

HUMAN RIGHTS COMMITTEE

Sahid v. New Zealand

Communication No. 893/1999

28 March 2003

CCPR/C/77/D/893/1999

VIEWS

Submitted by: Mohammed Sahid (represented by counsel Mr. John Petris)

Alleged victims: The author, his daughter and his grandson

State party: New Zealand

Date of communication: 28 August 1998 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 28 March 2003,

Having concluded its consideration of communication No. 893/1999, submitted to the Human Rights Committee by Mr. Mohammed Sahid under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication, dated 28 August 1998, is Mohammed Sahid, a Fijian national, born 24 October 1945. He brings the communication on his own behalf, and on behalf of his daughter Jamila, a Fijian national resident in New Zealand, and his grandson Robert, born in New Zealand on 14 February 1989. 1/ He alleges violations by New Zealand of articles 23,

paragraph 1, and 24, paragraph 1, of the Covenant in the event of his removal to Fiji from New Zealand. He is represented by counsel. The Optional Protocol entered into force for New Zealand on 26 August 1989.

The facts as presented

2.1 In July 1988, the author arrived in New Zealand on a temporary visitor's visa to visit his adult daughter, Jamila, and her husband. His wife and four other children remained in Fiji. In February 1989, a son, Robert, was born to Jamila, and in March 1989 he applied for residence in New Zealand for himself, his wife and four children in Fiji. In June 1989, the application for residence was denied. After a series of extensions, the author's final temporary permit expired on 7 June 1991; from that point, he was unlawfully in New Zealand. In May 1992, his daughter and her husband divorced. On 30 November 1992, the author was served with a removal order under the Immigration Act. On 24 December 1992, the author appealed his deportation order to the Removal Review Authority ("the Authority"). In 1995, the author's daughter remarried, divorced, and then remarried again.

2.2 On 31 May 1996, following various exchanges in the intervening period with the author's representative, the Authority dismissed the author's appeal. On 14 April 1997, the High Court, on further appeal, remitted the matter to the Authority for a rehearing. On 6 May 1997, Jamila's ex-husband died. On 18 September 1997, the Authority again dismissed the author's appeal against the removal order. On 29 April 1998, the High Court dismissed the author's appeal against the Authority's second decision. On 22 July 1998, the High Court denied the author's application for leave to appeal to the Court of Appeal. While these proceedings were continuing, the Minister of Immigration dismissed several appeals for special intervention on the basis of the matter being sub judice.

2.3 On 27 July 1998, the author's representative sought a special direction from the Minister of Immigration, exceptionally to allow him to remain in New Zealand. On 28 August 1998, the author petitioned the Human Rights Committee. On 9 September 1998, the Minister of Immigration declined the request for a special direction for lack of substance. On 9 June 1999, the author was arrested with a view to removal. On 10 June 1999, the High Court, on an application for interim relief to stay removal, directed that the author be released on bail while interviews would be undertaken. On 16 June 1999, following a humanitarian assessment, the authorities decided to proceed with removal. On 1 July 1999, the High Court dismissed the application for interim relief. On 2 July 1999, the author was removed to Fiji.

2.4 On 3 July 2000, the Minister of Immigration cancelled the author's removal order, which would allow him to apply in the usual fashion for a temporary or residence visa without waiting out the usual five year period following removal.

The complaint

3.1 The author contends that his removal to Fiji would violate the rights of the alleged victims to the protection of the family, guaranteed in article 23, paragraph 1. He contends that he, his daughter

and her son constituted a "family" for the purposes of article 23. He states that they have been living together for many years, and that the extended family is culturally important to him. He argues that protection of the grandson's rights implies that the author should stay with him in New Zealand, as international human rights law aims at maintaining the family unit and giving highest priority to the child's rights. He relies for these propositions on a decision of admissibility of the European Court of Human Rights 2/ under article 8 of the European Convention on Human Rights and Fundamental Freedoms 3/ and a report of the Australian Human Rights Commission. 4/

3.2 The author contends that at no time did he intend to evade the authorities and that during his time in New Zealand he was pursuing the remedies available to him under New Zealand's immigration legislation. It is stated that his daughter Jamila suffers from "a number of physical and emotional disabilities" and has a close emotional tie with her father. Further, it is stated that the author has, in recent years, developed a heart condition which has on occasion necessitated hospitalization.

