Removal Review Authority

70 The Terrace, PO Box 1674, Wellington, New Zealand. Telephone (04) 915 4274 Fax (04) 915 6390
DX SR 57333 www.removalreviewauthority.govt.nz

09 August 2005

AAS 45984

When replying please quote.....

CourierPost – Signature Required

Mr Harmon Lynn Wilfred
68 The Esplanade
Sumner
CHRISTCHURCH

Dear Mr Wilfred

I am writing in respect of your appeal against the requirement to leave New Zealand which was lodged with the Removal Review Authority in December 2004.

The Authority has now considered your appeal and a copy of its decision is enclosed.

Yours sincerely

Gavin Duffy
on behalf of the
Removal Review Authority

ORIGINAL CONFIDENTIAL

Appeal No AAS45984

IN THE MATTER of the Immigration Act 1987

and

IN THE MATTER of an appeal under Section 47 of the Act by **HARMON LYNN WILFRED**

DECISION OF THE REMOVAL REVIEW AUTHORITY

---

[1] This is an appeal from **HARMON LYNN WILFRED** ("the appellant"), who has appealed pursuant to section 47 of the Immigration Act 1987 ("the Act") against the requirement to leave New Zealand. The appellant's birth date is 29 May 1949 and his country of birth is the United States of America. However, he is not a citizen of any country for reasons discussed below.

Background

[2] The appellant entered New Zealand on 11 August 2001 together with his Canadian-born wife Carolyn Ruth Dare-Wilfred and each was granted a visitor's permit current to 11 November 2001. The appellant 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 (NZIS) on 1 May 2004 current to 1 November 2004. The appellant's wife also received a series of work permits and visitor's permits and is currently on a visitor's permit current to 26 October 2005.

[3] The appellant's appeal to this Authority was received on 10 December 2004. In his appeal form he disclosed that he had three children from previous marriages, the children currently living in the United States of America. These children are described as Tyler Jonathan Wilfred born on 31 December 1987, Danielle Marie Wilfred born on 16 October 1991 and Issac Arthur Wilfred born on

16 December 1993. He also discloses that his mother, two brothers and three sisters all reside in the United States of America.

[4] On 11 June 2002 the appellant lodged an application with the NZIS for a work permit to work in New Zealand for a one-year secondment as an employee of a Canadian company known as Super BT. This company had become a recent entry as a member of a strategic alliance forming an international consortium of communication companies based in Christchurch under the umbrella of a company known as Power Line Communications Limited. The appellant's work permit was granted by the NZIS on 28 June 2002 valid to 28 June 2003. A subsequent application for a further work permit lodged by the appellant with the NZIS on 21 April 2004 was declined by the NZIS on 28 June 2004 primarily on the basis that the NZIS considered the appellant was self employed and that a long-term business visa (LTBV) application might be more appropriate. A subsequent application for a visitor's permit was approved by the NZIS with the appellant's permit being valid to 1 November 2004.

[5] The Authority notes that the appellant's wife currently has a LTBV application with the NZIS for consideration.

Grounds of Appeal

[6] The appellant is represented by solicitors Barker & Associates, Christchurch, and detailed submissions have been lodged on behalf of the appellant by his solicitor. In all there have been three separate submissions of counsel lodged with the Authority, the first one accompanying the appeal under cover of the solicitor's letter of 9 December 2004. In addition to the three typed submissions of counsel, accompanying the appeal were two folders described as "Wilfred Case History Book 1 and Wilfred Case History Book 2" comprising 30 sections.

[7] The grounds of appeal I have elucidated from counsel's submissions and the material provided with the appeal can be summarised as follows:

1. The appellant as a result of unique circumstances in which he is currently placed has produced a web site, www.luminadiem.com which extensively and clearly outlines his position.

