

MIGRATION ACT 1958

DIRECTION UNDER SECTION 499

VISA REFUSAL AND CANCELLATION UNDER SECTION 501 OF THE MIGRATION ACT 1958

DIRECTION NO.21

DIRECTION - VISA REFUSAL AND CANCELLATION UNDER SECTION 501 - No. 21

PREAMBLE:

This Direction provides guidance to decision-makers in making decisions to refuse or cancel a visa under section 501 of the *Migration Act 1958* (the Act).

The object of the Act is to regulate, in the national interest, the coming into and presence in Australia of non-citizens. To facilitate this object the Minister has been given a discretion to refuse or cancel a visa where the visa applicant or visa holder does not pass the Character Test. In exercising this power, the Minister has a responsibility to the Parliament and to the Australian community to protect the community from criminal or other reprehensible conduct and to refuse to grant visas, or cancel visas held by non-citizens whose actions are so abhorrent to the community that they should not be allowed to enter or remain within it. The powers conferred under section 499 enable directions to be given, in exercising discretions under section 501, for the protection of the Australian community.

Under the Character Test, visa applicants and visa holders must satisfy decision-makers that they can pass the test. When a visa applicant or visa holder does not pass the Character Test, decision-makers will decide whether to refuse the application or to cancel a visa. Exercise of this discretion will take into account a wide range of factors including the expectations of the community, the nature of crimes committed, the non-citizen's links to Australia and any relevant international law obligations.

The Act enables the Minister to give precise written directions on what weight is to be given to each of these factors. These directions are binding to all decision-makers, including merits review tribunals, to ensure a consistency of approach.

The Act also enables the Minister to order the deportation of non-citizens under section 200/201 of the Act in certain cases. The Government is currently considering recommendations of the Joint Standing Committee on Migration on criminal deportation matters. Following that consideration, there may be a further direction in respect of the exercise of deportation powers.

For the purposes of this Direction the term **decision-maker** includes both the Minister's delegates for the purposes of section 501 of the Act, and members of the Administrative Appeals Tribunal when conducting a review of a decision made under section 501 of the Act.

THEREFORE I, Philip Maxwell Ruddock, the Minister for Immigration and Multicultural Affairs, hereby give the following Direction pursuant to section 499 of the *Migration Act 1958* to any person or body having functions or powers under section 501 of the Act.

1. This Direction may be cited as “Direction - Visa Refusal and Cancellation under section 501 - No.21”. This Direction revokes and replaces Direction No.17.

2. The purpose of refusing or cancelling a visa under section 501 is to protect the safety and welfare of the Australian community and to exercise a choice on behalf of the Australian community as a whole as to who should be allowed to enter or to remain in the community.

PRELIMINARY

This Direction consists of two parts. Part 1 provides directions on the application of the Character Test. Non-citizens who are being considered under section 501 must satisfy the decision-maker that they pass the Character Test. If the non-citizen does not pass the Character Test, decision-makers are to exercise the discretion to consider whether to refuse or cancel a visa, taking into account primary and other considerations. Part 2 provides directions on what these considerations are and the weight to be given to them.

PART 1 - APPLICATION OF THE CHARACTER TEST

The Minister may refuse or cancel a visa if the non-citizen does not satisfy the Character Test

1.1 Non-citizens who are being considered under section 501 must satisfy the decision-maker that they pass the Character Test. If there is reasonable suspicion that a non-citizen does not pass the Character Test, the non-citizen must also provide evidence to satisfy the decision-maker that the non-citizen passes the Character Test.

1.2 If a non-citizen is unable to satisfy the decision-maker that they pass the Character Test, subsection 501(1) provides the authority to refuse to grant a visa and subsection 501(2) provides the authority to cancel a visa that has already been granted.

1.3 There are four grounds against which a non-citizen may be considered to not pass the Character Test under subsection 501(6).

Paragraph 501(6)(a) “substantial criminal record”

1.4 A non-citizen does not pass the Character Test if they have a substantial criminal record. Substantial criminal record is defined in subsection 501(7).

Paragraph 501(6)(b) “association” grounds

1.5 The meaning of “association” for the purposes of the Character Test encompasses a very wide range of relationships including having an “alliance” or a “link” or “connection” with a person, a group or an organised body that is involved in criminal activities. “Association” does not require actual membership of a group or an organised body that is involved in criminal activities. In establishing criminal association, the decision-maker may have regard to the following:

- (a) the degree and frequency of association the non-citizen had or has with the individual, group or organisation;
- (b) the duration of the association; and
- (c) the nature of the association.

