

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

CIV 2005 485 001617

UNDER the Judicature Amendment Act
1972

IN THE MATTER of a decision of the Removal
Review Authority Appeal No.
AAS45984 dated 9 August 2005

BETWEEN **HARMON LYNN WILFRED** of 68
The Esplanade, Sumner,
Christchurch, Company Director

Applicant

AND **THE CHIEF EXECUTIVE OF
THE DEPARTMENT OF
LABOUR** of 56 The Terrace,
Wellington

First Respondent

AND **THE REMOVAL REVIEW
AUTHORITY** of 70 The Terrace,
Wellington

Second Respondent

**STATEMENT OF CLAIM - APPLICATION FOR REVIEW
Thursday 3 November 2005**

WYNN WILLIAMS & CO
SOLICITORS
CHRISTCHURCH

Solicitor: J V Ormsby

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The Applicant, by his solicitor, PETER FREDERICK WHITESIDE, says:

1. Parties

- 1.1 The Applicant is a company director of various New Zealand corporations who entered New Zealand on 11 August 2001 together with his Canadian-born wife, Carolyn Ruth Dare-Wilfred, on a visitor's permit which was current to 11 November 2001.
- 1.2 The Applicant was granted a series of subsequent work permits with his last permit being a visitor's permit which was granted to him by the New Zealand Immigration Service and was current to 1 November 2004.
- 1.3 The Applicant's wife, who is not a party to this proceeding, is presently in New Zealand on a long term business visa.
- 1.4 The First Respondent is the person responsible pursuant to Section 46 of the Immigration Act 1987 for communicating any obligation to a person under the Act of a requirement for the person to leave New Zealand.
- 1.5 The Second Respondent is the decision maker required pursuant to Section 47 of the Immigration Act 1987 to hear and determine appeals brought under that section against a requirement for such a person to leave New Zealand.
- 1.6 On the lodging of an appeal under Section 47, the Second Respondent must give to the First Respondent a copy of the Notice of Appeal and any information, evidence or submissions lodged by the Applicant and must allow the First Respondent a specified time to lodge any file it holds or any such other information, evidence and submissions as the First Respondent thinks fit.

2. The Decision

- 2.1 On 10 December 2004 the Applicant brought an appeal to the Second Respondent pursuant to Section 47 of the Immigration Act 1987 and the Second Respondent delivered a decision Number AAS45984 dated 9 August 2005 (the "Decision") which the Applicant seeks to have reviewed in this proceeding.

- 2.2 Annexed hereto and marked “A” is a copy of the Decision which is pleaded as if set out here in full.
- 2.3 The member of the Second Respondent who made the Decision was Mr W Olphert, senior member of the Second Respondent.
- 2.4 The Decision is a statutory power of decision and is a reviewable decision, affecting the rights and interests of the Applicant. The Decision was made pursuant to section 47 of the Immigration Act 1947 and will have a serious adverse effect upon the Applicant.

3. **Legislative Framework**

- 3.1 The Applicant’s appeal to the Second Respondent was based on Section 47 (3) of the Immigration Act 1987.
- 3.2 Section 47 (3) of the Immigration Act 1987 provides:

“[47. Appeal against requirement to leave New Zealand—

...

- (3) An appeal may be brought only on the grounds that there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the person to be removed from New Zealand, and that it would not in all the circumstances be contrary to the public interest to allow the person to remain in New Zealand. ...”

4. **Grounds for Relief**

A: Errors of Law

Error of Law - Failure to apply correct test

- 4.1 In making the decision, the Second Respondent had an obligation to act in accordance with the law in determining whether the Applicant should be required to leave New Zealand.
- 4.2 Section 47 (3) of the Immigration Act 1987 requires the Board to determine whether there are exceptional circumstances of a humanitarian nature which would make it unjust or unduly harsh for the Applicant to be removed from New Zealand (the “Test”).

4.3 The Second Respondent breached its obligation to apply the Test and erred in law in paragraph 36 of its decision by asking itself whether there are exceptional humanitarian circumstances or whether it would be unjust or unduly harsh for the Applicant to leave New Zealand which is a different question to that required by the Test.