3.3 As to article 24, paragraph 1, the author submits that his grandson, who has New Zealand nationality by virtue of his birth in New Zealand, is entitled to the same measures of protection as other New Zealand children. To expel the author, who is alleged to be a primary caregiver, on the basis of his lack of New Zealand nationality discriminates against the grandchild and violates his rights to be treated without discrimination as to race, national or social origin, or birth. In support of this argument, the author supplied a family therapist's report describing him as exercising an important parental influence over his grandson in view of the death of his biological father, and that therefore his removal should be reconsidered "on humanitarian and on economic grounds". 5/

The State party's submissions on admissibility and merits

4.1 By submissions of 10 November 2000, the State party disputes both the admissibility and the merits of the communication.

4.2 As to admissibility, the State party contends that there are domestic remedies still available to the author, that the communication invokes a right not covered by the Covenant, and that the communication is insufficiently substantiated, for purposes of admissibility.

4.3 As to exhaustion of domestic remedies, the State party notes that the author has been given leave to apply for visitor's and resident's permits (from Fiji) and has applied for the former. Should he be unsuccessful in applying for residence, rights of appeal and review would be available to him.

4.4 Secondly, the State party argues that the author's essential claim is that the author "should have been granted residence in New Zealand because one of his five adult children and a grandchild reside in New Zealand. In other words, the author is purporting to find, within the Covenant, a derivative right of non-nationals to permanent residence in a foreign country where family members are residents or citizens of that country". The State party argues that neither the Committee's previous jurisprudence, 6/ nor analogous reasoning of the European Court of Human Rights, 7/ place such a broad interpretation on articles 23, paragraph 1, and 24, paragraph 1.

Accordingly, as the right relied upon does not exist within the Covenant, the claim should be dismissed as inadmissible *ratione materiae*.

4.5 Finally, the State party notes that the communication "baldly asserts [the author's] right to family life and the right of his grandchild to his care" and does not establish a breach of either right. It "states" that there is a violation of article 23, paragraph 1, while providing no evidence that the State party is failing to protect the rights of family or children, either generally or in the specific instance. Accordingly, to the State party, the claims have been insufficiently substantiated.

4.6 On the merits, the State party rejects a violation of either article 23, paragraph 1, or article 24, paragraph 1.

4.7 The State party notes that the obligation under article 23, paragraph 1, is an "institutional guarantee", 8/ whereby the State is obliged within broad discretion to protect positively the family unit. The State party lists numerous areas of its law where the family is institutionally recognized and protected. It notes that while there is no single definition of "family" under New Zealand law, the greatest protection is accorded to "nuclear" or "immediate" family groups comprising one or more adults, and any dependent children. The State party notes that this kind of family group, rather than the present group, was at issue in the Yeung report. 9/

4.8 In the immigration context, the State party observes that its law and policy provides extensive recognition and protection for family groups: (i) residence policy has a specific "family" category for foreign family members, (ii) overseas family members may be granted visitor permits, (iii) residence policy has a "humanitarian" category applicable to family members, (iv) family considerations are relevant to the issue of exceptional permits, (v) family and welfare considerations are assessed in appeals against removal order, and before a removal order is executed.

4.9 The State party points out that different forms of family relationship are protected to differing degrees, so that, for example, couples or adults with dependent children are accorded greater protection than family relations between adult children and their parents, or between adult siblings. These differences reflect objective assessments of the degree of interdependence in different family relationships. Thus, for example, as aged parents are more likely to be dependent on adult children for support, it is easier for a parent to join an adult child in New Zealand than for another adult sibling of the child to do so. These policy distinctions are consistent with the broad requirements of article 23, are justified by objective criteria, and are in line with the State party's discretion as to how best to protect and promote the family unit.