1.6 In some cases the information concerning association will be protected from disclosure by section 503A of the Act. In all cases, great care should be taken not to disclose information that might put the life or safety of informants or other persons at risk.

Paragraph 501(6)(c) – not of good character on account of past and present criminal or general conduct

1.7 Under paragraph 501(6)(c), decision-makers are required to make a finding that a non-citizen is “not of good character” on account of the non-citizen’s past and present, criminal or general conduct and thereby does not pass the Character Test. In reaching the conclusion that a non-citizen is not of good character, decision-makers must take into account all the relevant circumstances of a particular case, including evidence of rehabilitation and recent good conduct.

- **Subparagraph 501(6)(c)(i) – past and present *criminal* conduct**

1.8 In considering whether a non-citizen is not of good character against subparagraph 501(6)(c)(i), decision-makers should take into consideration the following:

- (a) the nature, severity and frequency of the offence/s;
- (b) how long ago the offence/s were committed;
- (c) the non-citizen’s record since the offence/s were committed, including:
 - any evidence of recidivism or continuing association with criminals;
 - a pattern of similar offences; and/or
 - pattern of continued or blatant disregard/contempt for the law; and
- (d) any mitigating circumstances such as may be evident from judges’ comments, parole reports and similar documents.

- **Subparagraph 501(6)(c)(ii) – past and present *general* conduct**

1.9 In considering whether a non-citizen is not of good character against subparagraph 501(6)(c)(ii), decision-makers should consider the following matters (where they are relevant to the facts of the particular case), and where they are relevant, would, in the absence of any countervailing factors, constitute a failure to pass the Character Test:

(a) whether the non-citizen has been involved in activities indicating contempt, or disregard, for the law or for human rights. This could include, but need not be limited to:

- engaging in business activities which fall short of criminal fraud requiring proof beyond reasonable doubt, but which, on a more likely than not basis, are disreputable and reflect poorly on a non-citizen's moral qualities;
- continual evasion or non-payment of debt;
- continual disregard as to payments of family maintenance;
- involvement in activities such as organised crime, terrorism, drug related activities, political extremism, extortion, "white collar" crime, fraud, breaches of immigration law; or
- involvement in war crimes or crimes against humanity.

(b) whether the non-citizen has, in connection with any application for the grant of a visa or any kind of Government benefit, provided a bogus document or made a false or misleading statement;

(c) whether the non-citizen has ever made a false or misleading declaration on an approved form, as defined in subsection 5(1) of the Act, about the non-citizen's character or conduct or both;

(d) whether the non-citizen has been removed/deported from Australia or removed/deported from another country; or

(e) whether the non-citizen has been dishonourably discharged from the armed forces of any country or discharged prematurely as the result of disciplinary action in circumstances, or because of conduct, which would be regarded as serious in Australia.

1.10 In addition to the above matters, a non-citizen is, in the absence of any countervailing factors, not of good character under the general conduct provisions if the conduct of the non-citizen has:

(a) resulted in offences that are the subject of charges but are not resolved pending a hearing or trial. Matters to be considered when deciding the weight to be given to unresolved charges could include, (but are not limited to):

- whether there is a pattern of conduct relating to the applicant (eg similar charges in the past, other criminal behaviour); and/or
- the seriousness of the offence with which the applicant has been charged; or

(b) resulted in the non-citizen being acquitted of a criminal offence or where there has been no conviction recorded.

1.11 General conduct also includes recent good conduct. Any good acts of the non-citizen after reprehensible conduct are indications that the non-citizen's character may have reformed. Thus, both good and bad conduct must be taken into consideration in obtaining a complete picture of the non-citizen's character. However, where the decision-maker is not fully persuaded that the non-citizen has reformed, the discretion to refuse or cancel a visa is enlivened, and evidence of good acts and recent conduct becomes relevant to the exercise of the discretion (see Part 2).

Paragraph 501(6)(d) - "significant risk" of future conduct grounds

1.12 For the purposes of the Character Test, it is not sufficient to find that a non-citizen has engaged in conduct specified in paragraph 501(6)(d) in the past, rather, decision-makers are required to determine whether there is a significant risk that a non-citizen would engage in the specified conduct set out in paragraph 501(6)(d) in the future.

