

Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities (CRPD)

Consideration of the Combined Second and Third Periodic Reports Submitted by

New Zealand

1 August 2022

27th CRPD Session

Produced by the Fusi Alofa Association Tuvalu, Tuvalu Climate Action Network (TuCAN,) and the International Center for Advocates Against Discrimination (ICAAD)

About Fusi Alofa Association Tuvalu

Fusi Alofa Association Tuvalu (Fusi Alofa) is the only umbrella Disabled Person's Organization in Tuvalu. Fusi Alofa was established in May 2009 and was finally registered as a non-government organisation (NGO) in June 2012. Fusi Alofa strives to be the leading advocacy organisation on disability related issues in Tuvalu. Fusi Alofa also values its partnerships working on disability issues like the Tuvalu Red Cross Society, Department of Community Affairs (Social Welfare), Secretariat of the Pacific Community/Regional Rights Resource Team (SPC/RRRT), etc.

About TuCAN

Tuvalu Climate Action Network (TuCAN) was set up in response to the urgent need for a global commitment to reduce warming to well below dangerous levels and the equally urgent need to raise awareness on, adapt to climate change and implement clean energy in Tuvalu. It is a nationwide network that will be responsible for being the voice of all non government organisations in Tuvalu on climate change, working to coordinate and implement climate change activities and issues that are of direct relevance to non government organisations.

About ICAAD

ICAAD is a human rights advocacy center working at the intersection of legal innovation and human-centered design to create evidence-based programs with multidisciplinary partners to combat structural discrimination. They see the law and design justice as crucial lenses in identifying and changing discriminatory systems. Guided by international human rights law, we locate and approach human rights violations by identifying pattern and practices of discrimination within various government and cultural systems.

Contact: Erin Thomas (erin@icaad.ngo)

New Zealand: Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities (CRPD)

INTRODUCTION

1. New Zealand's state party report replied to the Committee's request for more information on the rate of denial of residency in New Zealand on the grounds of impairment, stating: "Immigration NZ does not record whether applications for residency and associated appeals were declined on health and disability grounds."¹ This submission aims to shed light on some of the gaps in information, looking specifically at the Pacific Access Visa Category in New Zealand.

Methodology

2. The examples in this submission are derived from interviews and documentation from Tuvaluan individuals and family members of those who have had their visa applications rejected by Immigration NZ due to disability status. This information comes from the Fusi Alofa organization based in Tuvalu. This qualitative data should support further inquiry through Immigration NZ to identify patterns in rejected visa applications on disability grounds.

ARTICLE 18: LIBERTY OF MOVEMENT AND NATIONALITY

General Issue Statement

3. New Zealand distinguishes between health and disability when assessing visa applications and looks specifically at the threat to public health, costs to health and education services, and ability to work or study based on the applicant's visa. The Immigration Act 2009 allows for significant discretion and very limited oversight when it comes to human rights concerns. While this is the explanation offered by New Zealand, it does not justify the failure to uphold New Zealand's obligations to ensure that people with disabilities are not discriminated against under the law. As it relates to the Committee's review, we draw specific attention to New Zealand's failure to uphold article 16 prohibiting discrimination on the basis of disability in immigration proceedings in the Pacific Access Category.

¹ CRPD Committee, Combined second and third periodic reports submitted by New Zealand under article 35 of the Convention pursuant to the optional reporting procedure, due in 2019, CRPD/C/NZL/2-3, 11 October 2019, p. 23.

Supporting Examples

4. The Pacific Access Category Resident Visa pathway began in 2002 and allows up to 250 citizens of Tonga, 250 citizens of Fiji, 75 citizens of Tuvalu, and 75 citizens of Kiribati to be granted residence in New Zealand each year. The scheme was suspended during the COVID-19 pandemic, and the government recently announced that they will be reopening the scheme later in 2022.² The examples below are from the last 20 years. More specific detail can be shared directly from Fusi Alofa.
5. A family, including a physically disabled child, applied for a visa under the Pacific Access Category. The process was significantly delayed until the parents removed the disabled son from the application. The rest of the family were granted visas shortly after that, and the son remains in Tuvalu.
6. In a similar example, a family including the father, daughter, and visually impaired mother applied for a visa under the Pacific Access Category. After significant delays, the father and daughter reapplied without the mother and were granted visas. After almost ten years, the mother is still waiting for an update on her visa. She is living in Tuvalu. In this case, the Ombudsman in Tuvalu worked with Fusi Alofa staff and Immigration NZ to find a resolution. Immigration NZ suggested withdrawing and re-applying. The application fees were prohibitive.
7. Two twin siblings applied for visas under the Pacific Access Category. One of the siblings was disabled and the other was not. After initially waiting for four months, they withdrew their application and applied again. Upon reapplication, their application was denied. The disabled sibling is living in Fiji supported by a parent who is living in New Zealand.
8. In addition to rejection to disability applicants on the Pacific Access Category scheme, rejections are also applied to disability visiting spouses or families for a short while. In 2019, Ms Peteli Manase living with hearing problems was not granted a visa to New Zealand to visit her husband Talatolu Jack (physically fit) working and a permanent residence of New Zealand. Due to the fact that the processing of visa is denied, the couple had lots of challenges in coping up with the issue that ended in a divorce.
9. All of these examples point to discretionary patterns by Immigration NZ that discriminate based on disability. In these examples, applications including persons with disabilities

² Bonnett, G. "Residence visas being offered to up to 5000 Pasifika after Covid-19 hiatus", 16 June 2022, Radio New Zealand, available at: <https://www.rnz.co.nz/news/national/469205/residence-visas-being-offered-to-up-to-5000-pasifika-after-covid-19-hiatus>.

remain in the processing phase for extended periods of time. When applying groups removed applicants with disabilities, visas were granted. Additionally, the cost of applying and reapplying is often prohibitive. The application fee for the Pacific Access Category is \$870-890 plus an additional \$410 immigration levy.³

RECOMMENDATIONS

- 10. Repeal Section 392 para. (2) and (3) of the Immigration Act 2009.** Para. 2 prohibits immigration-related complaints to the Human Rights Commission which limits national avenues for redress related to discrimination. Para. 3 provides an pathway for explicit discrimination, stating “immigration matters inherently involve different treatment on the basis of personal characteristics.”
- 11. Remove sections of the Acceptable Standard of Health (ASH) policy (A4.10.1) relating to disability.** New Zealand has stated their distinction between health and disability in the state party report, yet immigration policy still explicitly discriminates against persons with disabilities. We are encouraged by the removal of HIV infection from the list of medical conditions imposing prohibitive costs, and we urge New Zealand to similarly remove disability related impairment.
- 12. Remove the carve out for “physical, intellectual, cognitive and/or sensory incapacity that requires full time care, including care in the community...” in the ASH medical waiver policy (A4.60).** Should disability remain on the list of medical conditions deemed to impose too significant a cost, it should be removed from the list of excluded circumstances for medical waivers (section A, iii).
- 13. Reduce or eliminate application fees under the Pacific Access Category.** Given that the scheme falls under the “international/ humanitarian visa stream”, the application fee should either be greatly reduced or eliminated in order to better support applicants planning to settle in New Zealand.

³ Immigration NZ, “Fees Guide”, August 2022,
<https://www.immigration.govt.nz/documents/forms-and-guides/feesguide.pdf>