Can DIAC reconsider its decision refusing an offshore skilled independent visa application?

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The answer is yes under certain circumstances!

The visa applicant has no right of appeal in respect of the decision of the Department of Immigration and Citizenship ("DIAC") to refuse an application for an offshore skilled independent permanent resident visa (previous subclass 136 visa, now subclass 175 visa). However, the Regional Manager has the discretion to reopen the case and reconsider the DIAC decision if there is a gross mistake.

In a recent case, *Imelda Argel & Associates* sought the reconsideration of the DIAC decision to refuse a client's application for an offshore skilled independent visa by the Regional Manager. According to the DIAC decision, the visa was refused because the primary visa applicant failed to satisfy "recent work experience". This is required of the primary visa applicant in addition to passing the points test, if he or she does not meet the 2 year study rule.

In this case, the primary visa applicant worked as a Residential Care Officer (RCO) on a temporary working visa (subclass 457) in Australia. Notwithstanding that she worked in that capacity in nursing homes during the relevant period, the DIAC case officer decided that her duties were consistent with those duties of a "Personal Care Assistant", and therefore the visa applicant was not employed in an occupation in the Skilled Occupations List (SOL) for the relevant period. In support of the decision, the case officer made reference to the certificate of employment. However, as a matter of fact, the certificate of employment stated only her employment as Residential Care Officer within the specified period without listing any duties.

In the letter reconsidering the decision, the Regional Manager wrote, "I note that this is a deficient decision record as the case officer did not correctly reference the specific documents on which the decision was based. The basis on which the case officer assessed the applicant's skill level was based on the applicant's job description on the Resume/CV provided."

The Regional Manager of Region 5 at the Adelaide Skilled Processing Centre reopened the case and required the submission of further evidence of employment as Residential Care Officer. As this is an offshore visa application, the visa applicants left Australia to receive the visa grant overseas. The skilled independent permanent resident visa for the primary applicant and members of her family unit has now been granted.

Incidentally there was another case, wherein *Imelda Argel & Associates* sought the reconsideration of a decision by the Principal Migration Officer at the Australian

Embassy in the Philippines. The decision refused the inclusion of a child of the primary applicant who was born after the lodgment of visa application but before the decision. The Principal Migration Officer reopened and reconsidered the case and granted the visa for the newly born child as a secondary applicant, instead of insisting on the exercise of appeal rights because a decision had been made.

These cases show that senior officers at DIAC can exercise their discretion to reconsider a decision when it is obviously erroneous.

This information is of a general nature and should not be taken as authoritative legal advice for specific cases. Australia has a scheme that requires persons who give immigration assistance to be registered as migration agent. The writer, Atty. Imelda Argel is a practising Filipino lawyer and a registered migration agent in Sydney, Australia. She is a Solicitor of the Supreme Court of New South Wales, the High Court of Australia, an Attorney at law in the Philippines and in the State of New York, USA. Her Registered Migration Agent no. is 9682957. She is also the recipient of the inaugural NSW FAWAA (Filipino-Australian Women's Achievement Award) for her outstanding achievements in corporate practice. More information is available at www.iargel.com.au