1.13 The "significant risk" criterion will be met if there is evidence which suggests that there is more than a minimal or trivial likelihood that a non-citizen would, if allowed to enter or to remain in Australia, engage in conduct specified in paragraph 501(6)(d).

- **Subparagraph 501(6)(d)(i) - "engaging in criminal conduct in Australia"**

1.14 The reference to criminal conduct must be read as requiring there to be a significant risk of the person engaging in conduct for which a criminal conviction could be recorded. Decision-makers must make a finding that there is a significant risk that the non-citizen would engage in conduct which, if proven, would amount to a criminal offence.

- **Subparagraph 501(6)(d)(ii) - "harass, molest, intimidate, or stalk another person in Australia"**

1.15 For the purposes of section 501(6)(d)(ii), the words "harassment", "molestation", "intimidation" and "stalking" are to be given their ordinary meaning and should not be narrowly interpreted. However, decision-makers should note that subsection 501(11) defines the scope of conduct amounting to harassment or molestation. A wide variety of conduct and behaviour fall under this category including, (but is not limited to) the following:

- (a) conduct that does not breach the terms of an Apprehended Violence Order, or similar order, but nevertheless could be construed as harassment or intimidation;
- (b) engaging in conduct recognised as placing children in danger, such as unwelcome and inappropriate approaches, particularly to children; or
- (c) any conduct that causes a person to be severely apprehensive, fearful, alarmed or distressed regarding the behaviour or alleged behaviour of the non-citizen, towards a person or in relation to his or her or another person's property.

- **Subparagraph 501(6)(d)(iii) - "vilify a segment of the community",**
- **Subparagraph 501(6)(d)(iv) - "incite discord"**

1.16 Factors that must be considered in deciding whether or not a non-citizen passes the Character Test on subparagraph 501(6)(d)(iii) "vilify a segment of the community", and (iv) "incite discord" grounds includes, (but is not limited to), evidence that the non-citizen:

- (a) holds or advocates extremist views such as a belief in the use of violence as a legitimate means of political expression;
- (b) intends to vilify a part of the community;
- (c) has a record of behaviour linked to or encouraging disregard for law and order, for example in the course of addressing public rallies;
- (d) has engaged or threatens to engage in conduct likely to be incompatible with the smooth operation of a multicultural society, for example advocating that particular ethnic groups should adopt political, social or religious values well outside those generally acceptable in Australian society, and if adopted or practised, might lead to discord within those groups or between those groups and other segments of Australian society;
- (e) participates in, or is active in promotion of politically motivated violence or criminal violence and/or being likely to propagate or encourage such action in Australia;
- (f) is likely to provoke civil unrest in Australia because of the conjunction of the non-citizen's intended activities and proposed timing of their presence in Australia with those by another person who may hold opposing views;
- (g) evidence that the presence in Australia of the non-citizen will result in there being a significant risk that Australia's foreign relations will be prejudiced; or
- (h) any other credible material which may be relevant to the exercise of the discretion under subsections 501(1) & (2) or to the determination under Public Interest Criterion 4003 of Schedule 4 of the Migration Regulations.

1.17 When considering a non-citizen against subparagraph 501(6)(d)(iii) "vilify a segment of the community", and (iv) "incite discord", the decision-maker should bear in mind that subparagraphs 501(6)(d)(iii) and (iv) are not intended to provide a charter for denying entry or continued stay to non-citizens merely on the ground that they hold and are likely to express unpopular opinions, even if these opinions may attract strong expressions of disagreement and condemnation from some elements of the Australian community. It is therefore incumbent on the decision-maker to balance the operation of these subparagraphs against Australia's well established tradition of free expression.

PART 2 - EXERCISING THE DISCRETION

2.1 If a non-citizen does not pass the Character Test, decision-makers must have regard to the following considerations when exercising the discretion to decide whether or not the non-citizen should be permitted to enter or remain in Australia.

Weight of considerations

2.2 The Government is mindful of the need to balance a number of important factors in reaching a decision whether or not to refuse or cancel a visa. In making such a decision, a decision-maker should have regard to three primary considerations and a number of other considerations. The primary considerations are set out at paragraphs 2.3 - 2.16 and other considerations are set out at paragraphs 2.17 - 2.24. Decision-makers must have due regard to the importance placed by the Government on the three primary considerations, but should also adopt a balancing process which takes into account all relevant considerations.