4.4 The decision is thereby flawed.

Error of Law – Ambit of the Test

4.5 The Second Respondent breached its obligation to act in accordance with the law and erred in law at paragraph 25 of its decision in deciding that the circumstances of the Applicant in relation to:

- a. The United States Justice System;
- b. As a former financial contractor with the US Central Intelligence Agency;
- c. Evidence of the injustice which would result to the Applicant upon his return to the United States of America;

are not issues which fall within the ambit of the Test under section 47 (3) of the Immigration Act 1987.

4.6 The decision is thereby flawed.

Error of Law - International Covenant on Civil and Political Rights

4.7 The Second Respondent erred in law at paragraph 31 of the decision by failing to recognise that the Applicant's rights under the International Covenant on Civil and Political Rights and international law in the particular circumstances of the Applicant were exceptional circumstances of a humanitarian nature which made it unjust or unduly harsh for the Applicant to be removed from New Zealand.

4.8 The decision is thereby flawed.

Error of Law - Stateless Person

4.9 The Second Respondent was wrong in law not to determine that the status of the Applicant as a stateless person was not an exceptional circumstance of a humanitarian nature because as a stateless person the Applicant is denied:

- a. The universal right to citizenship of a nation state;

- b. The rights associated with citizenship of a nation state including the right to establish residence in such a nation state.

4.10 The Second Respondent was wrong in law not to determine that the status of the Applicant as a Stateless person and the circumstances of the Applicant would not make it unjust or unduly harsh for the Applicant to be removed from New Zealand.

4.11 The decision is thereby flawed.

Error of Law – Economic and Emotional Harm to Children

4.12 The Second Respondent was wrong in law not to determine that exceptional circumstances of a humanitarian nature existed which would make it unjust for the Applicant to be removed from New Zealand because of the impact of the Applicant's removal from New Zealand on the Applicant's children and in particular:

- a. The Applicant would no longer be able to provide child support payments which significantly contribute to their welfare;
- b. The mother of the Applicant's children has previously abused the children and would exact retribution on the children if child support was not paid.

4.13 The decision is thereby flawed.

Error of Law – Economic and Emotional Harm to Wife

4.14 The Second Respondent was wrong in law not to determine that exceptional circumstances of a humanitarian nature existed which would make it unjust for the Applicant to be removed from New Zealand because of the consequence of the extent of the economic and emotional harm that would be caused to the Applicant's wife as a result of the Applicant's removal from New Zealand, and in particular:

- a. Mrs Dare-Wilfred is a Company Director of Wilfred Investments Limited, which owns Combined Technology New Zealand Limited;
- b. Mrs Dare-Wilfred is in New Zealand on a long term business visa;

- c. Mrs Dare-Wilfred is entirely reliant on the Applicant's financial acumen and skill to operate her business enterprises as well as his emotional support.
- d. The forced removal of the Applicant from New Zealand would require Mrs Dare-Wilfred to abandon Wilfred Investments Limited and Combined Technology NZ Limited and her long term business visa and would also impose a lengthy separation between her and her husband.

4.15 The decision is thereby flawed.

Error of Law - Economic Harm to Persons lawfully in New Zealand

4.16 The Second Respondent was wrong in law not to determine that exceptional circumstances of a humanitarian nature existed which would make it unjust for the Applicant to be removed from New Zealand because significant economic harm will result to Combined Technology NZ Ltd and its employees. That company and its subsidiaries which have an annual turnover of nearly \$1,000,000.00 would almost certainly have to be shut down if the Applicant is removed from New Zealand.

4.17 The removal of the Applicant from New Zealand will prevent the Applicant from continuing with the significant charitable contribution that he makes to New Zealand society including the work performed through La Famia Foundation NZ which is incorporated under the Charitable Trusts Act 1947 and which was established by the Applicant to provide funding and expertise toward the nurturing and strengthening of the human family. La Famia Foundation NZ would not be capable of continuing with its charitable work in the absence of the Applicant.

