same houses as every one else.

Dr Tony: Made a comment that most encountered a most helpful person on the phone.

Q. One member in house (out of 3) leaving. HNZ said if 1 person leaving, all must go. Staff said new policy by new government.

A: I think you've told me that before. But not a policy that I have heard of.

Linda: Unless that person is the main tenant. If joint tenancy, then Residential Tenancies Act applies.

Q. I too think that there is often inconsistent information – like to give information what they believe, whatever impression they have. Might happen to others before.

A: Especially with quota refugees, normal tenants = mum and dad, sometimes young adults too. If named tenant, operate under RT Act, have to follow law. Tenant has right to remain in home until chooses to leave or taken to Tenancies Tribunal to terminate. If not main tenant, and main tenant gives up, then have to go because no succession rights. Many people on list.

Work & Income

Dianna Biddick & Rex Manson

Will start with general info then go specifically to refugees.

MSD

Provides strategic social policy advice to the New Zealand Government and provides social services to more than one million New Zealanders.

Work and Income is a service line of the Ministry of Social Development, providing income support, employment services and New Zealand Superannuation to New Zealanders.

Work and Income can help with:

- Job seeking
- Income Support
 - looking for work
 - unable to work due to sickness or disability
 - on a low income and needing extra help
 - caring for sick and infirm
 - a sole parent caring for dependant children.

Income support

To apply for financial assistance from Work and Income, applicants will need to:

- be a New Zealand citizen or permanent resident *and*
- be ordinarily resident in New Zealand at the time they first apply for benefit and generally be ordinarily resident in New Zealand.

Depending on assistance applied for, applicants may also be required to:

- have lived in New Zealand for a certain period of time
- meet an income test (and an asset test for hardship benefits)
- meet other criteria specific to the benefit applied for.

To apply for financial assistance from W&I, applicant will need to:

- be a New Zealand citizen or permanent resident *and*
- be ordinarily resident in New Zealand at the time they first apply for benefit and generally be ordinarily resident in New Zealand.

Depending on assistance applied for, applicants may also be required to:

- Lived in NZ – for most main beneficiaries 2 yrs, super 10 yrs
- meet an income test (and an asset test for hardship benefits)
- meet other criteria specific to the benefit applied for.

List of main benefits and pension categories:

- Domestic Purposes Benefit – Sole Parent
- Domestic Purposes Benefit – Care of Sick and Infirm
- Domestic Purposes Benefit – Women Alone
- Unemployment Benefit
- Sickness Benefit
- Invalids Benefit
- Emergency Maintenance Allowance
- Independent Youth Benefit
- Emergency Benefit
- New Zealand Superannuation
- Orphans Benefit and Unsupported Child's Benefit
- Widows Benefit

- War and Veterans Pensions.

Refugees

For refugees, it's a bit different. It's the govt that dictates policies and W&I just administers the policies.

All of these make them legal in the country, so can play them benefit.

A client granted refugee status is lawful in New Zealand.

Immigration New Zealand can grant refugee status in two ways:

- through the refugee quota **or**
- as a refugee claimant (Also known as spontaneous refugees or asylum seekers).

Where a person has made an application for refugee status and is waiting for a decision (including a decision from the Refugee Status Appeal Authority) and they are lawful in New Zealand they can apply for Emergency Benefit and Temporary Additional Support.

A claim for refugee status can be made at any time and includes an appeal to the Refugee Status Appeal Authority.

Process for refugee claimant clients

The following are the steps for clients claiming refugee status:

Step one: Client arrives in New Zealand claiming refugee status and Immigration New Zealand decides what (if any) permit is provided to the client

An application for refugee status is only allowed if the client appears to be a genuine refugee

Step two: Client is not a security risk and released into the community with a valid temporary permit. The client may apply for financial assistance

If the client does not have a permit, we, (W&I), will refer the client back to Immigration New Zealand. Because we can't see anyone or provide assistance without a valid permit.