PRIMARY CONSIDERATIONS

2.3 In making a decision whether to refuse or cancel a visa, there are three primary considerations:

- (a) the protection of the Australian community, and members of the community;
- (b) the expectations of the Australian community; and
- (c) in all cases involving a parental or other close relationship between a child or children and the person under consideration, the best interests of the child or children.

Protection of the Australian Community

2.4 The Government seeks to take reasonable steps to protect the Australian community from the actions of criminals and to take action to lessen the risk of crime and disorder within the Australian community. The Government is especially mindful to take reasonable steps to protect the safety of the more vulnerable members of the community, such as children and young people who are especially at risk. This is of particular importance when the offences in question are in relation to drugs and crimes of violence.

2.5 The factors relevant to an assessment of the level of risk to the community of the entry or continued stay of a non-citizen include:

- (a) the seriousness and nature of the conduct;
- (b) the likelihood that the conduct may be repeated (including any risk of recidivism); and
- (c) whether visa refusal or cancellation may prevent or discourage similar conduct (general deterrence).

a. *The seriousness and nature of the conduct*

2.6 It is the Government's view that the following are examples of offences which are considered by the Government to be very serious:

- (a) the production, importation, distribution, trafficking (including possession for this purpose), commercial dealing, or selling of illicit drugs:
 - persons who embark upon drug-related crime for financial gain have shown a callous disregard for the insidious effects of illicit drugs on the health and welfare of Australia's young people;
 - the Government views non-citizens who have sought to profit from the import or supply of drugs, whether or not motivated by their own need for illicit drugs, as extremely serious offenders. It is important both as a deterrent to other criminals and to protect Australian society that it is clearly understood that crimes involving drug trafficking, which puts the lives of young Australians at risk, be viewed as completely unacceptable to the community; and
 - offences involving illicit drugs of dependency or addiction, such as heroin, are also of particular concern to the Government and the community;
- (b) organised criminal activity resulting in a conviction in Australia or elsewhere;
- (c) serious crimes against the *Migration Act 1958*, including, but not limited to, offences attracting a sentence of imprisonment of 12 months or more for bringing non-citizens into Australia in contravention of the Act; or to harbour unlawful non-citizens; arranging a contrived marriage, de facto relationship or interdependency to obtain permanent residence; or providing certain false or misleading information about a marital, de facto or interdependency relationship, applying or nominating for permanent residence on the basis of a contrived marriage, de facto relationship or interdependency relationship; or using or possessing a visa granted to another person; or presenting false or forged documents or making a false or misleading statement in connection with entry or stay in Australia;
- (d) sexual assaults are particularly repugnant to the Australian community, especially sexual assaults involving children regardless of whether there was overt violence or the threat of violence;
- (e) armed robbery (including robbery involving the use of imitation weapons), home invasion;
- (f) murder, manslaughter, assault or any other form of violence against persons;
- (g) terrorist activity;
- (h) kidnapping;
- (i) blackmail;

- (j) extortion;
- (k) arson;
- (l) serious theft (including “white collar” crimes):
 - such crimes are of concern because of the amounts of money involved and/or the disruption caused to individuals, business and Government;
- (m) crimes against children:
 - due to their vulnerability as victims and potential victims, crimes against children take on a special significance, especially crimes involving inducing children to take illicit drugs, sexual assaults on children, child prostitution, violence to children, kidnapping and crimes taking advantage of children;
- (n) any other crimes involving violence or the threat of violence:
 - such crimes are of special concern to the welfare and safety of the Australian community; and
- (o) ancillary offences in respect to any of the above offences, including:
 - convictions for attempting to commit any of the above offences;
 - convictions for conspiracy to commit any of the above offences; and
 - convictions for being an accessory before or after the fact in any of the above offences.

2.7 It is the Government's view that the sentence imposed for a crime is an indication also of the seriousness of the offender's conduct against the community. Decision-makers should have due regard to the Government's view in this respect, including:

- (a) the extent of the person's criminal record, including the number and nature of offences, the time between offences, and the time that has elapsed since the most recent offence; and
- (b) the repugnance of the crime:
 - crimes involving violence or fraud against defenceless persons (such as children, the elderly, the disabled and the incapacitated) are especially repugnant to the whole community.