2. The appellant's entire case history as contained in the two folders, is summarised by counsel for the appellant as follows *(verbatim)*:

"**Section 1**
1988-2000 **Case History Presentation Outline and Personal / NACDL Profiles**
- Case History
- Personal Resume
- William B Moffitt / President NACDL
- NACDL Profile, Articles and News Release

Section 2
1989 **Divorce Case - Sandra Wilfred**
- Sandra Mediation Prep
- 1989 Divorce Pleadings
- Sandra Re: Fraud and Theft

Section 3
1990 - June 4 - October 25 Suit Filed for Civil Rights Violations / Bankruptcy
- Case No. 90-1892
- Wilfred VS Wilfred et al, Civil Rights, June 4, 1990
- Wilfred VS 18th Judicial District, Judge Steinhardt, October 25, 1990
- Wilfred Bankruptcy suit

Section 4
1991 - Fall **RTC /3M Greco Class Action Law Suit, Case No.92-204**
- Resolution Trust Corporation Summons
- RTC Case Summary
- Denver Post Article on Harmon's Class Action Suite on behalf of all US Tax Payers
- 'Angry Developer Sues RTC for 30 Billion'

Section 5
1991 - 1995 **Political Retibution in Family Court for Blowing the Whistle?**
- Letter for Attorney, Parrish debating the Disclosure of the Connection Between the Pension Fund Embazzlement and the Charges Filed in the Family Court
- Report of Embezzlement, DA Interview, Transcript

Section 6
1996 - January 30 **Gregory Craig Summary and Request for Assistance from President Clinton**
- Gregory Craig 'Urgent Request' Summary
- Denver Post Article on the El Paso County Pension Fund Embezzlement

Section 7
1996 - 1997 **Mitsubishi Note Transaction / Guatemalan Funding Evidence**

Section 8
1997 - September 30 **Legal Research/Custody**

Section 9
1997 - October 14 **Ciccolella Conflict Issues And Evidence**
- October 17, 1997 Transcript, Dearna Wilfred Case
- April 27, 1998 Transcript, Dearna Wilfred Case

- Ciccolella's Perjury in Court
- September 14, 1998 Transcript, Dearna Wilfred Case
- Motion To Disqualify Ciccolella
- November, 97 Order for property confiscation

Section 10
1998 - March 4

International Correspondence Campaign

- Hague Commission Letter
- American Embassy Letter
- American Civil Liberties Union Letter
- El Paso County Co. Social Services Letter

Section 11
1998 - June 2

Decree of Dissolution of Marriage - Dearna Wilfred
Final Orders

Section 12
1998 - June 2

Extradition Committal Based Upon Legalized Fraud
Phillip Freytag's charges / DA';s Motion to Dismiss Charges and Seal Records

Section 13
1998 - July 6

Release from Incarceration
Immigration Employment Restrictions While on Bail

Section 14
1998 - August 2

Marriage of Harmon and Carolyn Dare

Section 15
1998 - Fall

Affidavits / Including Maternal Child Abuse Submitted in Dearna Wilfred Case

Section 16
1999 - February 1

Continued International Correspondence Campaign

- ACLU and ACLJ Letter and Response
- Vice President Gore, Letter and Response
- Senator Wayne Allard Response
- Denver Post Letter and information on prosecutorial excess.
- US State Department Office of Children's Issues, Steven Sena Letter
- Department of Health and Human Services, Director, John Kelley, Letter and Response
- Colorado Governor Bill Owens Letter with copy to Ken Slalazar and Response

Section 17
1999 - March 18

Urgent Letter and Package Couriered to Kenneth Star

Section 18
1999 - April 16

Letter and Referenced Evidence Sent To Canadian Security Intelligence Service

- Copy to Office of Congressional Affairs
- Copy to Congressman Dennis Hastert
- Copy to Senator Trent Lott

Section 19
1999 - August 11

Search Warrant for Collin Finn's Apartment / DA's Mitsu Note Investigation Docs

Section 20
1999 - November 13

Gregory Craig Meeting to Toronto, Ontario

- Parrish and Sears Correspondence
- Gregory Craig's e-mail and fax correspondence with Harmon and Carolyn

Section 21
1999 - 2000 Nov - Mar

Report and Affidavit re: Affirmative Evidence and Witness Interviews In Co-operation With El Paso County Deputy DA, Bob Haward

- Parrish Letter to Deputy DA, Haward
- Dale Parrish's Affidavit Status Report
- Critical Evidence Attachments

