



Australian Government

Department of Home Affairs

Ref No: MC21-014459

Mr Rodger Smith
6 Randall Avenue
EDITHVALE VIC 3196

Dear Mr Smith

Thank you for your correspondence to the Minister for Home Affairs, the Hon Karen Andrews MP, the Sri Lankan family. The Minister appreciates the time you have taken to bring this matter to her attention and has asked that I reply on her behalf.

As a signatory to the *1951 Convention Relating to the Status of Refugees* and its 1967 Protocol (the Refugee Convention), I can assure you that Australia takes its international obligations seriously and provides protection to refugees consistent with the obligations set out in the Refugee Convention, and other relevant international treaties to which Australia is a party. Unlawful non-citizens are only removed if the Department of Home Affairs is satisfied they do not engage Australia's non refoulement obligations and that removal would not breach Australia's international obligations.

Since 2012, the family's claims to engage Australia's protection obligations have been comprehensively assessed on a number of occasions by the Department and various merits review bodies. The family has consistently been found not to be owed protection. These decisions have also been the subject of judicial review, including in the Federal Magistrates Court/Federal Circuit Court, the Full Federal Court and the High Court.

Home Affairs Portfolio Ministers have personal intervention powers under the *Migration Act 1958* (the Act) that allow them to grant a visa to a person, if they think it is in the public interest to do so. The public interest powers are non-compellable, that is, the Ministers are not required to exercise these powers. It is for the Ministers to define what is in the public interest.

On 15 June 2021, the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, the Hon Alex Hawke MP, exercised his non-compellable power under section 197AB of the Act to place the family into a residence determination arrangement in Perth, Western Australia.

Further, on 22 June 2021, the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs exercised his non-compellable power under section 195A of the Act to grant bridging visas to three members of the family.

The Australian Government's preference in every case is for foreign nationals who have exhausted all outstanding avenues to remain in Australia to depart voluntarily on their own accord. Those unwilling to depart voluntarily will be subject to detention and removal from Australia.

As this matter is before the courts, it would be inappropriate to comment further.

Thank you for raising this matter with the Minister.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. M.', written in a cursive style.

Ministerial Intervention
Department of Home Affairs
3 August 2021