

Research Briefing

Fighting or Facilitating Family Violence? Immigration Policy and Family Violence in New Zealand

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Victims of Family Violence (VfV) visa criteria

- Had a partnership with a **NZ citizen or resident**
- **Intended to seek residence** on the basis of the relationship
- Partnership ended due to **family violence**
(Final Protection Order, conviction, police letter confirming violence, or 2 x statutory declarations from professionals needed)
- Unable to return to their home country due to a **risk of abuse or exclusion** because of stigma, **or no means of financial support**
(Do not need to prove this for 6 month work visa, only for residence)



Victims of Family Violence visa objectives

... to recognise New Zealand's international obligations, particularly to:

*end discrimination against women in all matters related to marriage and family relations (Article 16 of CEDAW);
and*

protect children from mental and physical violence (Article 19 of UNCROC)



VFV appeals in the Immigration & Protection Tribunal (IPT)

- VVV residence visa declines can be appealed to the IPT
- IPT decisions guide Immigration Officers' application of policy
- IPT can recommend exceptions if 'special circumstances'
- 49 IPT cases published under current VVV policy wording:
 - Most common countries of origin: Fiji (11), India (7), China (6)
 - 62% had dependent children who were affected by the appeal
 - **'Unable to return' requirement was reason for decline in 80% cases** and only 3 decisions found Immigration NZ error in this assessment



'Unable to return': Threshold

- 'At risk of abuse or exclusion because of stigma' often interpreted to require 'shunning' or 'disowning':
 - *[T]here was no indication that she had been **shunned or disowned**.*
 - *The case officer was not satisfied that the appellant ... would be **disowned** by [her family] due to the stigma of her situation.*
 - *[T]here is nothing in the evidence to suggest that the appellant's parents or brother would **disown** her[.]*
 - *[The applicant] did not go as far as to say that she had been **shunned** by her family.*
 - *[S]he would not be **wholly excluded** from her family or community.*



'Unable to return': Threshold

- Treatment of *any* level of financial support as a barrier to VFV visa eligibility (even if inadequate to meet basic needs). Expected to disprove tenuous and minimal sources of support:
 - *[I]t might be difficult for the appellant to find a “favourable job” immediately, which would cover all her living costs, but she did not provide evidence to demonstrate that she was **excluded from the entire labour market.***
 - *Whilst a letter from [the Fiji Muslim League] states that it would not be able to “guarantee” assistance, it did not rule out the possibility.*
 - *There is also evidence of **some social support** being available to the appellant [in Fiji] as a victim of domestic violence[.]*
 - *[T]he appellant would have **accommodation (even if cramped and/or temporary)** with her parents[.]*



‘Unable to return’: Threshold

- Expectation that appellants turn to a wide array of male relatives for (often grudging) support, e.g.:
 - *Despite [the **appellant’s brother’s**] responsibility to support his own family and their mother, it was not established he could not also provide some financial assistance to the appellant and her children.*
 - *The appellant advised that **her daughter’s boyfriend** is unemployed, as are the **husbands of her sisters** in China. However, these are claims made with no supporting evidence. ... Her economic prospects may be improved by the fact that **her son** is now 18 years old and able to work.*
 - *[Immigration NZ] did not believe the appellant’s claims that **her brother-in-law** would not allow her to live in their household or share in the livelihood that he brings to that household.*



'Unable to return': Evidence

- Expectation of direct evidence of hostility or threats:
 - *Immigration New Zealand **did not receive any communication from the appellant's family** as to their refusal to support her.*
 - *[T]he appellant could not produce any **direct evidence** that she would not be accepted back into their home by her brother-in-law[.]*
 - *There was also **no convincing evidence, such as written statements** from community or family members, to suggest that the appellant's family intended to force her to remarry or of the proximity of abuse[.]*
 - *[T]he allegation that the ex-husband's father had said [in a phone call] that he would take revenge on the appellant if she returned to Fiji was **unsupported and uncorroborated**.*