Section 22
2000 - April 3

Abandonment Of Appeal, Canada

- Notice of Abandonment of Extradition Appeal
- Extradition Treaty Protection Letter from Alan Gold to Deputy DA, Bob Haward

Section 23
2000 - April 5

Colorado Bail and Bond Agreement from El Paso County

- Return Date to Colorado of May 11, 2000
- Receipt for Bond Payment

Section 24
2000 - May 10 - 26

Federal Arrest for Non-Payment of Child Support

Order Dismissing the Complaint

Section 25
2000 - POST May 26

Multiple Violations of the Hague Commission Treaty, Canada / US

- Letter of Complaint to the Canadian Department of Justice by Alan Gold
- Answer to Complaint, Canadian Department of Justice
- Harmon's Rebuttal to Answer to Complaint by the Colorado DA and the Canadian Department of Justice
- Illegal Re-Incarceration in The Denver City Jail ('The Killing Fields')

Section 26
2000 - June 29

Further Evidence of Treaty Violations and Successful Dismissal of Arapahoe County Order to Appear for Financial Examination

- Draft account of Federal Treaty Violation
- Notice of Hearing and Order to Appear on $750,000 Appearance Bond
- Motion to Vacate Rule 69 Financial Examination Hearing for Violation of Extradition Treaty

Section 27
2000 - September 18

Supplement to Case History, Conspiracy Theory, 3 Way Advantage

- Family Court Case, Dearna Wilfred Concluded for now
- Criminal Case, Dearna Wilfred, Custody Charges, Pending
- Family Court Case, Sandra Wilfred Concluded for now
- Criminal Case, Sandra Wilfred, Child Support and Maintenance - Dismissed and Sealed
- Mitsubishi Note Investigation - concluded, no wrong doing

Section 28
2000 - July - Dec **Continuing Efforts Towards Justice in Colorado**

- Request For Motion To Disqualify El Paso county DA Jeanne Smith
- Request for Motion for Change of Venue Due to Conflict

Section 29
2000 - 2001 - Oct - Feb **Reports to the US Justice Department - Insuring the Children's Well Being**

- Package Sent to the US Justice Department, October 2000
- Follow-up package sent in February 2000, to the Public Integrity Section
- Order and Establishment of a Professional Child Advocate for the Children
- Answer to 'Why didn't they Kill you' and Report on Witty's Dismissal
- Michael Witty's Documented Dismissal and DA Jeanne Smith Disqualified for Conflict

Section 30
2001 - Aug to 2004 **Continued Efforts from New Zealand**

- Employment with the Estate of Carolyn Dare
- Setting up Investment Opportunities For the Dare Estate
- Opening up Legal Communication with Colorado Regarding Commencement of Monthly Child Support
- Passport Flagged / Catch 22

It is respectfully submitted that to fully understand the Applicant's position, the Applicant's case history must be read in the first instance."

3. On 17 August 2004 the appellant made application to the United States Consulate in Auckland to renew his passport. The appellant was advised by the United States Consulate that his passport could not be renewed nor would it be returned because a security check showed "two hits" against the appellant's name. The appellant states that the United States Consulate advised him that unless the flags were withdrawn they would only issue the appellant with a temporary passport to enable him to travel from New Zealand, back to the US, whereupon he would be arrested and kept in custody pending any hearing as soon as he arrived at any US port of entry. Without a valid passport the appellant could not make any further applications to the NZIS for extensions or variations to the permit with which he had previously been provided. In previous applications made by the appellant to the NZIS for visitor and work permits, the appellant has seemingly failed to disclosed correct character details, that is, that he had not previously been charged with the offences. There was no intent by the appellant at these times to act in a fraudulent manner nor to mislead or misrepresent himself to the NZIS as the solicitor advising him at that time

was of the understanding that issues involving family and custody matters were not relevant to the questions in the application.

4. The applicant currently being the subject of unwarranted prosecution and process by judicial bodies in the United States, this violates the principles of fundamental justice and the rule of law. This amounts to exceptional circumstances of a humanitarian nature and that such action is unduly harsh or unjust (see *Canada (Ministry of Employment and Immigration) v Satiacum* (1989) 99NR 171 c.a.). In that case, at paragraph 19, it was recognised that prosecution may constitute persecution if imposed following a judicial procedure, which violates the rule of law or other standards of fairness.