(**Remember** - for a work ready client the permit should be a work permit)

Often have emergency benefit for spontaneous refugees – they have work permits. We will assist them to find a job.

Note a client cannot be considered for Emergency Benefit or Temporary Additional Support if they are not lawful in New Zealand

Step three: Client is granted Emergency Benefit

Note when granting Emergency Benefit – an expiry will be entered into our computer. It will be:

-the expiry date of the client's temporary permit or

-3 months from the date of grant **whichever is the earlier**

Reason – when apply for refugee status, not sure how long it will take. When application has been handed into INZ, only then can an emergency benefit be supplied.

Step four: A decision is made on the client's claim (including an appeal to the Refugee Status Appeal Authority) for refugee status

-claim granted. The client may still be eligible for Emergency Benefit and must be ordinarily resident in New Zealand. Part of this is applying for permanent residence. The reason a client does not make an application for permanent residence must be considered when assessing continuing eligibility

Assume that a refugee will want to be here – part of that is applying for residency.

-claim declined. From the date the application is declined, the client is not eligible for Emergency Benefit. Immigration New Zealand issues a removal order

Clients can then make an appeal. From the time the appeal is to be reheard and show proof, can get emergency benefit.

Step five: Client appeals to the Minister of Immigration or the Removal Appeal Authority to remain in New Zealand. This is not an application for refugee status and Emergency Benefit for this reason cannot be considered:

- Appeal to the Minister of Immigration

The Minister of Immigration cannot grant a client refugee status. They can only grant permanent residence or a temporary permit to be lawful in New Zealand

Appeal to the Removal Appeal Authority

The Removal Appeal Authority cannot grant a client refugee status. They can only grant permanent residence or a temporary permit to be lawful in New Zealand

This may be treated as an application for permanent residence and the client may be considered for Emergency Benefit if they are compelled to remain in New Zealand for some unforeseen circumstance. – Will have to conduct an interview.

Comment: Ioana Uca: Declined asylum seekers have to be in NZ to have an appeal, so compelled to remain in NZ. There is no logic in that.

Answer: It's about the refugee status not the need to stay in NZ. Unless they are compelled to remain in NZ because of the removal appeal. If appeal to RRA, cannot pay benefit unless part of appeal to RRA is for a humanitarian reason.

If the client is granted permanent residence, they are assessed the same as any other person granted permanent residence

Question & Answers

Q. Elizabeth: Problems when people's work permit still being processed and W&I stop the emergency benefit. Is there a memorandum of understanding (MOU) between INZ and W&I? Why can't there be a phone call to inform?

A; There is an MOU. If hasn't happened, it's because the people involved aren't aware of that.

Q. Elizabeth: Settlement grant – why can't it be given to people who get refugee status beyond 1 year of arrival?

A: Govt policy. It is the same settlement grant as people who get it in domestic violence circumstances.

Diana: The policy is not specific to refugees. It is a general policy.

Q. Elizabeth: Is there room for policy change?

A: This keeps being raised, but would require a policy change.

Q John Petris: Know of two applicants who have not been able to get benefit. Two things of concern:

- **level of ignorance of policy and**
- **can take it to senior level? How/who to contact for review of officers? Told by officer that can't get benefit as spontaneous refugees/need 2 yrs etc**

A; The human factor is involved, some people get it wrong. MSD has a high turnover of staff. Situations like that occur in any service centre. If you have a problem with the advice please talk to service centre manager or assistant manager.

Rex: Can put in review of process straightaway. The main aim is to give full and correct entitlement. Talk to service centre manager or service centre assistant manager.

Q: How do you make the complaint?

A: Thought the Service Centre Manager (each branch has one) or Service Centre Assistant Manager. If not, then go to Regional Manager.

Rex: The call centre has a complaints alert. Can be escalated if the complaint persists.

Q: Between RSAA decline and when RRA appeal lodged, and waiting for decision. There is a long time in between with no income support. Where is the humanity of the NZ govt. I was told to go to City Mission for food. It is a very needy time.