4.18 The decision is thereby flawed.

Error of Law - Physical Danger, Economic and Emotional Harm to Applicant

4.19 The Second Respondent was wrong in law not to determine that exceptional circumstances of a humanitarian nature existed which would make it unjust for the Applicant to be removed from New Zealand because the Applicant will suffer physical danger, and economic and emotional harm by being removed from New Zealand

and returned to the United States of America because of the circumstances of the Applicant in relation to:

- a. The United States justice system;
- b. As a former financial contractor with the US Central Intelligence Agency;
- c. Evidence of the injustice which would result to the Applicant upon his return to the United States of America.

4.20 The decision is thereby flawed.

B: Breach of Natural Justice

4.21 In making the decision, the Second Respondent had an obligation to act in accordance with the principles of natural justice and to give sufficient reasons for its decision.

4.22 The Second Respondent was required to so act and give such reasons because the decision determined whether or not the Applicant could remain in New Zealand or would be made subject to a removal order.

4.23 The Second Respondent breached its obligation to act in accordance with the principles of natural justice and provide sufficient reasons for its decision.

Particulars:

- a. The decision did not give sufficient reasons explaining why the circumstances of the Applicant were not exceptional circumstances of a humanitarian nature and in particular failed to give reasons why:
 - i. The fact that the Applicant is a stateless person is not an exceptional circumstances of a humanitarian nature;
 - ii. The fact that the Applicant's children would suffer significant economic and emotional harm is not an exceptional circumstance of a humanitarian nature;
 - iii. The significant economic and emotional harm that will result to Carolyn Ruth Dare-Wilfred as a result of the

Applicant's removal from New Zealand are not exceptional circumstances of a humanitarian nature;

- iv. The significant economic harm that will be caused to Combined Technology NZ Ltd and its employees are not exceptional circumstances of a humanitarian nature;
- v. The prevention of the Applicant from continuing with significant charitable contributions that he makes to New Zealand society, including the work performed through La Famia Foundation NZ, being prevented by his removal from New Zealand are not exceptional circumstances of a humanitarian nature;
- vi. The risk of the Applicant suffering physical danger, economic and emotional harm by being removed from New Zealand are not exceptional circumstances of a humanitarian nature.

4.24 The decision is thereby flawed.

C: Mistake of Fact

4.25 The Applicant repeats the allegations contained in the preceding paragraphs and says further that the decision was made pursuant to the following mistakes of fact:

- a. That the Applicant and his wife have no nexus to New Zealand other than their employment through the Applicant's initial secondment to SuperBT;
- b. That the Applicant's wife, Carolyn Ruth Dare-Wilfred, would not suffer significant economic and emotional harm from the removal of the Applicant from New Zealand.

4.26 The Applicant and his wife have significant nexus to New Zealand and Mrs Dare-Wilfred would suffer significant economic and emotional harm from the removal of the Applicant from New Zealand because:

- a. Mrs Dare-Wilfred is a Company Director of Wilfred Investments Limited, which owns Combined Technology New Zealand Limited;

- b. Mrs Dare-Wilfred has a long term business visa;
- c. Mrs Dare-Wilfred is entirely reliant on the Applicant's financial acumen and skill to operate her business enterprises as well as his emotional support.
- d. The forced removal of the Applicant from New Zealand would require Mrs Dare-Wilfred to abandon Wilfred Investments Limited and Combined Technology NZ Limited and her long term business visa and would also impose a lengthy separation between her and her husband.
- e. That significant economic harm would be caused to Combined Technology NZ Limited and Wilfred Investments Limited as a result of the Applicant's removal from New Zealand;
- f. That significant economic harm would be caused to the employees of Combined Technology NZ Ltd and Wilfred Investments Ltd as a result of the removal of the Applicant from New Zealand;

4.27 That as a result of these mistakes of fact the decision is flawed.

D: Failing to take into account relevant considerations

4.28 The Applicant repeats the allegations set out in the preceding paragraphs and says further that the Second Respondent failed to take into account relevant considerations.