‘Unable to return’: Evidence

- Country research often dismissed as ‘too general’, but direct evidence perceived as self-serving or unconvincing.
 - *[S]he presented **evidence that was too independent**, because it was from people [an MP, the Fiji Council of Social Services, and an international human rights lawyer in Fiji] who did not know her personally or know her family.*
 - *[INZ] noted the affidavits the appellant had provided from her family which suggested that there was a real threat to her life should she return to India. Immigration New Zealand was correct to note that **this affidavit evidence was speculative only**.*
 - *A **joint statement from her grandparents, rejecting her** and stating they could no longer afford to look after her son, was weighed against the evidence that she had been able to stay with them [prior to separating].*



'Unable to return': Evidence

- *While it is acknowledged that the Fijian economy is depressed and unemployment high, the appellant cannot rely on bare assertions that she will be unable to find employment. She admitted at interview that **she had not searched for or applied for any jobs in Fiji.***
- *[She] responded with (untranslated) **unsuccessful applications** for jobs in Romania, a claim that over half the employment positions in Romania were filled through referrals, and testimonies provided by people living in Romania as to the extreme difficulty in securing employment. ... It is not sufficient to **simply claim** that a woman of her age, with previous work experience ... will be unable to secure employment again.*



Other trends in VFV policy application

- **Misunderstanding of cultural norms** – e.g. using past dowry payments as an indication that family could financially support, or remarriage as indicative of absence of stigma.
- **Undue narrowing of definitions** – e.g. ‘stigma’ as *only* ‘the stigma of separation in the context of family violence’.
- **International obligations used to narrow, not widen, eligibility** – policy objective interpreted as only protecting women from the stigma of divorce, rather than also protecting women from violence within New Zealand.



Family violence & 'special circumstances'

- 15 cases found 'special circumstances'
- All but one involved dependent children, and children's interests appeared determinative rather than appellants'
- Impacts of family violence received limited recognition as 'special circumstances'
- Appellants' contributions and nexus to NZ assessed in ways that didn't account for family violence
- Intention that including international obligations would benefit women appealing decisions not borne out



Family violence & 'special circumstances'

- Violence often 'normalised', made invisible, or irrelevant:
 - *The failure of a relationship which was to be the basis of residence application is **not out of the ordinary**. [Making the context of family violence invisible, and her situation 'ordinary'.]*
 - *The fact of the abuse inflicted upon the appellant, regrettable as it is, **does not make her circumstances uncommon or out of the ordinary**.*
 - *[N]either the difficulties relating to the end of the appellant's relationship with her former partner, [nor] her acute disappointment and hurt at his actions, ... are **out of the ordinary or uncommon**.*



Family violence & 'special circumstances'

- Consequences of violence typically given little weight:
 - *[The appellant's doctor advises that] the appellant continued to suffer from significant depression and anxiety, and low mood and self-confidence, resulting from the stress arising from the breakup of her marriage, and domestic violence, and the strain of the court case. In the doctor's opinion, the appellant needed to continue with ongoing therapy in New Zealand. Any move back to Fiji would negatively impact her mental and emotional health. ... The Tribunal recognises the domestic violence suffered by the appellant ... **The appellant has suffered and no doubt continues to suffer emotional and physical effects as a consequence of his behaviour.** ... However, while being out of the ordinary, it is not demonstrated that these circumstances warrant consideration of an exception to immigration instructions.*



Children & 'special circumstances'

- The IPT is required “to have regard to the best interests of children as a primary consideration”
- Inconsistent approaches to the risk of separation of victim-survivor mother and child, and to the interaction between IPT and Family Court decisions
- Inconsistent approaches to assessing effects of removal on a child



Children & 'special circumstances'

- Effective expulsion of New Zealand citizen children:

*[T]here is no reason the appellant cannot continue to parent her son in India, as she does in New Zealand ... **while the son is entitled to know about both his parents' cultures, naturally he will be more exposed to the culture of his custodial parent. His father's twice yearly visits can have done little to assist his son adopt a Maori identity or become familiar with his whanau [sic]. As for the father's claim that it is his son's birthright to stay in New Zealand, as a New Zealand citizen, the son is free to depart or return to New Zealand at any time. That is a self-evident, but distinct, principle from the question of whether his mother is entitled to remain in New Zealand.***