2.8 When exercising discretion, decision-makers must also take the following factors into account as relevant considerations:

- (a) any relevant factors provided by the non-citizen as mitigating factors;
- (b) the offence is not classified as an offence in Australia.
 - for example, a non-citizen who has been subjected to imprisonment as a result of political, religious or ethnic persecution may fail the substantial criminal record component of the Character Test. However, discretion may be exercised to grant the visa permitting the non-citizen to enter or stay;

- (c) a lighter sentence would be incurred in Australia for a similar offence; or
- (d) the non-citizen has been pardoned:
 - Note in some jurisdictions “pardons” may only have the status of spent convictions legislation in Australia.

2.9 In relation to non-citizens who do not pass the Character Test due to convictions resulting from unsoundness of mind or insanity, the degree of recovery must be taken into consideration. If the non-citizen continues to rely on medication to control their condition, the non-citizen cannot be defined as having fully recovered. Moreover, the likely consequences of a non-citizen deliberately or accidentally not taking their medication must be considered.

b. likelihood that the conduct may be repeated (including any risk of recidivism)

2.10 It is the Government's view that the person's previous general conduct and total criminal history are highly relevant to assessing the likelihood of an offence and risk of recidivism. In particular, the following factors will be relevant to the assessment:

- (a) a non-citizen commits a further offence after having been warned previously about the risk of refusal or cancellation;
- (b) a non-citizen with several previous convictions in Australia should be considered as having an increased risk of recidivism in light of that past behaviour. In cases where there is a gap or gaps between convictions, the inference may be open that the non-citizen has demonstrated that a substantial period since an earlier conviction is not a reliable indicator that future offences will not be committed; and
- (c) the extent of rehabilitation already achieved, the prospect of further rehabilitation and the positive contribution to the community the person may reasonably be expected to make.

c. general deterrence - the likelihood that visa refusal or visa cancellation would prevent (or inhibit the commission of) like offences by other persons

2.11 General deterrence aims to deter other people from committing the same or a similar offence. While not a conclusive factor in itself, general deterrence is an important factor in determining whether to refuse or cancel a visa. The general deterrence factor may be relevant in a number of ways:

- (a) the nature of the offence may be such that visa refusal or cancellation may deter others from committing similar offences; and
- (b) the visa refusal or cancellation in respect of a non-citizen who has been involved in a criminal scheme or schemes may discourage or prevent another person or persons from engaging in similar schemes.

Expectations of the Australian community

2.12 The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has breached, or where there is a significant risk that they will breach this trust or where the non-citizen has been convicted of offences in Australia or elsewhere, it may be appropriate to refuse the visa application or cancel the visa held by such a person. Visa refusal or cancellation and removal of the non-citizen may be appropriate simply because the nature of the character concerns or offences are such that the Australian community would expect that the person would not be granted a visa or should be removed from Australia. Decision-makers should have due regard to the Government's view in this respect.

The best interests of the child

2.13 This consideration only applies if the child is or would be less than 18 years of age at the time when the decision is intended to come into effect. The best interests of any children aged 18 years or more is not a primary consideration but may be considered with other considerations under paragraph 2.17.

2.14 Where there are two or more relevant children, it should not be assumed that the interests of each child will coincide, and it may be that the best interests of one child may indicate the non-citizen parent should not be refused a visa or removed from Australia, but that the best interests of another child may point towards visa refusal or cancellation.

2.15 In general terms, the child's best interest will be served if the child remains with its parents. Countervailing considerations, which may point to the child's best interests being served by separation from the non-citizen, include, but are not limited to:

- (a) any evidence that the non-citizen has abused or neglected the child in any way, including physical, sexual and/or mental abuse or neglect; or
- (b) any evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen's conduct.

2.16 When considering the best interests of the child, decision-makers should have regard to the following:

- (a) the nature of the relationship between the child and the non-citizen;
- (b) the duration of the relationship including the number and length of any separations and reason/s for the separation; the hypothetical prospect for developing a better/stronger relationship in future (whether or not there has been significant recent contact) would normally be given relatively less weight than the proven history of the relationship based on past conduct;
- (c) the age of the child;

- (d) whether the child is an Australian citizen or permanent resident;
- (e) the likely effect that any separation from the non-citizen would have on the child;
- (f) the impact of the non-citizen's prior conduct on the child;
- (g) the time (if any) that the child has spent in Australia;
- (h) the circumstances of the probable receiving country, including the educational facilities and the standard of the health support system of the country to which the child may have to go, or return to, should the non-citizen not be permitted to enter or remain in Australia;
- (i) any language barriers for the child in the probable country of future residence, but taking into account the relative ease with which younger children acquire new languages; and
- (j) any cultural barriers for the child in the probable country of future residence, but taking into account the relative ease with which younger children adapt to new circumstances.

