RACS REFUGEE ADVICE & CASEWORK SERVICE

6 February 2014

Committee Secretary

Senate Legal and Constitutional Affairs Committee

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Parliament House

Canberra ACT 2600

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To the Committee

Migration Amendment Bill 2013 – response to questions taken on notice

We thank the Committee for the opportunity to give evidence on 4 February 2014 and address issues arising from our written submissions and the *Migration Amendment* Bill 2013. At the hearing RACS took two questions on notice. Our responses to those questions are set out below.

1. **Is there a time limit within which the Tribunal (RRT) must notify the applicant of a decision on a review?**

Section 430A of the *Migration Act* 1958 (Cth) (*Act*) provides that the Tribunal must notify the applicant of a decision on a review (other than an oral decision) by giving the applicant a copy of the written statement within 14 days after which the decision is taken to have been made and in accordance with one of the methods specified in section 441A of the *Act*. A copy of the statement must also be given to the Secretary within 14 days and in accordance with one of the methods specified in section 441B of the *Act*.

2. Repeat applications following the decision of the Full Court of the Federal Court in *SZGIZ v Minister for Immigration and Citizenship* [2013] FCAFC 71

On this issue the Chair put two propositions to us that require clarification.

2.1 Firstly, as we understood the proposition, following the decision of SZGIZ an individual is now able to apply for a protection visa numerous times relying on a different convention ground on each occasion. We reiterate our submission that this is not what follows from the Full Court decision. Once a person has had their claims assessed and rejected under the Refugee Convention, irrespective of whether they had relied on one or all five of the Convention grounds, they continue to be barred from applying for a protection visa on the basis of claiming to be a person whom Australia owes protection obligations under the Refugee Convention. The Full Court decision simply allows them to make an application relying on the other Criterion for a protection visa identified in section 36 of the *Act.*

2.2 Secondly, Department's view that the decision of the Full Court allows an individual the opportunity to apply for a protection visa four times because there are effectively four ways of being granted a protection visa. This proposition, while true in a strict sense, does not paint an accurate picture of the actual implications of the decision of the Full Court.

Shortly stated, section 36(2) of the *Act* provides that a Criterion for the grant of a protection visa is that the visa applicant is a non-citizen in Australia:

I. In respect of whom the Minister is satisfied Australia has protection obligations under the Refugee Convention ((2)(a)); or

II. In respect of whom the Minister is satisfied Australia protection obligations under Complementary Protection ((2)(aa)); or

III. Who is a member of the same family unit as a person found to be a refugee and who holds a protection visa ((2)(b)); or

IV. Who is a member of the same family unit as a person found to be owed complementary protection and who holds a protection visa ((2)(c)).

The proposition, as we understand it, is that following the Full Court decision it is open to a non-citizen to apply for a protection visa on four occasions relying on a separate Criterion each time. This, it is said, leads to a non citizen who has no

meritorious claims being able to abuse the process. A number of points should be made about this proposition.

Firstly, as the explanatory memorandum correctly notes, any visa application to the Department that was not finally determined before the introduction of the Complementary protection provisions would have had, at bear minimum, the Criterion on the Refugee Convention ((2)(a)) and on the Complementary Protection provisions ((2)(aa)) considered. As such, it would no longer be open to a non-citizen to make a fresh application to the Department asking that they have their claims against those Criterions reassessed. Following the decision of SZGIZ a non-citizen in this position can only make an application relying on either Criterion (2)(b) or (2)(c), which in our submission could be considered by the Department in the one application.

Any suggestion that a non-citizen can somehow have the same information considered in multiple applications must also be rejected. It would not be open to a non-citizen to raise claims against the Refugee Convention or the Complementary Protection provisions in a subsequent application relying on Criterion (2)(b) or (2)(c). Further to this, section 50 of *Act* provides that if a non-citizen who has made an application for a protection visa, where the grant of that visa has been refused and the application has been finally determined makes a further application for a protection visa, the Minister is not required to consider any information previously considered and may take as correct any previous decision made about that information.

Secondly, the only circumstance in which a non-citizen may theoretically be able to make four separate applications is if their initial application for a protection visa was finally determined before 24 March 2012. Here, a non-citizen can make a further application relying on the Complementary protection provisions and should that application fail then it would theoretically be possible to make a further application relying on either Criterion (2)(b) or (2)(c). As stated above, there is no reason why the Department could not then consider those Criterion in the same application as they now do with Criterion (2)(a) and (2)(aa). RACS is not aware of any examples where a non-citizen has made four applications.

Finally, RACS embraces the comments of the Full Court at paragraph [60] that "*to deny a person a statutory entitlement to seek protection from, for example, torture, because the Minister had previously not been satisfied of a claim of a*

well-founded fear of persecution under the Refugees Convention would not only conflict with Australia's international obligations, but also would be arbitrary." We submit that it is entirely appropriate, and consistent with our international obligations, for a non-citizen to have a statutory entitlement to have claims assessed against the Complementary Protection provisions. That some or many of those claims may later be found to lack merit is, with respect, not to the point.

To discuss the contents of this submission, please contact us on (02) 9114 1600.

Yours sincerely,

REFUGEE ADVICE AND CASEWORK SERVICE (AUST) INC

Per:

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