4.10 The State party notes that the author's application for residence and subsequent appeal against removal have both been considered in accordance with its law and policy. His family circumstances, including the interests of his daughter and grandson, as well as those of his wife and four children resident in Fiji, were given extensive and repeated consideration. 10/

4.11 The State party submits that the obligation to afford institutional protection does not give rise to an overriding obligation to protect all "families", however defined, in all circumstances. Rather the obligation must be balanced against other considerations, including, in this instance, the

author's other family relationships. The situation is thus similar to that considered in Stewart v. Canada, where the Committee held:

[T]he interference with Mr. Stewart's family relations that will be the inevitable outcome of his deportation cannot be regarded as either unlawful or arbitrary when the deportation order was made under law in furtherance of a legitimate State interest and due consideration was given in the deportation proceedings to the deportee's family connections. There is therefore no violation of articles 17 and 23 of the Covenant. 11/

4.12 The communication thus fails to demonstrate how New Zealand law falls short of the general obligation in article 23, paragraph 1, to protect and promote a family unit in New Zealand society.

4.13 The State party observes that it is unclear why the author's counsel has not expressly referred to article 17, paragraph 1, of the Covenant. Should article 17 nonetheless be considered relevant in the circumstances, the State party argues that article 17 prohibits "unlawful" or "arbitrary" interference with the family, accordingly not absolutely banning any interference but requiring that it be according to law, reasonable, proportionate and consistent with the Covenant. 12/ In the context of immigration, therefore, the State party refers to the Committee's jurisprudence that there can be no overall obligation on a State party to respect the choice by a family of a particular country of residence. 13/ The jurisprudence of the European Court has also held, consistently, that there is no general obligation to respect the choice by married couples of the country of their matrimonial residence, 14/ and that States are entitled to balance family interests against their legitimate interests in controlling their borders. 15/

4.14 This concept of balance has been recognized by the State party's courts, which have emphasized the need to give due consideration to the interests of families and children in accordance with the Covenant. 16/ The State party's residence policy, under which the author applied, provides for a wide range of circumstances in which strong family ties in New Zealand give rise to residence entitlement. The State party's law and policy recognize however the necessity, respected under international law, of retaining some limitations on entry and residence. In determining this policy, the State party observes it is entitled to distinguish amongst family relationships it regards as most compelling on the basis of objective factors.

4.15 Turning to the specific case in terms of article 17, the State party first observes that the author is a member of a variety of family groupings, including his relationship with his daughter Jamila and his grandson. The State party submits that his own primary family unit properly comprises, in addition to himself, his wife, son and three daughters in Fiji. While he clearly has an important relationship with his daughter, it must be recognized that she is an adult woman, who left Fiji, and has established a new life in New Zealand, having married, had a child, and now remarried. Her marriage is also strongly relevant to any consideration of the author's relationship with her and her child. As noted above, the State party submits it may accord the relationship between the author and his daughter, her husband and son a more limited weight than that between the author and his wife and other four children.

4.16 Secondly, the State party contends that the author has not demonstrated how any State action

has interfered with his family life. While his family members are now spread between Fiji and New Zealand, that was the result of his daughter's decision to leave and establish herself in New Zealand. While he may have become closer to his daughter and grandson in New Zealand, it should be recalled that his initial purpose was to visit his daughter briefly, and that much of his subsequent stay there was permitted to allow him to exercise appeal rights. Throughout that time, all but one member of his immediate family remained in Fiji and his primary family relationship must be taken as being there. Further, regular contact with his New Zealand family remains possible. Aside from the possibility of a visitor permit for him to visit New Zealand, and of mail and telephone, they may return to or visit him in Fiji. While this contact may be more intermittent than the author may wish, it does not fall to the State party to reconstruct a family relationship disrupted by his daughter's decision to leave Fiji.