Ger: We will be talking about failed asylum seekers after afternoon tea. Bring up this question later.

Q: Ioana: Some asylum seekers are told that don't qualify for a benefit – this happens many times. They meet with a case manager, and are still told don't qualify. No letter is given. They have to go and see another case manager, then told can only be seen after 2-3 weeks. Later, benefit only paid from then, not paid retrospectively because no letter.

Rex: How do they apply? At the call centre?

Ioana: When they come to make an appointment at reception, it was recorded. 1st point of contact.

A: A letter should be given at that time. The Call Centre should log the meeting and it is evidence that an appt has been made if a back payment needs to happen.

Ioana: There was no letter given

Rex: I'll give my card and you can call me.

Question: Some families have problems with getting uniforms. They applied for income last year, four kids got uniform and given advance payment. This year, applied for another benefit for uniform. Haven't completed repaying advanced payment, so deductions will increase. When I ring call centre – I was told that I not authorised to talk on behalf of this family. If not authorised, why would they tell me all details? Waste of time, keep calling back.

A. Governed exceedingly tightly by Privacy Act. If any client does not give permission to speak to anyone else, cannot talk no matter how dire the problem is. Need to be given permission – put client on phone, nominate as agent etc.

Q: Official Information Act information wanted. I told the family to give me approval. Family did that, gave me number. But when I rang, told that no number given.

A: Trouble with phone calls is, we don't know who is on the end of the phone. If going to do it by phone, have family sitting there with you so can confirm at specific points that it's them. All about protecting clients privacy.

Community Law Louise Darroch

27 community law centres around NZ.

The difficulty is that asylum issues very specialised source of expertise, knowledge is not necessarily available. There are only a few people who work in this area. But to qualify for legal aid, a minimum of 1 year's experience and certain no. of cases completed is needed.

How to get experience? Have to be a lay provider or secondary provider. Secondary provider need to work with lay provider, but no funding available.

Lay provider very reluctant to do that because area is very specialised. It is people's one shot of getting refugee status. Legal aid is very limited. Amount paid doesn't represent all the time and effort and the human issue.

Community Law Centres provide information on a whole wide range of issues – basic information, employment issues, initial advice. Across 27 centres, depends very much on range of skills at particular law centre. Depends on who can recruit, who is working there at that time – not paid much. My law centre has developed into dual law practice – conveyancing and related matters that other community law centres don't do. We can take representation up to High Court on certain matters.

Immigration Advice

It depends on which community law centre you approach. There are geographic limitations to be eligible for the service. But if not eligible, we will suggest other law centre, will be given list of community law centres. Mangere has a specialist immigration advisor, not solicitor but a legal executive.

Community law centres have a lot of experience in negotiating red tape – filling up forms, applying to tribunals, going to appointments. Our centre has expertise in challenging WINZ and HNZ decisions. Good to have someone with a lot of skill, knowledge to help and advocate for them.

Most community law centres have legal education programmes at most. They are useful to new migrants, refugees, people and organisations helping them. Every Wednesday morning in Mangere, there is a three hour seminar on a range of legal topics.

Funding – historically from interest on solicitor's trust accounts. With declining housing market lead to dropping interest rates, funding dropped by 68%. Simon Power came with new model – we are hoping it will be a more sustainable funding model.

Auckland Disability Law is based at Mangere office. Specialise in disability law and advocate for people with disabilities.
There is also a specialist in youth law.

Questions:

Q: Asylum seeker at airport who wants legal aid, how can he/she get it?

A: Not too sure of process and how to be referred to right person.

Q: How do you change the person who is acting for you?

A: Sign a piece of paper nominating someone else. It is quite straightforward. If legal aid involved, a bit more to change legal aid provider.

Q: Do community law centres have access to interpreters?

Louise: We use language line.

Q. Neville: I have often advocated that NZ follows Aus with special community law centres to deal with certain common problems. Immigration is one. The more we hear of LSA (Legal Services Agency) problems, the more current situation not satisfactory. Is there any chance of community law centres working with NZ refugee/immigration organisations to try and get something like this off the ground?

