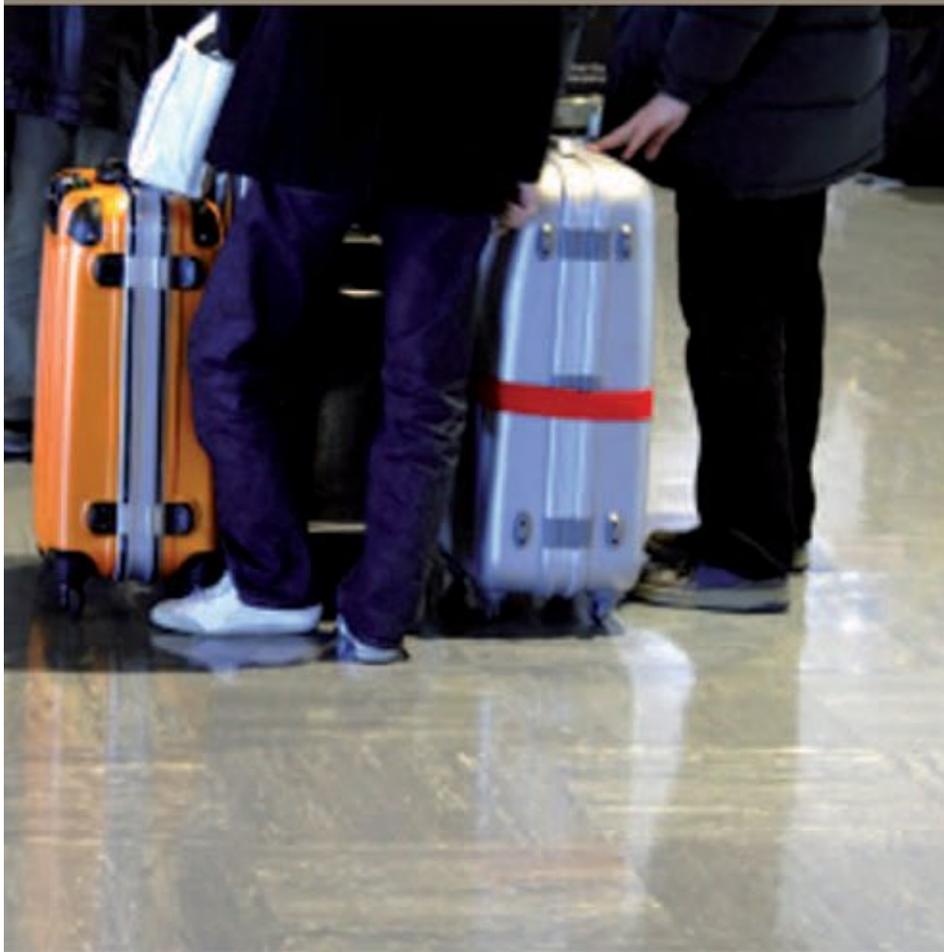


Thinking migration



Your goals Our know-how

All the experience, skill
and tenacity needed
to get you there.

Solicitors

From commercial, insurance and business transactions to family, employment and estate matters.

Conveyancers

Fast, accurate detailing of all property transactions.

Mediation

Sensitive dispute negotiation to help you avoid going to court.

Notary Public

Witnessing and certifying the validity of documents, affidavits and depositions.

Migration Agent

Negotiating with government on your behalf for family, lifestyle or career reasons.

LEGALMINDS
thinking together

www.legalminds.com.au

T 1300 642 166

E contactus@legalminds.com.au

157 Beardy Street Mall, Armidale



Thinking Migration - with Joy Tekinay (Senior Solicitor, Migration Agent)



THINKING MIGRATION

CHARACTER, PROCEDURAL
FAIRNESS AND CITIZENSHIP

In recent months the issue of migration has dominated much political and legal debate, both in Australia and internationally. Domestically, the protective stamp of citizenship has also been in the spotlight. This renewed focus is due in part to the federal parliament giving consideration to extinguishing the Australian citizenship of dual nationals on security grounds. It is also attributable to an increase in the number of visa cancellations of Australian permanent residents on the basis that they fail the character test.

The character test is defined in subsection 501(6) of the Migration Act 1958 (the Act) and provides that the Minister of Immigration and Border Protection (the Minister) may refuse to grant a person a visa if the person does not satisfy the Minister that the person passes the character test. On 16 October 2015 the High Court refused to grant special leave to appeal the Full Federal Court decision ([2015] FCAFC 53) that upheld a cancellation of visa ban for Mr Alex Vella applying the character test.

Mr Vella had migrated to Australia from Malta in 1967 aged 14. His wife, sons and mother are all Australian citizens, but he did not hold citizenship. Mr Vella became the national president of the Rebels Motorcycle Club in 1973 and had at least one conviction for trafficking marijuana. He left Australia in June 2014 to travel to Malta and shortly thereafter the Minister cancelled his visa. The basis of the Minister's decision was a finding that Mr Vella did not meet or pass the character test based upon his association with a "group, organization or person" who the Minister reasonably suspected was involved in criminal conduct. The effect of the visa cancellation was that Mr Vella remained stranded in Malta and unable to return to Australia.

Mr Vella claimed that he had been denied natural justice and procedural fairness because the Minister had refused to release information relied upon in making the original cancellation decision and later, in refusing to revoke the cancellation including intelligence provided by an Australian Crime Commission-led task force, Attero. That information

suggested that among other things Mr Vella had overseen the expansion of the Rebels and its alleged business of drug dealing, money laundering, assaults and firearms offences.

Section 503(A)(2)(c) of the Act provides that: "the Minister or officer must not be required to divulge or communicate the information (that has been given by law enforcement or intelligence agencies on the condition that it be treated as confidential) to a court, a tribunal, a parliament, or parliamentary committee or any other body or person". The Full Court was asked to consider whether principles of natural justice would require disclosure of such information provided and relied upon by the Minister.

Mr Vella's lawyers argued that the section should be read narrowly. The Court rejected this interpretation and instead held that the provisions of section 503A of the Act override the requirements that would otherwise normally apply.

Accordingly, information that has been provided to the Minister by a law enforcement or intelligence agency on a confidential basis can be treated very differently than other information that is normally relied upon for making a decision to cancel a visa. Information that falls within this class is protected from disclosure. Principles of natural justice and procedural fairness do not require that this information be disclosed to the person who is the subject of any visa cancellation and therefore cannot be the subject of scrutiny.

This clarification is likely to become more significant in the coming years as further intelligence is sought and obtained concerning potential visa applicants and current visa holders. If Mr Vella was a citizen he would not have been subjected to the risk of losing his visa.

If you are intending to migrate, make an application for Citizenship or apply for any other Australian visa you should start by obtaining initial advice from a registered migration agent. Talk to us. You'll be inspired!

Joy S. Tekinay
Senior Solicitor/Migration Agent
(MARN 1575740)