5. A series of letters between November 1999 and March 2000 from the appellant's advisors note that the previous and current actions of persons within the District Attorney's office in Colorado towards the appellant are of such an exceptional nature that it raises a real humanitarian concern. The previous actions of the District Attorney's office in Colorado infer not only a bias and prejudicial position in the matter, but also personal involvement, which gives rise to serious concern that prosecution of the appellant violates the rule of law and other standards of fairness. Counsel cited the authority of *Yusuf v Chief Executive, Department of Labour* (High Court Wellington, CIV 2002-485-192, 9 September 2003, Gendall J) and *Sale v Removal Review Authority* (26/10/93) M 1471/93.

6. It is submitted that the appellant if he were to return to the United States of America would be immediately placed under arrest at any port of entry, detained and returned to the Colorado District. The appellant would be given no opportunity to explain the past circumstances to the authorities who arrested him. That would cause enormous physical, emotional and economic harm to the appellant. He would be separated from his wife for an unknown period of time, he would stop receiving remuneration which would have a flow-on effect for his children who would not receive the child support payments which have regularly been made by the appellant to date. The appellant's wife would also suffer emotional and financial harm should the appellant be arbitrarily placed in custody. She has emotionally and financially supported the appellant throughout the history of this matter.

7. It would not be contrary to the public interest for the appellant to remain in New Zealand. The appellant and his wife have started and developed a company, Combined Technology New Zealand Limited, which currently employs seven persons. This company has contributed financially to the gross productivity in New Zealand. As well, the appellant's wife has made an application to the NZIS for a long-term business visa.

8. The appellant and his wife have while living in Christchurch contributed greatly by being active in local organisations both physically and financially.

9. On the basis of the preponderance of credible information and evidence included in the appellant's application and submissions, it is submitted that the Authority allow the appellant's appeal and grant him residence, allowing him to remain in New Zealand.

[8] The following documents and letters were lodged with the appeal:

- Letter dated 8 December 2004 from the appellant's wife.
- Letter dated 6 December 2004 from Dr Gerry Walmisley, Chief Executive, Richmond Fellowship NZ Inc.
- Letter dated 6 December 2004 from Meri Gibson, Managing Director of Calibrae Limited.
- Copy of application for long-term business visa and permit lodged with the NZIS by the appellant's wife, that application being dated 22 October 2004, together with a copy of the business plan.
- A number of High Court decisions and Court of Appeal decision of *Rajendra Patel v Removal Review Authority* [2000] NZAR 200.

[9] On 13 May 2005 the appellant's solicitor wrote to the Authority with further submissions on behalf of the appellant and requested that those submissions be read as part of the application completed by the appellant and his earlier submissions. Counsel said that the submissions were made pursuant to section 129P(1) of the Act on the basis that it was the responsibility of an appellant to establish the claim and the appellant must ensure all information, evidence and

submissions that he wishes to have considered in support of the appeal are provided to the Authority before it makes its decision on the appeal. Submissions of counsel noted that the appellant on 1 March 2005, at the American Consulate General at Auckland, made a formal renunciation of his American nationality as provided by section 349A(5) of the Immigration and Nationality Act, 66 stat 268. By that formal renunciation the appellant stated:

> "I hereby absolutely and entirely, without mental reservation, coercion or duress, renounce my United States nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining."

In addition to copies of the appellant's signed renunciation of his US citizenship the following were also enclosed:

- Letter dated 1 April 2005 from Barker & Associates to the Family Support Registry, Colorado, showing the payment of NZD6,000 as child support for Danielle and Isaac Wilfred and NZD4,500 for Tyler Wilfred.

- Letter dated 6 April 2005 from the Ministry of Justice following a request for any criminal conviction information held by the Ministry advising that there is no information held or able to be released in respect of the appellant and his wife.

- A press release issued in New Zealand on behalf of the appellant on 9 March 2004 headed "Whistleblower and Former US Citizen Elated to be Free at Last".