A: It was mooted a few years ago. Pilot study done a few years ago. But struggling to keep 27 centres afloat, so unlikely. It is about prioritising what service needed. More about upskilling current ones.

Q: Where are the 27 law centres?

A: Throughout NZ.

Q: Is there one in Waikato?

A: Yes. There is a website.

Q: Appointment times – is there any specific time?

A: We have a walk-in everyday. Depending on priority or situation, there might be follow up appointment.

Comment: Wellington community law centre – has for many years been running specialist refugee law services. Confined to Wellington area

Q: I had a bad experience of employment problem. Contacted Mangere centre, but referred to Manukau. Took 4 days. Then referred to Grey Lynn (because don't live in area) – 1 week to get appointment. Made 9 phone calls, but not replied. Waited 2 weeks, and time running out with appeal coming. Then had to pay private lawyer to do it in a day and spent \$700.

A: We are geographically prescribed as to who we can assist. Also the issue of workload – a limit how much one person can do, given the complexity. It is a juggling act with resources available.

Comment

Carole Curtis: My practice is 99% legal aid. Often either the cases don't meet criteria for legal aid or meet it and are declined. Gratitude to members of community who give time for interpreting – need to explain case to get information for legal aid application. Also thank Elizabeth (who takes people who can't get into a hostel) and Dr Tony (who sees people who may be very damaged, specialised skills to find out why person is so unwell).

It is the nature of this work that the use/awareness of the community is very important. It is a rewarding experience but an interesting challenge, working in this area.

Immigration Advisors Authority

Zeenat Afiz

Purpose of IALA

"... to promote and protect the interests of consumers receiving immigration advice and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice."

Key dates slide

- As of 4 May 2009, immigration advisers within New Zealand must be licensed by the Authority to provide New Zealand immigration advice, unless exempt;
Exemptions covered by s 11 of IALA
- From 4 May 2010, the licensing regime will apply to offshore immigration advisers, unless exempt
Which means that Immigration New Zealand will refuse to accept applications from unlicensed onshore immigration advisers, from that date, unless exempt

Immigration Advisors Authority

The Act established the Immigration Advisors Authority (the Authority) - a statutory body which sits within the Department of Labour

- Maintains a register of licensed immigration advisers
- Administers the licensing regime for immigration advisers
- Develops and maintains Competency Standards and Code of Conduct for immigration advisers
- Facilitates the education and professional development of immigration advisers
- Facilitates public awareness of matters relating to the provision of immigration advice
- Investigates and takes enforcement action in relation to offences under the Act
- Provides procedures for the lodging of complaints, including requiring immigration advisers to set up their own complaints processes

- Carries out such other functions as may be conferred on the Authority by this Act or any other enactment

The Act establishes the IAA (the Authority).

The licensing regime – exceptions:

Persons exempt from licensing:

- Persons who advise in an informal or family context only (not systematically or for a fee)
- MPs and their staff (within the scope of their employment)
- Public service employees (within the scope of their employment)
- Citizens Advice Bureaux staff and volunteers
- Community law centre employees or volunteers where a lawyer is a supervisor or on the employing body
- Practising lawyers

- a full list of exemptions is available on the Authority's website www.iaa.govt.nz

What is "immigration advice"?

"... using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward"

Guideline defined as:

Giving 'immigration advice' is likely to occur when:

- Assistance or direction or representation is tailored to the particular circumstances of an individual;
- Guidance is provided to an individual based on the adviser's knowledge or experience in immigration - involves offering an opinion or suggestions about possible entitlements, or avenues an individual might take;
- Representation involves acting for a person and advocating for them if necessary

What is not considered to be immigration advice:

- Providing information that is publicly available (e.g. from INZ website www.immigration.govt.nz)
- Directing a person to the Department of Labour or to the online register of licensed immigration advisers (www.iaa.govt.nz)
- Carrying out clerical work, translation/interpreting services, or settlement services

The Act defines clerical work:

- a) the recording, organising, storing, or retrieving of information:
- b) computing or data entry:
- c) recording information on any form, application, request, or claim on behalf and under the direction of another person

Settlement services has also been defined in the Act. This could include target services for refugees and their family.