4.17 Even if the Committee considered that there had been interference with the author's family within the meaning of article 17, the State party submits that it was justified, being lawful and reasonable. There is no question that the decisions to decline his residence application and appeals against removal were taken according to applicable law and policy. Within these processes, extensive consideration was given to family/humanitarian circumstances.

4.18 The author's initial residence application was considered under the family and humanitarian categories. The denial was twice confirmed by the Minister, who invited him by interview to raise further circumstances. Once his temporary permits expired, the Authority considered whether there were "exceptional circumstances of a humanitarian nature" warranting cancellation of the removal order.

4.19 The Authority found, as to the medical condition of his daughter Jamila, there were facilities both in New Zealand and Fiji providing good treatment, and, if she returned to Fiji, there would be "greater family support" for her. While some emotional distress would occur upon separation, there was no serious resulting physical harm. As to her threat to commit suicide if the author was removed, this was accepted as evidence of her emotional vulnerability and need for support, and she was urged to seek counselling. As it was open to her to travel to Fiji with her husband, however, this could not of itself justify the author remaining in New Zealand.

4.20 The Authority also found, as to the author's allegations of delay in resolving the author's applications and appeals, the delays were principally due to the author's exercise of all available rights of appeal. Further, in the context of certain political and economic marginalization of Indians in Fiji, the author eight years earlier had had a window broken and Jamila suffered a theft. While unpleasant and worthy of sympathy, these instances did not show he would personally be at risk of harm, discrimination or marginalization in the event of removal. ^{17/} Finally, accepting that family support was important in determining the best interests of the child and its development, the primary responsibility lay with the parents. This was not a case where a child was being involuntarily separated from its parents.

4.21 On appeal to the High Court, the author challenged these conclusions and the Authority's failure to consider a letter detailing his medical condition received two days before the decision was delivered. The Court considered the Authority had properly interpreted the facts and the law,

and that, while the Authority had been unable to consider the letter, it had addressed the question of the author's health. It further noted that the author could not complain that the Authority had not considered the letter when he had had the best part of a year to place the information in question before the Authority. Thereafter, upon an application for judicial review against the Immigration Service for the decision to deport him, the High Court held that the Service had fully and properly considered the various humanitarian matters arising.

4.22 The State party observes that the decision to remove the author was fully consistent with the aims and objectives of the Covenant. The decision makers at each level, including the Immigration Service, the Authority, the High Court and the Minister independently considered relevant international instruments, as the domestic courts have emphasized must occur. 18/ According to the State party, as the Committee has recognized, human rights principles must be balanced against rights of States, recognized under international law, to exclude aliens, admit aliens subject to conditions, or expel aliens. 19/ To the extent that the author seeks to challenge the application of its immigration law and policy, the State party invites the Committee to follow its previous jurisprudence that it will not entertain reconsideration of domestic law unless there are indications of bad faith or abuse of power, neither of which have been suggested in the present case. 20/

4.23 As to the claim under article 24, paragraph 1, the State party notes that this provision imposes a comprehensive duty to guarantee measures of special protection to children within its jurisdiction, within a broad discretion as to how this is implemented by the State. The State party refers to extensive protection of children, both generally, and in the immigration context, where children's interests are considered at all stages of proceedings.

4.24 As to the contention that the grandson has suffered discrimination, the State party observes that the claim appears to be that the complaint is that the grandfather, not his grandson, has been treated differently on the basis of national or social origin. In any case, issuance of a removal order occurred because of the application of ordinary immigration criteria, applicable to all persons in such a situation, regardless of nationality.