- Press release in New Zealand on behalf of the appellant dated 9 February 2005 headed "Outraged ?American Whistleblower to Renounce His U.S. Citizenship".

- Facsimile letter from Rutherford & Company, Barristers and Solicitors, Christchurch to the appellant and his wife headed "Colorado Code of Criminal Procedure". Attached to the letter was a copy of a page of Chapter 29 of the Colorado Rules of Criminal Procedure headed Rule 48, Dismissal.

[10] By letter dated 27 June 2005 the appellant's solicitors again wrote to the Authority enclosing further submissions. After noting the provisions of section 50(4)(a) and (b) of the Act, counsel submitted that the further material to be

provided with the submissions was background country information relevant to the appellant's application. The information consists of:

- A book, *Constitutional Chaos,* Judge Andrew P Napolitano.
- CATO Police Report, *How the Government Breaks the Law,* Judge Andrew P Napolitano.
- *Here Comes the Judge, Fran Fox:* Timothy Lynch, 17 February 2005.

[11] Counsel submits that the RRA in making any determination must consider and take into account the *International Covenant on Civil and Political Rights* (ICCPR) and refers to the preamble and Articles 12 and 13 of that Covenant. Counsel submits that the appellant's human rights and freedoms as well as his right to justice were severely restricted while he was resident in the United States. Further, that should the appellant be returned to the United States he would be detained, incarcerated and again absorbed into a system where he would effectively have no right to freedom of justice.

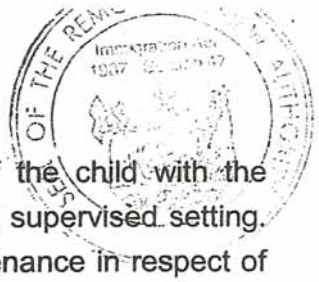
[12] Counsel further submits that the background information illustrates, via a *bona fide* authority, that injustices and corruption exist and are prevalent within the United States constitutional and justice system.

[13] Finally counsel submits that the appellant is a victim of such circumstances, as illustrated in their previous submissions to the RRA, and that these equate to exceptional circumstances of a humanitarian nature which are unjust and unduly harsh.

Additional Background Information

[14] As indicated earlier in the Background part of this decision I noted that there were two folders of material provided with the appeal containing 30 sections. I consider it appropriate as additional background information that the following is noted as taken from the two volumes:

1. The appellant's first wife was Sandra and they had one child, Tyler Jonathan Wilfred who born on 31 December 1987. That marriage ended in divorce in 1990. By order of the District of Arapahoe County, Colorado,



dated 27 June 1990, Sandra was granted custody of the child with the appellant granted visitation with the minor child under a supervised setting. Child support was ordered to be paid as well as maintenance in respect of Sandra. The appellant, who was not present at the time the court orders were made was far from satisfied with the orders and filed a complaint and in addition bankruptcy was undertaken with a federal bankruptcy attorney.

2. The appellant remarried in December 1990 and his wife Dearna delivered two children of that marriage Danielle and Isaac. In October 1997 the appellant filed for divorce. He had an attorney acting for him. On the advice of his attorney the appellant took possession of the two children and he returned to his new home in Stratford, Ontario with the children during the process of the divorce proceedings.

3. In a detailed statement dated 19 October 1999 from the appellant to a Mr Gregory Craig, Washington DC, following his Canadian counsel referral, the appellant set out in some considerable detail events that then unfolded resulting in family court orders being made in his absence. This resulted ultimately in the appellant's wife, Dearna, regaining physical possession of the children and the children being returned to Colorado. The appellant stated:

> "This enabled them to invoke the Hague Commission treaty between Canada and the US and on February 14, 1998 to come to my home in Canada, seize the children, and force them into an unmarked police van while on a walk with their nanny. They took them directly to the airport and immediately returned them back to Colorado and into the arms of the abusive environment from which they had been rescued from months earlier."

4. The appellant was subsequently extradited from Canada to the United States of America and faced further court proceedings.

5. In support of the appellant's claim that the children were well looked after by him in Canada, statements or affidavits from both the appellant's present wife Carolyn Ruth and her two children were included in the two volumes that I have referred to.