"all or any of a range of targeted support services provided for migrants, refugees, and their families, including services for the purposes of enabling migrants, refugees, and their families to settle into the community, learn the language, and find out how to access essential community services."

NGOs have to be licensed to provide immigration advice. If not, can direct them to:

- those exempt (e.g. someone at a CLC, CAB; an MP's office; to a lawyer; or to INZ); or
- a licensed immigration adviser, or to the register of licensed immigration advisers on the Authority's website: www.iaa.govt.nz
- Provide publicly available information from INZ website (e.g. fact sheets for migrants)

You can continue the following work

- clerical work
- translation and interpretation services
- settlement services

If those working with migrants and refugees in the not-for-profit sector would prefer to take the licensing route, the Authority will assist them with information, enabling them to understand the evidence requirements for licensing, and to make a licence application. If an individual/organisation is granted not-for-profit status by the Registrar, then no licence application fee or levy is payable

Education and professional development:

Once licensed, immigration advisors are required to participate in continuing professional development. An example is continuing study. Can always talk to Authority directly and asked if related to competency required to meet.

Trademark of licensed advisor is not for companies or business. Only individuals can be licensed.

The Authority hopes that it will develop a recognition brand and community of practice.

Question & Answers

Q: How many people have been prosecuted under Act since it was introduced? How many people have been prosecuted for using non-licensed advisor?

A: Can't comment on prosecution on the way at the moment (maintenance of the law). But at the moment, there have been none, but there may be in the future.

Q: Is it going to be a secret?

A: Rely on the Privacy Act – cannot divulge that information. It is for the registrar to comment.

Q: What level of cooperation with branches of immigration? I was told that giving evidence about an immigration matter could lead to being prosecuted.

A: Giving evidence is not giving immigration advice.

Q: I was warned 3 times that could lead to prosecution.

A: Could be possible depending on information given, but from what you've told me, not done anything wrong.

Dougal: There is a process where immigration officers refer breaches to CEO, who refers to Authority – the point of contact is in Wellington. If anyone thinks the IAA needs to know something about someone's behaviour, you can provide to same point of contact in Wellington.

Q: Is there a blacklist of applicants seeking advice from non-licensed advisor?

A: No implication on applicant for consulting someone not licensed. We are interested in person who is giving advice, not person seeking advice in good faith.

Q: Some asylum seekers are traumatised people, they are afraid of telling people what happens. The only people they trust are community

leaders. This is making things more difficult/causing trauma for asylum seekers - don't understand why there is a law like this.

A: Unfortunately, this is one of the processes that was brought in because of all the complaints against immigration advisors, paid money etc. But then, there was no regime to manage it. If someone applies for asylum in NZ, they have to come to terms with fact that have to talk to someone at a government level about their claim. One of those things that they just have to come to terms with.

Dougal: If a community leader gives advice, will he be liable for prosecution?

A: Not if the advice is not given systematically. If it is a one-off, no.

Q. Geraldine: How can NGOs apply to become licensed?

A: It is in the brochure.

Q: How are licensed advisors monitored?

A: One of the requirements of Code of Conduct states that the fee has to be reasonable. IAA currently undertaking research into what reasonable fee is.

Q: Because some advisors charging \$2000 to fill residence forms.

A: At the moment, we can't monitor that as such. But you have access to register of licensed advisors – shop around.

Q: Problem with interpreters - Need to remember that language line doesn't have all the languages. Some services don't provide interpreters, don't pay for them. Sometimes language line not enough, but face-to-face can help.

A: There are no issues with people providing translation/interpretation services. Don't have to be licensed to do that. Not everybody will have somebody from their community to interpret. Some services don't have interpreters. Need to get interpreters, not just rely on language line.

