**In the Waitangi Tribunal**

**Wai 1428**

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| **Concerning** | the Treaty of Waitangi Act 1975 |
| **and** | the New Zealand Immigration Service (Hauiti) claim |

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**Memorandum and directions of the Deputy Chairperson regarding a renewed application for an urgent hearing**

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1. On 4 October 2007 I declined to grant an urgent hearing into Wai 1428, a claim submitted by Rosina Hauiti concerning Immigration New Zealand's decision not to grant her husband residency status. In my directions I stated that Ms Hauiti had failed to show that an imminent Crown practice or policy would breach her rights under the Treaty of Waitangi, as required for the granting of an urgent hearing. I gave Ms Hauiti leave to reapply for an urgent hearing if documents sought under the Official Information Act from Immigration New Zealand revealed a new basis for an urgent hearing.
2. I have now had the opportunity of reading the further submissions of Mr Delamere, now assisted by Evgeny Orlove, on behalf of Ms Hauiti. Appended to the submissions are miscellaneous articles, cases, and a letter to Ms Hauiti from Minister Cunliffe concerning Mr Fonoa's immigration status.
3. Unfortunately, the further submissions, calling in aid many human rights principles and cases, have not advanced my consideration of Ms Hauiti's application for an urgent hearing before the Tribunal. This is not a human rights case, and, if it were, it would not properly be directed to the Waitangi Tribunal. Our jurisdiction is about the principles of the Treaty.
4. It is theoretically possible that the Tribunal could receive and hear a claim from a Māori person whose Treaty rights were infringed because her husband had been negatively affected by policies and practices of the Crown that breach the principles of the Treaty. This would necessitate an argument that the treatment of her husband affected her own Treaty rights. That argument has not been made out here, though. None of the principles and practices of the Crown to which our attention has been directed in this case appear to be at all questionable. It appears that there is a requirement that a marriage must be stable in order for a person to be granted the right to remain in New Zealand as a result of his or her marriage. The immigration authorities are satisfied on the basis of what they know about Ms Hauiti's relationship with Mr Fonoa that it does not meet this criterion. Clearly, Ms Hauiti disagrees with this assessment. However, that does not indicate that the policies and/or practices breach the principles of the Treaty, nor that the Waitangi Tribunal should inquire into whether the authorities' assessment of the situation is right or wrong. And whether or not Ms Hauiti considers Mr Fonoa to be a taonga in terms of the Treaty is really a distraction from the main point at issue. I should say in passing, however, that the applicant's arguments in this regard are similarly unpersuasive.
5. It is not the role of the Waitangi Tribunal to second-guess the immigration authorities. We would need to be satisfied that there was a clear case in terms of the Treaty in order to grant an urgent hearing. The Tribunal has a very full schedule, and the threshold for granting an urgent hearing is high. I have seen nothing to persuade me that this is a case that meets our criteria. Primarily, as I have said previously, the question of immigration status is a matter for the immigration authorities, and the ordinary courts

are the proper place to seek review of their decisions if they are considered wanting at law.

6. The application is accordingly declined.

The Registrar is directed to send a copy of this direction to all those on the notification list for Wai 1428, the New Zealand Immigration Service (Hauiti) claim.

**DATED** at Wellington this 16th day of October 2007

Judge C M Wainwright
Deputy Chairperson
**WAITANGI TRIBUNAL**