6. The appellant married his present wife Carolyn Ruth in Ontario on 2 August 1998.

7. Whilst in New Zealand the appellant has engaged counsel to try and resolve not only the outstanding matters between the appellant's two former wives and children but also endeavouring to achieve a prospect of his not being incarcerated on his return to the United States being determined by the appropriate authorities.

Relevant Legislation

[15] This appeal has been lodged pursuant to section 47 of the Act, the relevant provisions of which are:

> **"47. Appeal against requirement to leave New Zealand**
>
> (1) A person who is unlawfully in New Zealand may appeal to the Removal Review Authority against the requirement for that person to leave New Zealand.
>
> (2) The appeal must be brought within 42 days after the later of—
>
> (a) The day on which the person became unlawfully within New Zealand; or
>
> (b) The day on which the person received notification under section 31 of the confirmation of the decision to decline to issue a permit, in the case of a person who, while still lawfully in New Zealand, had lodged an application under section 31 for reconsideration of a decision to decline another temporary permit.
>
> (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) For the purposes of subsection (3), the mere fact that a person's circumstances are such that the person would meet any applicable Government residence policy requirements for the grant of a residence permit does not in itself constitute exceptional circumstances of a humanitarian nature.
>
> (5) The following persons may not appeal under this section ... [not applicable]."

[16] Section 50(1) provides that an appeal to this Authority under section 47 is to be determined on the papers and with all reasonable speed. Section 50(2) states that on any section 47 appeal, it is the appellant's responsibility to ensure that all information, evidence and submissions the appellant wishes to have considered in support of his or her appeal are received by this Authority within the 42-day period.

[17] In determining an appeal, the Authority may seek and receive such information as it thinks fit and consider information from any source, but may not consider any information which relates to matters arising after the date the appeal was lodged, unless satisfied there are exceptional circumstances justifying the consideration of such (section 50(4)). The Authority must disclose to the appellant for comment any potentially prejudicial information that it proposes to take into account (section 50(5)).

[18] Where the Authority allows an appeal, it may direct an immigration officer to grant the successful appellant a residence or temporary permit subject to such requirements or conditions as the Authority may determine (section 52(2)).

[19] Otherwise, subject to sections 115A and 116, if a person's appeal to this Authority is unsuccessful and that person is still unlawfully in New Zealand seven days after the decision has been notified to him or her, that person is liable for removal from New Zealand (section 53(1)(b)).

Decision

[20] As will be apparent from the Background part to this decision there has been placed before me considerable material and submissions, all of which I have carefully read. The appellant and his counsel have gone to considerable effort to place all this material before the Authority and I have endeavoured to capture the flavour of this material as best I can. Clearly this appellant has had a very long history dating back to 1988 where he has had to deal with a number of issues involving officials at various levels within the United States and issues over spousal and child support and maintenance, custody and access issues, other civil judicial actions, all of which has no doubt taken its toll on this appellant.

[21] In the two volumes of case history, section 30 is headed "Continued Efforts from New Zealand". This speaks of the period 2002 to 2004 and outlines both the appellant and his wife's continued efforts to try and co-operate with the family court authorities in Colorado to the benefit of his children. The appellant said that, through his New Zealand attorney, efforts have been made to renegotiate payment structure and attempt mediation and resolution as far as was possible. Nothing appears to have been accomplished in mediation since April 2002. The appellant says that since April 2002 he has paid "US $161,119.75". The appellant says that

the child support authorities in both counties have offered to reconsider the original judgments based upon a true record of past and current income. The appellant states:

> "After over two years of consistent payments, Harmon is now submitting the documentation to the respective counties to accomplish this goal. This reconsideration is of course only for the current and further payment levels. The only way to deal with the accumulated arrearage is to return to Colorado and challenge the original judgments in court, a dangerous prospect for sure."