Q. Roger Bono: Do you believe that this initiative would be more supportive of refugees/migrants? If so, how? Do you believe this initiative should be helpful to the community?

A: Yes. Because licensed advisors are answerable to Registrar and Tribunal. If complaint is made and investigated, the license can be cancelled.

Q. Roger: Will you start up a programme/office to receive complaints?

A: We have an investigations team to deal with complaints.

Q: Wellington has immigration advisors but none interested in refugee work. Only 2-3 lawyers who do it. Is there anything to educate more people to deal with it?

A: We can't dictate to people which fields they should work in. We are here to administer the licensing regime.

Q: But you are stopping people who want to do it for free.

A: If people who are licensed are not comfortable with refugee cases, RRA cases, we can't ask them to deal with those fields. They are specialist issues. People need to have the expertise to deal with those issues.

Settlement Workshop & Failed Asylum Seekers Update Geraldine Tew

In May 2009 RSB and Department of Labour branches met with NGOs to discuss failed asylum seekers, especially the hardships faced by these people i.e. no work permits, no benefits etc. We looked at three groups: those whom UNHCR say it is unsafe to return home, those undergoing judicial review and those at the Removal Review Authority.

The new Immigration Act resolves a lot of the issues raised. For those the UNHCR say it is unsafe to go home, currently under Section 35a, and under Section 61 of the new Act, these people can apply in writing to the Minister within 30 days of a decision being issued against them, to regularize their status. Approvals are granted on a case-by-case basis.

In addition, under Section 150 of the new Act, persons can be granted a generic visa that will last for the duration of their claim. The IPT will look at all of New Zealand's international obligations and any humanitarian issues involved. If the person is entitled to a permit they will be granted one and everything that entitles them to. If the person's IPT appeal is rejected they are subject to removal from New Zealand.

For those undergoing judicial review, under the new Act, it is more than likely that the person will be entitled to a permit, if they were entitled to a permit while their claim and IPT appeal were heard.

Q: Brian: Is legal aid available for judicial review?

A: Yes it can be. It would be assessed by the LSA

Q: Elizabeth Walker: Is the 30 day application to regularize their status new?

A: No, this has existed for quite a while. Approvals are decided by the Minister on a case-by-case basis

Q: What if they are rejected?

A: (Bernard) There are quite a few applications under Section 35a and quite a few of these people are on temporary permits. They must lodge the application themselves, some get permits, some don't. There is not a specific class of person who is issued a permit, INZ will always look at each case on its individual merits, some will get it, in other cases they will not be granted a permit due to policy. Standard policy regarding identity and character may still apply.

Q: Abdirazak: for those who have failed their final appeal and are pending removal, but are not certain when it will happen, under these circumstances when they have kids going to school, the school won't let them continue to attend because they are unlawful in the country. We must provide education to under-16., Within letter given to families can we put a line is saying kids can attend school?

A: They can attend school

Q: But schools don't let them

A: John Petris – they can attend school, with a limited purpose permit, children can apply at INZ, right guaranteed under Convention on Rights of Child

Q: Schools are not allowing it

ACTION POINT: Email Geraldine the names of schools not letting such children attend because it is policy for children up to 16 years of age to be entitled to attend school.

Comment:

Tony Wansborough: Children have a right to shelter, food etc... these come before education but children are being denied income, I find that curious.

Comment

Brian: They also have a right to their parents

Q: When failed asylum seekers apply to the RRA will they be given a visa?

A: The new process is all encompassing, if they are declined at the end of that they are subject to removal because they are considered to be unlawful. The new process is one process, there is no separate removal appeal body.

Q: What happens to failed asylum seekers that UNHCR recommends can't return home?

A: There is no gap, such people can apply to regularize their status under Section 35a presently, that will continue under Section 61 of the new Act.

Q: How can you return them?

A: If a person didn't meet the definition of a refugee for whatever reason but they come from a country which is at present on the UNHCR non-returns advisory list,

in a few years time they might be able to return to that country if it comes off that list.