Children & 'special circumstances'

- Many decisions did not see separation of mother and child as a matter warranting an immigration solution – appellants expected to return to Family Court to try to lift orders:
 - *[T]he nature of the appellant's rights to have contact with her daughter, do not operate as a "trump card" which mean that the appellant ought to be granted residence. ... the **appellant has recourse to the Family Court** [to seek to remove her child].*
 - *[D]etails as to how [child's] future best interests can be protected can be determined by agreement between the appellant and her ex-husband or, failing such agreement, **by order of the New Zealand Family Court.***



Children & 'special circumstances'

- Greater weight to Family Court orders in recent decisions – more positive outcomes overall. However possible tension prioritising contact between a child and the parent who uses violence?
- *Despite the difficulties which ongoing contact presents to her, [the appellant] maintains and encourages [child]'s ongoing contact with her father ... the ongoing relationship that [child] has with her father [should not be] undermined by her removal[.]*
- *[The appellant's] presence is required in New Zealand so that she can continue to provide this care and to support her daughter in maintaining a relationship with the father[.]*



Other gaps in family violence responsiveness

- Minimising or euphemistic language
 - “a *domestic incident*”; “[h]er husband evidently *treated her badly*”; “[t]he appellant was very *poorly treated* by her husband and his parents”; “the so-called pattern of abusive behaviour by the appellant’s ex-husband”; “*her troubles* with her ex-partner”.
 - Mutualising violence or fail to identify the perpetrator: “*The relationship* was unstable and abusive. This culminated in the appellant suffering a miscarriage”; “the appellant was in a fragile state of mind after her *abusive relationship* and abrupt separation”; and “her abusive marriage”.
 - Strangulations referred to as ‘attempts’ (rather than accurately describing them as non-fatal strangulation).



Other gaps in family violence responsiveness

- Lack of understanding of forms of violence affecting migrant women:
 - Minimisation of dowry abuse: “the appellant became disillusioned with her fiancé’s expectation of money and gifts from her”; “what the appellant describes as her case against her ‘ex husband and in laws “dowry abuse””.”
 - Victim of a sham marriage found not to meet the criteria for VFV visa eligibility due to husband’s deception
 - Immigration systems abuse rarely discussed as a form of abuse, despite being evident in many decisions



Other gaps in family violence responsiveness

- Using safety risks in NZ as a reason a victim-survivor should leave (against her own wishes):
 - *Because of her ongoing anxiety and stress issues, the Tribunal does not consider that being in New Zealand is necessarily the best place for the appellant due to a fear of her former partner (the first partner) contacting her.*
 - *The appellant had also indicated that her ex-husband was threatening her. She had provided a temporary protection order during the interview ... Therefore, it appeared to Immigration New Zealand, the appellant would be safer in China.*



Other gaps in family violence responsiveness

- Using strengths and resilience against victim-survivors:
 - *[T]he appellant has shown herself to be **independent and resilient**.*
 - *The appellant has proven herself to be a **capable and resourceful** person despite the trauma of her failed relationship[.]*
 - *In fact, as past events have shown, she is a **resourceful and determined** woman.*
 - *[E]ven if the appellant cannot expect assistance from her family, and suffers some discrimination in India, she has the means (her education, employment history, and “**capacity for independent assertive actions**”, as confirmed by the psychologist) to ensure the best for herself and her child.*



Improving family violence responsiveness

- Policy review is urgently needed:
 - ‘Unable to return’ requirement should be removed
 - Pathway to residence needed for all survivors who need to remain in NZ with children
 - Other key policy gaps include FV evidence requirements, partners of temp visa holders, transnational abandonment
 - FV sector must be involved in policy review, to ensure criteria feasible for victim-survivors to meet
- But policy reform alone is not enough – comprehensive and ongoing education required