[22] The appellant has his own website which I have not visited as I felt that the material I had before me was sufficient. But what the appellant said in his statement in section 30 of his case history is this:

> "As shown in this web site, Harmon has gone to great lengths to report the political corruption behind his family court judgments and related criminal charges, and cooperate with the US system to prove his innocence to no avail. He has gone all the way to the top to find no possibility of a level playing field to hear his case. Therefore he has come to the conclusion that the only level playing field left is the World Wide Web Court of Public Justice. This is the field of legal battle that he has now chosen, hoping that this challenge against those who have attacked him can be justly played out before the media as his judge and the World Wide Web / global public as his jury.
>
> **Lumina Diem and the World Wide Web Court of Public Justice is now in session and we call upon all of those named in the Summons and Complaints contained herein to step up and face Harmon on this level playing field. May the truth prevail and the best man win! In Harmon's own words, 'My life is an open book and I have nothing to hide. I have lived this nightmare for over 14 years and it's time to finally insure my children's well being, get the truth on the table, and get all of those individuals responsible for this criminal injustice fired and in some cases, prosecuted! In the mean time Carolyn and I are seeking residency and citizenship in New Zealand or elsewhere if turned away'."**

[23] I have set out the above quotation from the appellant's own statement as it does explain the appellant's personal concerns as to the way he feels he has been treated through the United States of America system whether it be judicial or otherwise. The difficulties incurred by the appellant both as to his incarceration in both Canada and the United States of America and his other concerns centring around public officials of the United States of America are clearly deeply felt by this appellant. These are certainly factors that I take into account in determining this appeal.

[24] The feelings held by the appellant are clearly deeply felt given the very serious step that the appellant took in renouncing his United States citizenship on 1 March this year. He has announced this action publicly by virtue of the press

releases that I have referred to earlier in this decision. I have to determine whether this is a matter that I can appropriately consider after the 42-day period provided for by virtue of section 50(2)(b) of the Act. The appellant's counsel referred to section 129P(1) of the Act. That section, however, refers to matters being considered before the Refugee Status Appeals Authority, not this Authority. Why the appellant found it necessary to take this very serious step of renouncing his citizenship is not clear to me. Counsel for the appellant in his submission of 13 May 2005 notes that the Colorado District Attorney would not be initiating extradition proceedings for the appellant to be brought back to the United States as they did not deem the matter serious enough. However it is possible that the appellant has simply had enough of the various matters in the United States of America.

[25] Clearly the appellant has issues in the United States of America. I do not consider those issues, which are mainly of a legal nature, fall within the ambit of the test that I have to apply in determining this appeal. It is not for this Authority in this case to determine the rights and wrongs of any judicial proceedings in another country such as appear to exist with this appellant over the various battles that he has had and continues to have in the United States of America. The appellant clearly is not satisfied with the way matters developed over a period of years. Those issues simply cannot be explored by this Authority. They are matters properly dealt with in his country of birth.

[26] The appellant and his wife have no nexus to this country other than their employment through the appellant's initial secondment to Super BT. Clearly the appellant is a resourceful and well-educated man who has skills particularly in the technology field as set out in the various letters of support that I have referred to earlier in the Background part to this decision.

[27] The appellant through his counsel says by virtue of his renunciation of his United States citizenship he is now a stateless person. That was a voluntary step that the appellant took no doubt with the full knowledge of what he was doing. I note the renunciation was made with his own solicitor present. I do not consider that that step elevates this appellant's case to the high test that I have to apply in determining this appeal. Counsel has provided on appeal a number of High Court and Court of Appeal decisions. I do not intend to deal with each and every one of those. What is, however, important is that the test the Authority must apply under

section 47(3) is a high test as was expressed by the Court of Appeal in *Rajendra Patel v Removal Review Authority* [2000] NZAR 200 at 204.

> "Section 63B appeals start from the premise that the appellants are in New Zealand unlawfully and are seeking an exemption. The stringent statutory wording, 'exceptional circumstances of a humanitarian nature ... unjust or unduly harsh', using strong words imposes a stern test. In its natural usage, 'exceptional circumstances' sets a high threshold necessarily involving questions of fact and degree. Associated in the test under the paragraph is that it be 'unjust or unduly harsh' to remove on that account. It is a composite test and the whole picture is to be viewed, both circumstances and effects; and as part of that whole picture, the effects on others as well as the person removed may require consideration *(Nikoo v RRA* [1994] NZAR 509, 619)."