Ellen Hansen

UNHCR has non-return advisories to obvious countries, i.e. Iraq, Somalia and Afghanistan. If their refugee claim fails we are nervous about people being returned to these countries because UNHCR takes generalised violence into account, while Convention signatories do not. UNHCR might be nervous about the fragile security environment at present, but that person might be able to be removed the following year.

UNHCR thinks New Zealand has a comprehensive system of assessing refugee status. If you are going to make distinctions, these must be made with integrity, so if people fail they should be removed in an expedited manner if their appeal fails. UNHCR's business is to protect those in need of international protection, not everyone. Recognise this is not a popular point but it is reality.

Q: If the person fails and is awaiting removal, how long can that person wait to be removed?

A: (Ellen Hansen) How long is a piece of string? If the delay goes on indefinitely it is better to regularise their status but we don't have a precise definition of when that time will occur. If there is no chance of return we ask countries to regularise their status sooner rather than later.

Settlement Workshop, August 2009

In the short-term RQB social worker Marta is contacting all approved refugees to go through information with them so they have personalised attention. Looking at quotes for funding some initiatives. There are no set policies at present. Marta is the first point of contact for them.

In the long-term we are looking at all different ideas, talking with internal and external groups for quotes, establish funding needs to make a case for things. Two issues are funding for all government departments at present, and the implementation of new Act which is the department's priority.

Open Questions

Q; Is it possible to have an immigration lawyer present at IVs when people arrive at the border?

To answer that question needs INZ, Border, Compliance, LSA, lawyers – to be addressed later

Q; Rowland Woods: this is a complicated issue because the person is outside the country, must take into account security, funding, roster, training – huge issue

Ioana Uca: When they call for an interpreter at the airport they should call for a lawyer at the same time.

Comment

Want to acknowledge IPG staff for becoming more approachable, are there any plans to increase staff etc?

IPG: Funding is the issue, looking to hire 3 new staff, more about working smarter than more workers

Q: Why do WINZ not provide interpreters for their clients?

They do if the client tells them. The client must tell them they need an interpreter. Use language line more than interpreters. In theory should be able

to access language line during an interview, but may be reluctant to do that because they only have a 30 minute appointment.

Q: Detention: difficulty for those in detention accessing information – could those detained in penal institutions be made available to certain NGOs to help them access support?

Compliance detains them, UNHCR and RSB is informed of their detention. This matter can be discussed with LSA and Compliance; however, it raises privacy issues, which will need to be discussed with DOL Legal. Usually these people have legal representation who can pass on information. We have to be careful in regard to our legal obligations in terms of their privacy.

Q: Carole Curtis: People should be told when they go to prison, perhaps they could be asked if they want their name to go on a list?

Tracey Hutching: We give detainees a lot of information about refugee status determination process, we could also provide them with other information brochures

Ellen Hansen: In Australia we have posters for people in detention, the Australian government is working on a simplified brochure stating what their rights are, what process and review bodies they have access to

Dougal: Detainees are given the option of applying for legal aid

POINT OF ACTION (for someone to pursue): WINZ: could there be a specialist person in WINZ to whom refugee claimants be referred to – could this position be reinstated (previously with MSD)

Funding for this position ended 2006

Q. For that new Act, who's going to appoint members to the IPT? If it is the government, how are we going to see the transparency and independence of the board? Are there any plans to bring RSAA members to IPT. If not, is there a reason for that?

