

Visa Cancellation at Airport

Is Ministerial Intervention an option?

In recent days, there have been several media reports of the controversy surrounding the Home Affairs Minister Peter Dutton's decision to use his ministerial discretionary power. It has been reported that in 2015 Mr Dutton intervened in three au pair from being deported after arrival in Australia each on a Tourist visa. There is no suggestion Mr Dutton acted beyond his power. The au pairs would most likely to have had their Tourist visa cancelled and detained as an unlawful non-citizen before Mr Dutton would have had the power to grant them a new Tourist visa.



Whoever assisted and successfully made representations to Mr Dutton's office on behalf of the au pairs would have done a task that in our view is generally not possible. This is because visa cancellation and the deportation process at an airport happens very quickly, within few hours with no opportunity to obtain legal advice or representations. During the process, a person whose visa is being

considered for cancellation does not get an entitlement to make telephone calls and are often only given a very short time such as 10 to 15 minutes to consider and give reasons why their visa should not be cancelled. Once a decision is made to cancel the visa and refuse the person's entry into Australia, that person is usually deported on the next available flight often on the same day and within hours.

It is usually not possible for a person who is the subject of a visa cancellation at an airport to make a ministerial intervention request. This is not only because the person who had their visa cancelled at an airport may not even be aware, as they will not be informed by visa cancellation officer, that the Minister has a discretionary power to grant them any visa if the Minister thinks it is in the public interest to do so under s.195A of the *Migration Act*. Rather, it is simply not possible to get a request to the Minister's office in time by the person while being detained.

The normal process of a ministerial intervention request is:

1. Written request sent to the Minister's office in Parliament House.

2. The request is then forwarded to the relevant section of the Department of Home Affairs that will assess the request against guidelines given by the Minister to determine whether the case should be referred to the Minister for consideration.
3. If the guidelines are met, then the relevant section of the Department will prepare a submission to the Minister for consideration and decision.

Therefore, the normal process that is in place for ministerial intervention is impractical to a person who has had their visa cancelled at an airport. What has been reported is in one of those au pair's case, that is was raised with Mr Dutton's office directly which prompted Mr Dutton to seek a briefing from his own Department. It seems most likely that what happened was someone who was expecting the au pair's arrival contacted Mr Dutton's office after being made aware that the au pair's visa has been cancelled.

In short, under normal circumstances the chances of having the Minister intervene by granting another visa to a person who has just had a visa cancelled at an airport is not possible.

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