[28] In *Prasad v Chief Executive, Department of Labour* [2000] NZAR 10, 23 McGechan J observed:

> "... that it is open to an Authority to have regard to the integrity of New Zealand's immigration laws when making determinations under s63B(2)(a) and (b). Indeed, such may well be unavoidable. However, an Authority should do so with moderation, in the sense that the integrity of New Zealand's immigration laws is no more than one factor amongst others. There should not be a single focus upon the integrity factor so as to necessarily preclude the availability of the s63B exception."

[29] Equally in *Ronberg v Chief Executive, Department of Labour* [1995] NZAR 509 at pages 526-527 McGechan J said:

> "Mere economic betterment - the fact a person can live more comfortably in New Zealand than elsewhere - perhaps with employment instead of unemployment - is not the type of humanitarian consideration in contemplation in the statute. It would usually have difficulty qualifying in itself as an 'exceptional circumstance' rendering removal 'unjust or unduly harsh'. It was not intended New Zealand house the world. In reality, economic considerations which can come into play will co-exist with serious physical and emotional harm. Poverty in itself will not suffice. Poverty, starvation, and disease might do so. These are questions of degree; but clearly mere economic considerations - per se - are not an intended element."

[30] Counsel had referred me to the *International Covenant on Civil and Political Rights* and in particular the preamble and Articles 12 and 13. It is counsel's submissions that the appellant's human rights and freedom as well as his right to justice were severely restricted while he was resident in the United States. If he returned to the United States he would be detained, incarcerated and again absorbed into the system where he would effectively had no right of freedom or justice. In submitting to me Article 12, that Article provides for example in Article 12.1:

> "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

Equally Article 12.4 states:

> "No one shall be arbitrarily deprived of the right to enter his own country."

[31] The International Convention referred to by counsel is a factor that this Authority must take into account in determining appeals but it certainly cannot be the function of this Authority to override or criticise orders of another country's judicial system. There are avenues applicable to any such person as the appellant to have corrected any injustices. It is not for this Authority to determine whether there are any injustices arising out of matters pertaining to this appellant in the United States of America.

[32] I accept that citizens of a state as referred to in the above articles, have the right to liberty of movement within that territory. However such liberty can be restricted where a judicial process requires detention. That is but one illustration or example. However, in the case of this appellant, there is a risk of detention if he returns to the United States of America. If that detention is subsequently found to be unlawful, he may have appropriate remedies.

[33] I have studied the two articles referred to in paragraph 10 of the decision as well as the book by Judge Andrew P Napolitano. I do not consider it appropriate for this Authority to comment on the matters therein raised as they relate to matters of opinion expressed by the writers on a system or systems in the United States of America. I am not satisfied that there are matters that place this appellant at risk to a degree that reaches the test of exceptional circumstances of a humanitarian nature. Again they are one of the factors that I have considered in determining this appeal.

[34] I have also considered the effect on the appellant's wife in the event this appeal is dismissed and the appellant returned to his country of birth or elsewhere. There will be some emotional impact. Adjustments will need to be made in the event of the appellant being required to leave New Zealand. She is a Canadian citizen and no doubt can return to her home country with or without her husband. Any such separation would I hope be of a temporary nature.

[35] I note that the appellant's passport is held by the American Consulate in New Zealand. Any travel documents will be a matter for the NZIS to consider in assisting the appellant with such matters.

[36] I have given most anxious consideration to all aspects of this appellant's personal circumstances and indeed those of his wife. I have considered the totality of the grounds of appeal, the material supplied. The totality of the circumstances do not satisfy me that there are exceptional humanitarian circumstances or that it would be unjust or unduly harsh for the appellant to leave New Zealand.

[37] The appeal is dismissed.

[38] In dismissing this appeal I note for the attention of the appellant and his advisor/s that pursuant to section 53(1)(b) of the Act, the appellant has a period of seven days after the date on which this decision is notified to him to leave New Zealand before he is at risk of having a removal order served on him. Should a removal order be served on the appellant after that seven-day period he would be prevented from returning to New Zealand for a period of five years.

DATED at Wellington this 9TH day of AUGUST 2005

W Olphert

Senior Member
Removal Review Authority