OTHER CONSIDERATIONS

2.17 When considering the issue of visa refusal or cancellation, other matters, although not primary considerations, may be relevant. It is the Government's view that where relevant, it is appropriate that these matters be taken into account but that generally they be given less individual weight than that given to the primary considerations. These other considerations may include:

- (a) the extent of disruption to the non-citizen's family, business and other ties to the Australian community;
 - "Article 23.1 of the International Covenant on Civil and Political Rights (ICCPR) provides that:
"The family is the natural and fundamental group unit of society, and is entitled to protection by society and the State."
 - Article 17.1 provides that:
"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."
- (b) genuine marriage to, or de facto or interdependent relationship with, an Australian citizen, permanent resident or eligible New Zealand citizen:

- in assessing the compassionate claims of the Australian partner (Australian citizen, resident or eligible New Zealand citizen), decision-makers must consider the circumstances under which the relationship was established and whether the Australian partner knew that the non-citizen was of character concern at the time of entering into or establishing the relationship;
- (c) the degree of hardship which would be caused to immediate family members lawfully resident in Australia (including Australian citizens), including whether the immediate family members are able to travel overseas to visit the non-citizen, the nature of the relationship between the non-citizen and the immediate family members, whether immediate family members are in some way dependant on the non-citizen for support which cannot be provided elsewhere;
- (d) family composition of the non-citizen's family, both in Australia and overseas;
- (e) the likelihood of the non-citizen seeking to evade any outstanding legal matter or on-going liability;
- (f) the likelihood of the non-citizen breaching any conditions attached to the outstanding legal or on-going matter, any cost or bilateral implications of such a breach (eg extradition);
- (g) the nature and seriousness of the offence(s) or alleged offence(s) (in the context of seeking to evade an outstanding legal matter);
- (h) any evidence of rehabilitation and any recent good conduct;
- (i) whether the application is for a temporary visa or permanent visa;
- (j) the purpose and intended duration of the entry to or stay in Australia, including any significant compassionate circumstances; and
- (k) the fact that a non-citizen has been formally advised in the past by an officer of the Department of Immigration and Multicultural Affairs about conduct which brought him or her within the deportation provisions at section 200/201 of the Act or the visa refusal and cancellation provisions at section 501.

OTHER INTERNATIONAL OBLIGATIONS

2.18 Where relevant, decision-makers are required to consider the international obligations contained in this section.

2.19 The International Convention on Civil and Political Rights (ICCPR) has an implicit non-refoulement obligation where as a necessary or foreseeable consequence of their removal or deportation from Australia, the person would face a real risk of violation of his or her rights under Article 6 (right to life), or Article 7 (freedom from torture and cruel, inhuman or degrading treatment or punishment) of the ICCPR, or face the death penalty, no matter whether lawfully imposed (Second Optional Protocol to the ICCPR).

2.20 The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) has an explicit prohibition against refoulement “where there are substantial grounds for believing (the person) would be in danger of being subject to torture”.

2.21 The prohibition of refoulement under the CAT and ICCPR is absolute: there is no balancing of other factors if refusal or cancellation would amount to refoulement under the CAT or ICCPR.

2.22 In cases where issues of protection pursuant to the Convention and the Protocol Relating to the Status of Refugees (the Refugees Convention) are raised, they must be given consideration in the decision making process.

2.23 If Article 33(1) of the Refugees Convention does not apply to the non-citizen, there is no obligation on Australia to provide the non-citizen with protection under the Refugees Convention. If Article 33(1) applies, then there will need to be consideration whether the non-citizen can claim the benefit of Article 33(1).

2.24 Notwithstanding international obligations, the power to refuse or cancel must inherently remain a fundamental exercise of Australian sovereignty. The responsibility to determine who should be allowed to enter or to remain in Australia in the interests of the Australian community ultimately lies within the discretion of the responsible Minister.

Date of effect of Direction

2.25 This direction is to take effect from the date of signature.

Dated this 23rd day of August 2001

PHILIP RUDDOCK

Minister for Immigration and Multicultural Affairs