4.25 Further, if it were directed against the grandson, the discrimination prohibited by article 24 would have to refer to differentiation on the basis of a child's own characteristics. As a New Zealand citizen, Robert is entitled to the protection of the law regardless of his national or social origin. Nor was he discriminated against in comparison to other children whose grandparents, who were not New Zealand residents, have not been removed. In those cases, exceptional factors militating against removal were present, which factors were found not present in the instant case. In particular, the circumstances in the Yeung case cited by the author are significantly different. 21/ The relationship there between an infant child and his parents is quite different to the relationship between a child and a grandparent. In any event, the concerns raised by the Commission in that case were in fact taken into account in the present proceedings. Finally, any differentiation the Committee may find would be justified by objective, reasonable and proportionate grounds - as already described, the denial of residence to the author reflected a careful balancing of family circumstances.

The author's comments

5.1 By letter of 7 December 2000, the author rejects a number of the State party's arguments on admissibility and merits. He emphasizes that, at the point of submission of the communication, all domestic remedies were exhausted and indeed he was removed shortly thereafter. As to subsequent events, while the author was given leave to apply for a visitor's permit, this was then denied. No appeal lies against denial of a visitor's permit. As to admissibility *ratione materiae*, the author argues that his claims relate specifically to articles 23 and 24 of the Covenant. He contends that his allegations are properly substantiated.

5.2 As to the merits, the author argues under article 23, paragraph 1, that the interference in question was not reasonable and proportionate, for New Zealand immigration law and policy did not provide for the author's migration to New Zealand even though he had a daughter and grandson there. Accordingly, it provides little if any recognition to extended family relationships common in cultures such as his own, which "raises a preliminary question whether those policies are discriminatory on the basis of race or ethnic origins". The author regards it as "simplistic" to reduce his situation to a father, daughter, grandson relationship, as this does not consider Jamila's "isolation" in New Zealand, nor the rights of New Zealand citizens. The author suggests that relocation to Fiji is "unrealistic".

5.3 The author argues that with his removal "strong family bonds have been severed and this has had a greatly adverse effect on Robert". He attaches reports by a family therapist dated 29 June 2000 and 1 September 2000, on behavioural problems caused, in the therapist's opinion, by immigration decisions concerning the author. 22/

5.4 As to proceedings in the domestic courts, the author argues that his appeal was in terms of whether exceptional circumstances of a humanitarian nature existed. According to the author, the courts have consistently held that normal family ties cannot be considered exceptional circumstances. He argues that while the concept of balance has been judicially recognized, there is no developed doctrine of proportionality under New Zealand law. While the author accepts that immigration procedures now require the consideration of international conventions, he rejects the Authority's decision in his case as unreasonable. He further contends that superior courts do not enter into the merits of a humanitarian appeal, but confine themselves to an assessment of law and are "almost illusionary" [sic] remedies.

5.5 As to article 24, paragraph 1, the author argues that his function as a primary caregiver was of little consequence under the family/humanitarian aspects of the State party's residence policy, as his application was denied. As to alleged discrimination, he considers the basis for the differentiated treatment is the author's national or social origin.

Supplementary submissions by the parties

6.1 By submission of 16 July 2001, the State party provided supplementary submissions. The author's application for a visitor visa had been declined because of a high risk of non-compliance with visa conditions. He has however not yet applied for a residence visa despite being invited to do so. The author's wife has been issued an eight week temporary visa to allow her to assist her

daughter following medical treatment.

6.2 As to the author's claim advanced in his comments on the State party's submissions that its immigration policy may be discriminatory, the State party regards it "plainly inappropriate" to advance such an allegation not addressed in the communication. Nonetheless, the author's failure to acquire residence reflects the application of residence policy to his case rather than any deficiency in the policy. Further, immigration policy does make provision for extended relationships, and, to the extent that there are differentiations between various forms of family relationship, such distinction is consistent with the Covenant.

6.3 The State party rejects the author's claim that the superior courts only review questions of law and therefore provide "almost illusory" remedies. It notes that the author's case has been considered repeatedly in accordance with legislation and policy that is mindful of, and consistent with, international obligations. While the courts may be generally reluctant to reconsider findings of fact made in such decisions, such review gives careful consideration to compliance with law and policy, including consideration of international obligations.

