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Christopher Levingston Blog

Australian Immigration Law blog



Posted by [Christopher Levingston](#) on Thursday, 28 June 2018 in [General](#)

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Citizenship, Unreasonable delay



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It appears that Home Affairs has been sitting on Citizenship Applications hoping hope against hope that the foreshadowed changes to the Citizenship Act will eventually make its way across the line.

It appears that the backlog is now running at 120,000 unresolved applications. (as at April 2017)

<https://www.sbs.com.au/yourlanguage/punjabi/en/article/2017/10/20/citizenship-application-backlog-mounts-120000>

At some stage the delay becomes unreasonable and there is good judicial authority to the effect that an application arguing unreasonable delay can be made in the Federal Court.

<http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca1530>

I am of the view that the fact of Home Affairs "sitting" on applications in order to apply the 20 April 2017 foreshadowed changes is completely unacceptable and is imposing hardship and significant disadvantage to would be Citizens.

In addition there is no proper legal basis for this tardiness

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
Posted by [Migration Alliance](#) on 28 June 2018

In addition there is no proper legal basis for this tardiness.

I think a delay of 2 years is prima facie "unreasonable".

Last modified on Thursday, 28 June 2018

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Comments



Tim Nolan Thursday, 28 June 2018

Great article...
If everyone had money to commence action then you can definitely put the department on notice.
Only an order from the court can compel the Minister to act.
Any unreasonable delay impacts the applicant in many ways.

 [Reply](#) 



Electric Boogaloo Thursday, 28 June 2018

So much for procedural fairness....

What is procedural fairness?
This article contains precedent & other instructive case Law, as well as a good definition.
<https://www.alrc.gov.au/publications/procedural-fairness-duty-and-its-content>

 [Reply](#) 



Libby hogarth Thursday, 28 June 2018

Absolutely agree - especially when they subsequently won't process partner visa applications until the sponsor is an Australian citizen

 [Reply](#) 



NOLA RANDALL Thursday, 28 June 2018

April 2017 was disallowed anyway. So they should definitely get on with it. I notice that people who continued to apply during that period, even though I notified the department that it was not yet approved by parliament and should be accepted, have never been given any acknowledgement document which is also unacceptable as these are now supposed to be in the system

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Citizenship, Unreasonable delay

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Commencing 1 July 2018, the Department of Home Aff...
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Bradley Bruce Thursday, 28 June 2018

No doubt, it's a great article and its about time for some action. How come ? No ones raising their eye browse over the timing of regional migration scheme system (rms 187) visa. Processing timing was 6 to 8 month in 2016 at the moment its 22 to 24 months. Your input would be appreciated. Thanks

 Reply 



Electric Boogaloo Thursday, 28 June 2018

Hi,
As noted by the PF article, it is difficult to establish PF has not been afforded when something is applied equally across all administrative decisions - like a policy. That is not to say it's impossible though...

As with the citizenship issue, one would need to prove the Department had deliberately held those applications back for some illegitimate purpose and as such have not afforded PF to the applicant(s).

an obvious issue with processing times for non citizenship applications is the fact the processing times are available to the entire public on the Department website - as well as the applicant being advised of processing time by their lawyers - agents.

If I was arguing the case for the Department I would certainly run at least one argument that:
"...the applicant is afforded PF within the time advised and it is not in the public interest to process these applications hastily given Australia's current and ongoing issues with security."

It would be much harder to run the same argument with the citizenship issue, given processing times are not advertised the same way, and there may be evidence (according to the original writer) that some 'holding back' of applications is in fact the reason for delays.

I want to be bored?

Court decisions are only binding on lower Courts - thus the High Court decisions are really the ones you want to be reading for 'precedent'. The high Court decisions are the ones the Fed Court base their judgements on - if there is a 'like case. This is called the doctrine of 'Stare decisis' if you really want to be particular about it....

Another article for you!
<http://legalresearch.org/writing-analysis/stare-decisis-techniques/>

 Reply 



MARGARET GIBSON Thursday, 28 June 2018

Completely agree with Libby Hogarth. It's delaying all other associated applications as well. Completely unacceptable.

 Reply 



sharon harris Friday, 29 June 2018

Class action Christopher ???
we could all ask our clients to contribute towards your fees.

 Reply 



David Brooking Friday, 29 June 2018

Completely agree with the above. This should not be restricted just to citizenship applications. Is there a possibility of a more general case about the unreasonable delays. I have just done a partnership visa with the sponsor an Australian citizen who has been legally married to the applicant for over 6 years and it is predicted that the processing will take up to 2 years!

Really how much time can it take to read the application - check the documentation and grant the visa?




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Robert Bock Friday, 29 June 2018

I just inherited an MRT case where the sponsor, a PR, mass denied a spouse visa, when she has been married to the husband for 30 years, and seven kids together. Beat that. What can we say.,RB

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Robert Bock Friday, 29 June 2018













Re my last post,they were married as Amadi Muslims in small village in Pakistan in the 80's. No phones,no electricity, no cameras,no water,no mobiles but the marriage was accepted and registered Case officer refused because Amadi marriages are not accepted because of current govermet non recognition of this community. Is our system non discriminatory? Don't think so.

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Guest Friday, 29 June 2018

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