4.29 In making the decision, the Second Respondent failed to have regard to the following relevant considerations:

- a. The fact that the Applicant is a stateless person:

Particulars:

- i. The Second Respondent failed to adequately consider the universal right to citizenship of a nation state;
 - ii. The rights associated with citizenship of a nation state, including the right to establish residence in such a nation state;
 - iii. The impact of the lack of such rights on the Applicant.
- b. The Applicant's children's welfare:

Particulars:

- i. The Applicant would no longer be able to provide child support payments which significantly contribute to his children's welfare;
- ii. The mother of the Applicant's children has previously abused the children and would exact retribution on the children if child support was not paid.
- c. The actual circumstances of the Applicant's wife upon the Applicant being removed from New Zealand and on her investments:

Particulars:

- i. Mrs Dare-Wilfred is a Company Director of Wilfred Investments Limited, which owns Combined Technology New Zealand Limited;
- ii. Mrs Dare-Wilfred has a long term business visa;
- iii. Mrs Dare-Wilfred is entirely reliant on the Applicant's financial acumen and skill to operate her business enterprises as well as his emotional support.
- iv. The forced removal of the Applicant from New Zealand would require Mrs Dare-Wilfred to abandon Wilfred Investments Limited and Combined Technology NZ Limited and her long term business visa and would also impose a lengthy separation between her and her husband.
- v. That significant economic harm would be caused to Combined Technology NZ Limited and Wilfred Investments Limited as a result of the Applicant's removal from New Zealand;
- vi. That significant economic harm would be caused to the employees of Combined Technology NZ Ltd and Wilfred Investments Ltd as a result of the removal of the Applicant from New Zealand;
- d. The harm that would result to persons lawfully in New Zealand:

Particulars:

- i. Significant economic harm would result to Combined Technology NZ Ltd and its employees. That company has subsidiaries which have an annual turnover of nearly \$1million, which would almost certainly have to be shut down if the Applicant is removed from New Zealand.
- ii. The removal of the Applicant from New Zealand will prevent the Applicant from continuing with the significant charitable contribution that he makes to New Zealand society including the work performed through La Famia Foundation NZ which is incorporated under the Charitable Trusts Act 1947 and which was established by the Applicant to provide funding and expertise toward the nurturing and strengthening of the human family. La Famia Foundation NZ would not be capable of continuing with its charitable work in the absence of the Applicant.
- e. The physical danger, economic and emotional harm that would result to the Applicant as a consequent of his removal from New Zealand and return to the United States of America:

Particulars:

- i. As a result of the United States Justice System:
 - ii. As a former financial contractor with the US Central Intelligence Agency:
 - iii. Evidence of the injustice that would result to the Applicant upon his return to the United States of America.
- 4.30 As a result of the Second Respondent's failure to have regard to the relevant considerations, the decision was flawed.

E: Unreasonableness

- 4.31 The Applicant repeats the allegations contained in the preceding paragraphs and says that the Decision was, in all the circumstances,

unreasonable in the sense that it was a decision that no reasonable decision maker in the position of the Second Respondent would make and is thereby flawed.

WHEREFORE the Applicant seeks:

- a. A declaration that the decision is invalid;
- b. An order quashing or setting aside the decision;
- c. Costs

AND FOR A FURTHER CAUSE OF ACTION, the Applicant repeats the allegations contained in paragraphs 1 - 4.31 above:

5. Bill of Rights Act - Breach of Natural Justice

5.1 In all the circumstances the decision was in breach of the Applicant's right to natural justice recognised by Section 27 (1) of the New Zealand Bill of Rights Act 1990.

5.2 In the event that the decision can proceed notwithstanding such breach, the Applicant will suffer significant detriment.

WHEREFORE THE APPLICANT SEEKS:

- a. Compensation;
- b. Costs.

THIS Statement of **Claim** is filed by **PETER FREDERICK WHITESIDE** solicitor for the abovenamed **Applicant** of the firm of Wynn Williams & Co. The address for service of the abovenamed **Applicant** is at the offices of Wynn Williams & Co, 7th Floor, BNZ House, 129 Hereford Street, Christchurch.

DOCUMENTS for service on the abovenamed **Applicant** may be left at that address for service or may be:

- a. Posted to the solicitor at P O Box 4341, Christchurch; or
- b. Left for the solicitor at a Document Exchange for direction to WP21518, Christchurch