



Hon Chris Penk
Associate Minister of Immigration
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CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION

1. We act for Candace Owens Farmer and refer to the decision of Immigration New Zealand's ("INZ") Chief Operating Officer, Jock Gilray, to deny her an Entertainers Work Visa pursuant to section 15(1)(f) of the Immigration Act 2009 ("the Decision").
2. This letter constitutes a request for a special direction under section 378 of the Immigration Act 2009 that Ms Farmer's application for an Entertainers Work Visa be granted. This request is made on the grounds that INZ has incorrectly interpreted section 15(1)(f) of the Immigration Act and reached the incorrect conclusion on the application of this provision on the facts of Ms Farmer's case.

Section 15(1)(f) - removed, excluded, or deported from another country

3. The Decision is inconsistent with the leading authority, the High Court's decision in *Ministry of Business, Innovation and Employment v EM* [2019] NZHC 1966 (**attached**) where the Court analysed the application of this provision and concluded:
 - a. Identifying the nature of exclusion from New Zealand will inform what is meant by being excluded from another country.¹ To be excluded from a country means being banned from re-entering. If a person commits an offense that affects their ability to return, but doesn't completely remove that right, they have not been excluded.²
 - b. Under Australian law, there is a category of person expressly treated as an excluded person. Under section 503 of the Migration Act 1958, certain persons are excluded from Australia: people deported for committing criminal offences or people who have been refused entry for a failure of the character test provided for by the legislation. This is the type of persons that section 15(1)(f) is contemplating — those who have committed serious transgressions of a kind that would lead to someone being deported, and/or not otherwise allowed to re-enter Australia.³

¹ *Ministry of Business, Innovation and Employment v EM* [2019] NZHC 1966 at [27](a).

² At [36]

³ At [39]



Application to Ms Farmer's case

- Ms Farmer applied for a Temporary Activity (Class GG) visa to enter Australia to carry out work on a short-term, temporary basis. Her application was refused pursuant to section 501(3)(a) of the Migration Act 1958. However, as the above authority states, to rely on section 15(1)(f) in refusing to grant Ms Farmer her Entertainers Work Visa, Immigration New Zealand must carefully assess whether Australia's refusal to grant the Class GG visa is considered exclusion. There is no evidence to suggest Ms Farmer would not be allowed entry into Australia under other non-work visas for example, if the purpose of her visit changed to a holiday.
- Ms Farmer appealed to Australia's Department of Home Affairs to revoke its decision (a copy of the letter dated 1 November 2024 **attached**). As you will see, Ms Farmer asserts the decision maker had actual and apprehended bias and the visa should be granted because she passes the character test, and the discretionary factors favour the granting of the visa. Ms Farmer is still awaiting the outcome of this appeal.

Conclusion

- INZ has relied on section 15(1)(f) to justify its decision to deny Ms Farmer an Entertainers Work Visa without correctly interpreting this provision, specifically, what constitutes exclusion in New Zealand. The facts do not support the assertion Ms Farmer has been excluded from Australia. Further, the decision in Australia is currently under review.
- We ask the Minister direct that Ms Farmer's Entertainers Work Visa be granted.
- We look forward to hearing from you.

Yours faithfully,

Free Speech Union (New Zealand) Inc.

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