6.4 The State party observes that the issue of the mental health of the grandson and the psychological reports were first raised in the author's comments on the State party's submissions, and were not drawn to the attention of any domestic authority. It would be open to the author to seek entry to New Zealand on humanitarian grounds by reference to the mental health of his grandchild.

6.5 The State party observes that the author's assertion that he was his grandchild's primary caregiver was not accepted as a matter of fact by the domestic authorities. The author's remarks on this and other questions of fact seek to revisit factual questions already considered by the domestic authorities.

6.6 Finally, as to the author's contention that there is no statutory requirement to consider the importance of the family or the Covenant, the State party observes that this overlooks the legally binding requirements, established by immigration policy as well as judicial precedent, for officials, tribunals and courts to take into account family circumstances and international human rights obligations.

6.7 By letter of 15 August 2001, the author stated that he has no further comments to make. On 20 December 2001, he forwarded a therapist's letter recommending the grant of a temporary visa to any family member able to make a brief visit to New Zealand in order to assist with Robert. 23/

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its Rules of Procedure, decide whether or not the complaint is admissible under the Optional Protocol to the Covenant.

7.2 As to the admissibility of the claims brought by the author on behalf of his adult daughter and grandson, the Committee refers to its consistent jurisprudence that an individual must show compelling grounds for bringing a communication on behalf of another in the absence of authorization. 24/ The Committee notes that the author has not supplied any authorization from his adult daughter, or otherwise demonstrated why it would be appropriate to act on her behalf. It follows that the author does not have standing, in terms of article 1 of the Optional Protocol, to present a claim under article 23, paragraph 1, on behalf of his adult daughter, Jamila. As to the claim on behalf of his grandson Robert under article 24, paragraph 1, the Committee considers that, in the absence of special circumstances not demonstrated in the present case, it is inappropriate for the author to bring a claim on behalf of his grandson without expression of assent to such a course by a custodial parent. 25/ Accordingly, the Committee considers that the author does not have standing in terms of article 1 of the Optional Protocol in respect of his daughter and his grandson, and these claims are inadmissible.

7.3 As to the author's own claim, the Committee notes the State party's arguments with respect to exhaustion of domestic remedies that it had become open to the author, after his removal, to apply for a residence permit which would enable him to return to New Zealand, and that he had not done so. The Committee observes that this opportunity only became available as a result of the (purely discretionary) decision of the Minister to cancel the removal order, after the author's removal had in fact taken place, and further that the author's application for a visitor's permit which also became possible after the Minister's decision has been declined. In the circumstances, the Committee does not regard the remedy advanced by the State party as being demonstrably effective, such as would preclude the Committee by article 5, paragraph 2 (b), of the Optional Protocol from considering the communication.

7.4 As to the State party's argument that the communication is insufficiently substantiated and/or outside the scope of the Covenant, the Committee refers to its previous jurisprudence 26/ that issues of removal of persons to another jurisdiction in the immigration context may arise under the articles pleaded by the author. The Committee accordingly finds that there is sufficient information before it raising an arguable claim concerning the author in terms of article 23, paragraph 1, of the Covenant.

7.5 In the absence of any further obstacles to admissibility, therefore, the Committee finds the communication admissible insofar as the alleged violation of the author's right under article 23, paragraph 1, of the Covenant is concerned.

Consideration of the merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1 of the Optional Protocol.

8.2 As to the admissible claims under article 23, paragraph 1, the Committee notes its earlier decision in Winata v. Australia, 27/ that, in extraordinary circumstances, a State party must demonstrate factors justifying the removal of persons within its jurisdiction that go beyond a

simple enforcement of its immigration law in order to avoid a characterization of arbitrariness. In Winata, the extraordinary circumstance was the State party's intention to remove the parents of a minor, born in the State party, who had become a naturalized citizen after the required 10 years' residence in that country. In the present case, the author's removal has left his grandson with his mother and her husband in New Zealand. As a result, in the absence of exceptional factors, such as those noted in Winata, the Committee finds that the State party's removal of the author was not contrary to his right under article 23, paragraph 1, of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not reveal a breach of any of the articles of the Covenant.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Mr. Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

Notes

1/ The author, acting on his own, provides no authorization or other justification for bringing the communication on behalf of the two latter individuals: see further paragraph 7.3.