Recruitment process is unknown at this stage, there will be open advertising for members of the IPT. The first thing is to appoint the chair which will be a district court judge, logic tells us they will appoint the chair first, and then he will be responsible for subsequent appointments, but this will also through Cabinet and the Ministry of Justice. There is no provision for RSAA members to be transferred across, but previously it has been noted that it is important to retain a core of RSAA members to the IPT. There is a transparent process for advertising jobs through the Ministry of Justice. Everyone is committed to a transparent process based on the criteria for appointment

If someone has arrived in NZ and there are reasonable grounds for thinking they have committed a war crime they are excluded under the Convention and could be returned to their home country. However, under CAT and ICCPR the prohibition on return is absolute, so there is the potential for a situation under the new Immigration Act of someone being excluded from protection under the Convention, but being a protected person under CAT or ICCPR. The prohibition on returning them to their home country remains while the risk (say of them being tortured) endures. UNHCR's doctrinal position in this situation is that the prohibition on return is absolute; however, we are not arguing for a particular form of treatment, that is for the government to decide, the person could be prosecuted or extradited to a third country for trial (i.e. ICTY)

Q. Is it ok that an asylum seeker who has funds has been asked to pay over \$32,000 to initiate his subsequent claim? This money has been paid and legal aid has been granted, but this fund has not returned back to the client in particular?

A lawyer cannot charge fees on top of legal aid. If legal aid is granted the lawyer is obliged to return any monies paid in respect of that legal matter

Attendees:

Abdikader Mahmed	Somali Federation
Abraham Mamer	Ministry of Education
Adam Awad	Changemakers Refugee Forum
Aidan Burch	Amnesty
Andrew Duris	RAS
Anne Uma George	Sri Lankan Community
Aki Cuthbert	RSB
Allan Mackey	RSAA
Arif Saeid	RAS
Asma Bashir	DIA
Balakrishnasarma Bhargavan	NZSLFMSG
Bernard Maritz	DoL Compliance
Bianka Atlas	Amensty
Brian Lewis	RSAA
Bryan Johnson	ARCI
Carole Curtis	Solicitor
Caroline Butterworth	HNZ
Conrad Wright	RSB
Craig Little	IPG
David Lyon	RAS
Dianna Biddick	WINZ
Dougal Ellis	RSB
Dr Rasalingham	RCNZ
Dr Toni Wansbrough	Peoples Centre
Durga Ray	CAB – Language Link
Elizabeth Walker	ARCI
Erin Jones	RSB
Farhan Adan	Interpreter
Fahima Saeid	RAS
Fiona Taler	ARCI
Gary Poole	RAS/RCNZ
Geraldine Canham Harvey	DoL Policy
Geraldine Tew	RSB
Gul Kamale	
Hannah Brodsky-Pevzner	NZSTI& NAATI
Heval Hylan	Reunity Trust
Hsu-Ee Khoo	RSB
Ibrahim Hagi	RAS
Ioana Uca	Solicitor
Jan Jeffrey	RQB
Janene Smith	DoL Compliance
Jenni Broom	Refugee Services
Joan Houghton	ESOL
John Petris	Solicitor
John Love	
Kafeba Mundeke	ARCC
Kailesh Thana	NZSLFMSG
Linda Kelm-Handley	HNZ
Lisa Gould	IPG
Louise Darroch	Mangere Community Law
Mahmmet Essu	

Manhal Yakoob	RQB
Manogi Tavelia	Grey Lynn Neighbourhood Law Office
Margot Ah Sam	Supporting Families in Mental Illness
Mark Forman	RSB
Mark Getchell	IOM
Mark Malan	Refugee Division
Mike Sheppard	World Vision
Neville Kay	Reunity Trust
Payman Radhar	
Peter Tsai	RSB
Phyllis Nicol	HNZ
Rameez Mohideen	Interpreter
Rasathurai Gopalasingham	
Rez Mansen	WINZ
Rina Tagore	Manukau City Council
Roger Bondo	Congolese Community
Rowland Woods	Solicitor
Sadiqa Hajee	ADHB
Sangita Wadnerkar	RAS
Santino Deng	RAS
Sayed Mahboob	Refugee Advocate
Selvakumar Sivanathan	NZSLFMSG
Siamak Farahi	
Tin So Lim	DoL ACB
Tracey Barnett	ARCI
Tracey Hutching	RSB
Vea Bloomfield	LSA
Vimbai Mugadza	ARMS Manukau
Zeenat Afiz	IAA
Zenebe Tsegor	ARC
Zoe Egusquiza	ESOL West