

OFFICIAL

Wai 1428, #2.5.2

In the Waitangi Tribunal

Concerning

the Treaty of Waitangi Act 1975

and

the New Zealand Immigration Service (Hauti) claim

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

1. On 24 September 2007 an application for an urgent hearing was submitted to the Tribunal by Rosina Hauti, claimant for Wai 1428. Ms Hauti's claim concerns Immigration New Zealand's decision not to grant Ms Hauti's husband, Mofuike Fonua, residence status.
2. On 2 October 2007 I requested that the applicant supply further details regarding her application. Ms Hauti's advisor, Tuariki Delamere, filed a response to this direction on 3 October 2007.
3. Prima facie, the Waitangi Tribunal is not a forum for appeals against immigration decisions. It is not clear on the information provided what the policy is that Mr Fonua has been affected by, nor why his marriage is not considered valid, nor why any of these policies and/or practices are inconsistent with the principles of the Treaty of Waitangi. For the application to succeed, we would need to see argument and/or evidence showing that the policy or practice is inconsistent with the principles of the Treaty of Waitangi in some way, and that this is a breach of his wife's Treaty rights. Neither evidence nor argument to that effect is evident. The argument that Mr Fonua is a taonga to his wife, and therefore decisions affecting him impugn her Treaty rights, are not at all persuasive. On that basis, it would be available to applicants to argue that when a Māori's wife or husband is wrongly charged with a crime, their own Treaty rights are impugned. This is clearly not tenable. The source of the applicant's difficulty is the handling of her husband's immigration status by the immigration authorities, and the couple's complaints should continue to be directed to them. If the authorities' conduct is inconsistent with administrative law principles, then the ordinary courts are where they can find a remedy. The fact that applying to the ordinary courts is more expensive does not mean that the Waitangi Tribunal can be supplanted as the forum to which the complaints can be made.
4. I accept that the position may change after the applicant receives the documents sought under the Official Information Act. If the information then available to her affords the basis for a more plausible argument in terms of this body's jurisdiction, she has leave to apply again.

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 (Hauti) claim.

DATED at Wellington this 4th day of October 2007



Judge C M Wainwright
Deputy Chairperson
WAITANGI TRIBUNAL