2/ Uppal v. United Kingdom 3 EHRR 391 (1979) held *admissible*, and subsequently resolved by *friendly settlement*.

3/ Article 8 of the Convention provides: "Everyone has the right to respect for his private and family life, his home and his correspondence".

4/ *Human Rights Commission Report No. 10*: "The human rights of Australian-born children: a report on the complaint of Mr. and Mrs. R.C. Au Yeung" (January 1985). The Commission found it "inconsistent with and contrary to human rights" to deport two parents, who being unlawfully present in Australia had a year earlier had a child born to them, in circumstances where the child, an Australian national by virtue of birth there, had no option but to leave with the parents.

5/ Report dated 13 January 1999, by Julie Patterson, Senior Family Therapist.

6/ *Stewart v. Canada* (Case No. 538/1993, Views adopted on 1 November 1996).

7/ In Abdulaziz v. United Kingdom (1995) EHRR 471, the Court held, at paragraph 68: "The duty imposed by article 8 [of the Convention] cannot be considered as extending to a general obligation on the part of a contracting State to respect the choice by married couples for the country of their matrimonial residence and to accept the non-national spouses for settlement in that country."

8/ Nowak, M.: *CCPR Commentary* (Engel, 1993), at 290 and 402.

9/ See footnote 4, *supra*.

10/ The State party notes that between July 1989 and July 1999, the author pursued or was accorded more than 20 opportunities to make further submissions on these matters and to seek review of the decisions to deny him residence and to remove him. His requests for residence and/or appeal against removal were considered three times by the Immigration Service, twice by the Removal Review Authority, once by the Ombudsmen, six times by the Minister, and four times by the High Court.

11/ *Op.cit.*, at para. 12.10.

12/ General Comment 16 on article 17.

13/ Aumeeruddy-Cziffra v. Mauritius (Case No. 35/1978, Views adopted on 9 April 1981).

14/ Abdulaziz, *op. cit.*, at 497498, Gul v. Switzerland (1986) 22 EHRR 93, at 114, and Jaramillo v. United Kingdom (Appln. 24865/94).

15/ Bouchelkia v. France (1997) 25 EHRR 686, at 707.

16/ See, for example, Puli'uvea v. Removal Review Authority (1996) 2 HRNZ 510 (Court of Appeal).

17/ The State party notes that this assessment took place before the recent internal dissension in Fiji, the facts of which could be advanced by the author in lodging a new application for a permit.

18/ See, Puli'uvea op.cit., Tavita v. Minister of Immigration [1994] 2 NZLR 257 (Court of Appeal), Schier v. Removal Review Authority [1999] 1 NZLR 703 (Court of Appeal).

19/ The State party refers to General Comment 15 "The position of aliens under the Covenant".

20/ De Groot v. The Netherlands (Case No. 578/1994, Decision adopted on 14 July 1995), Maroufidou v. Sweden (Case No. 58/1979, Views adopted on 9 April 1981).

21/ See footnote 4, *supra*.

22/ Reports by Julie Patterson, Senior Family Therapist, Capital Coast Health.

23/ Letter, dated 19 December 2001, by Julie Patterson, Senior Family Therapist, Capital Coast Health.

24/ See, for example, F (on behalf of C) v. Australia (Case No. 832/1998, Decision adopted on 25 July 2001).

25/ See, by contrast, the approach taken in the special circumstances of Laureano v. Peru Case No. 540/1993, Views adopted on 25 March 1996, where the State party was found in violation of, inter alia, articles 6, 7 and 9 of the Covenant.

26/ Winata v. Australia Case No. 930/2000, Views adopted on 26 July 2001.

27/ Ibid.