

ON LINE *opinion* - Australia's e-journal of social and political debate

Migration health requirement locks out kids

By Susan Harris Rimmer and Kristin Natalier

Posted Tuesday, 3 November 2009

Australians all now know the story of German citizen Dr Bernard Moeller, who moved with his family to rural Victoria in 2006 to help fill a doctor shortage. Late last year Dr Moeller was denied permanent residency because the department believed his 13-year-old son Lukas, who has Downs Syndrome, would be a drain on the health system. The Minister for Immigration Senator Chris Evans used his discretionary power to waive the health requirement in November 2008 and announced a Parliamentary inquiry into the issue, which is about to take evidence.

Fewer of us may remember that in April 2001, Pakistani refugee Mr Shuharyar Kiyani died after dousing himself with petrol and setting himself alight outside Parliament House in a protest at years of delay in bringing his wife and three daughters to Australia. His daughter Amun had cerebral palsy and had failed the health requirement.

Then Immigration Minister Philip Ruddock had refused to exercise the waiver, stating: "It's complicated because the child in this case has very severe disabilities and the matter that's being assessed is the potential cost to the Australian community if the application were to proceed. Those costs (for medical treatment) go to many hundreds of thousands of dollars".

The health requirement looks on the surface to be fair and objectively applied to all comers. All applicants for a permanent or temporary visa for Australia are screened against the "health requirement". An applicant may have to undergo a health check if "screened in" according to the "health matrix" - which is based on the risk posed by the applicant's country of origin and likely activities in Australia. Countries are deemed as "high risk" based on the prevalence of tuberculosis, but basically they line up as poor or developing countries. Non-communicable diseases from wealthy countries, like diabetes, cardiac issues or obesity, are not caught in this matrix.

If sent for a health check, the Migration Regulations 1994 specify that all applicants for an Australian visa must meet Australia's "public interest", articulated as follows:

- be free from tuberculosis; and free from a disease or condition that is or may result in the applicant being a threat to public health or the Australian community; and
- not have a disease or condition which: is likely to require health care or community services; or is likely to meet the medical criteria for the provision of a community service; during the period of the applicant's proposed stay in Australia; and
- not have a disease or condition where provision of the health care or community services would be likely to result in a *significant* cost to the Australian community in the areas of health care and community services; or prejudice the access of an Australian citizen or permanent resident to health care or community services; regardless of whether the health care or community services will actually be used in connection with the applicant ...

A "disease or condition" considered significant is any medical issue which would require a threshold value of \$20,000 over five years to treat.

For some visa categories a waiver of the health requirement is available if the cost would not be considered "undue", and some compassionate circumstances are considered. But if the condition would cost over \$200,000, the waiver is rarely given. The Minister can also exercise his or her discretion in such cases once reviews have been exhausted to grant or substitute a visa.

This all sounds fairly reasonable, but these regulations are regularly used in the administrative decisions of Australia's Immigration and Citizenship (DIAC) to deny temporary and permanent residence visas to children living with a disability, on the basis of their potential demands on the health care system and/ or community services, presumably because this would be at the expense of services for Australian children living with a disability. Compassion tends to be reserved for rural doctors rather than refugees at the waiver or Ministerial intervention stage, with the earning potential of the parent a key consideration.

Disabled children, especially those from “high risk” countries, are disproportionately impacted by the operation of this seemingly objective legal scheme, because the health requirement asks the Medical Officer of the Commonwealth to calculate costs including education and carer pension costs over a person’s lifetime, and thus children are more likely to cross the \$200,000 barrier than adults.

Children are not usually the primary applicant so their particular situation or prospects are not considered at any stage in the process, unlike applicant adults. Therefore, they are only ever considered as a cost, not someone who may go on to be a contributing and valuable member of the community in their own right.

The health requirement is designed so that if one fails, all fail, and so we know that the operation of this policy has often resulted in children with a disability being left behind while other members of the family migrate, especially in refugee cases. We do not know the extent of this issue due to lack of data.

Usually children are thought of as precious, sacred, priceless; an investment in our future. Our leaders talk constantly about the value of families. But our migration policies send quite a different message to would-be migrants. The objective numbers hides the sometimes brutal reality of the operation of the scheme. This is a debate that has taken a long time to reach Parliament, but one our society needs to have. Lukas Moeller and Amun Kiyani deserve a voice in their own future.

Dr Susan Harris Rimmer is an academic at the Australian National University and is President of national voluntary NGO Australian Lawyers for Human Rights.

Dr Kristin Natalier is a lecturer in the School of Sociology and Social Work, University of Tasmania.