

# Shadow Report to the Committee on the Rights of Persons with Disabilities

**Country:** Aotearoa New Zealand

**Organisation:** Migrants Against the Acceptable Standard of Health Aotearoa

**Primary author:** Áine Kelly-Costello

**Contact:** [endashnow@gmail.com](mailto:endashnow@gmail.com); [website](#)

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# Executive summary

When disabled people migrate to or seek to settle in Aotearoa New Zealand (NZ), they face direct and unacceptable disability discrimination. Acceptable Standard of Health (ASH) requirements force migrants, and some refugees, to prove that their presumed health, disability or education costs are unlikely to exceed a particular threshold. It is a degrading and deficit-based process which treats all those impacted as unworthy, focusing narrowly on their economic value rather than acknowledging their strengths and diverse contributions which enrich the country.

The Acceptable Standard of Health (ASH) requirements comprise criteria that most people applying for most kinds of visas in Aotearoa NZ have to meet. The ASH instructions classify practically all common impairments/disabilities and a huge range of health conditions as imposing "significant costs and/or demands" on health or education services and use this as grounds to deny applications. ASH affects a huge range of people, including adults with many disabilities, health conditions or health needs, as well as families with children who are likely to qualify for education support funding (Ongoing Resourcing Scheme funding). Refugees are also subject to the full set of ASH restrictions or a narrower version, depending on the category of their application.

The psychological and physical health impacts of the lengthy, degrading, expensive and uncertain ASH-related processes cannot be overstated. Fear of authorities learning of migrants' health status can also harm health. The financial impacts from paying for immigration advisors and lawyers, and/or from being unable to work because of visa status, are also significant. In at least one case, Immigration NZ has gone so far as to explicitly criminalise a migrant family because of their remaining unlawfully in NZ given their son's health conditions and disability by arguing that the parents were aiding and abetting him to do so. Uncertainty caused by the bureaucratic and drawn-out ASH policy processes can drag on for years, often splitting families across borders and leaving those impacted in prolonged limbo.

During NZ's last UNCRPD review, after the CRPD Committee raised concerns around discriminatory migration policy, the Government argued that the current ASH instructions are justifiable under the UNCRPD. However, Migrants Against ASH believe that the ASH requirements breach a number of UNCRPD articles, especially:

- Article 5 – non-discrimination: ASH directly discriminates against migrants on disability and health grounds. Entering into the medical waiver process and fighting against that discrimination is costly (involving lawyers), time-consuming, highly stressful, terrible for mental health, and exhausting. Many migrants, and especially refugees, do not have the combination of language skills, support networks, education, financial resources and time needed to even consider entering into this process, effectively prolonging their resettlement or barring them from living in NZ. Furthermore, some disabled people are prevented from even attempting to enter into the process because of being considered to require full-time care including in the community - a condition that is considered non-waivable by INZ. This also infringes on Article 19: Living independently and being included in the community.

- Article 18 – Liberty of movement and nationality: Disabled migrants are deprived of the rights to "liberty of movement, to freedom to choose their residence and to a nationality, "on an equal basis with others" as set forth in Article 18. The "on an equal basis with others" aspect is salient here. Article 18 also stipulates that "[c]hildren with disabilities shall be registered immediately after birth and shall have [...] the right to acquire a nationality". However, cases such as that of Ruby O'Connor, where Ruby was born in NZ and still denied residency let alone citizenship, show that ASH breaches this right. Some refugees, and/or their family members, are also denied resettlement on health grounds.

The ASH instructions also violate a range of human rights as set out in the UN Convention on the Rights of the Child, the Political Declaration on HIV and AIDS, and many other international human rights instruments.

Even though the character requirements pertaining to NZ visas and being able to remain in NZ do not directly discriminate against disabled people, including people experiencing mental distress, the application of these requirements has the potential to do so as detailed in the report in the case of the deportation of Narinderjit Singh.

The Immigration Act 2009 prohibits migrants from bringing human rights complaints under the Human Rights Act regarding migration decisions. A Private Member's Bill has been drafted which would rectify this. It would also remove the provision stating that "immigration matters inherently involve different treatment on the basis of personal characteristics". However, the Government has shown no interest in supporting the provisions in this Bill so there is no assurance it would pass whenever drawn for review.

In 2020, NZ's independent Monitoring Mechanism recommended that immigration laws and policy be reviewed to align with the UNCRPD. Such a wide-ranging review was recently carried out in Canada, whose medical inadmissibility rules were similar to NZ's ASH, resulting in a substantive reduction of the requirements and agreement to phase them out entirely.

However, despite ongoing advocacy, the Government is currently only reviewing the health cost threshold, and not the wider policy. This is despite a recommendation from the cross-Party Education and Workforce Select committee that the policy should take a strengths-based approach to disability and only screen for the most serious health conditions.

## Recommendations

Migrants Against ASH seeks an end to both disability and health-based migration policies and practices, including via the removal of the ASH instructions and the legislative framework enabling such instructions to be created.

Migrants Against ASH recommends that the Committee on the Rights of Persons with Disabilities:

- Recognises the extent and injustice of the impacts of the ASH requirements on disabled migrants and their families, especially on disabled refugees;
- Highlights that the discrimination disabled migrants face due to the ASH policy breaches the human rights of disabled migrants under the UNCRPD and other international human rights instruments;
- Calls for an immediate halt to applying health or disability limitations to asylum seekers and all categories of refugees at any point during asylum seeking and resettlement processes, including visa applications for residency and family reunification;
- Indicates its support for the migration-related NZ IMM recommendations from 2020, which are
  - "47. Review relevant legislation and policy to ensure that disabled people do not experience additional barriers over and above others when applying for entry into New Zealand, including but not limited to:
    - a. ensuring that immigration officers have regard to the Disability Convention when making decisions under the Immigration Act; and
    - b. repealing section 392 of the Immigration Act to enable the Human Rights Commission to receive complaints about immigration matters.
  - 48. Work with disabled people to create immigration instructions that fulfil the Government's obligations under the Disability Convention and the Disability Strategy."

# Introduction

When disabled people migrate to, or seek to settle in, Aotearoa New Zealand (NZ), they face direct and unacceptable disability discrimination. Acceptable Standard of Health (ASH) requirements force migrants, and some refugees, to prove that their presumed health, disability or education costs are unlikely to exceed a particular threshold. It is a degrading and deficit-based process which treats all those impacted as unworthy, focusing narrowly on their potential economic value rather than acknowledging their strengths and diverse contributions which enrich NZ.

This report is authored by Migrants Against the Acceptable Standard of Health Aotearoa (abbreviated to Migrants Against ASH). We are a grassroots migrant collective campaigning to end disability and health discrimination in Aotearoa New Zealand's immigration system. We are led by migrants, refugees and families directly affected by ASH discrimination.

Migrants Against ASH acknowledge that the UN Committee on the rights of Persons with Disabilities raised migrant discrimination in NZ's 2018 List of Issues.<sup>1</sup> We also endorse the immigration recommendations (para 47 and 48) made by NZ's UNCRPD Independent Monitoring Mechanism in 2020. We believe that the Acceptable standard of Health requirements are both incompatible with the UNCRPD and highly unjust, and that, as a result, a full review of migration regulations which impact disabled people is warranted. This report, based on the firsthand experiences of our members, and supplemented by publicly available materials such as media articles and Parliamentary questions, explains why.

## What are the Acceptable Standard of Health requirements?

The Acceptable Standard of Health (ASH) requirements comprise criteria that most people applying for most kinds of visas in New Zealand have to meet. The ASH instructions classify practically all common impairments/disabilities and a huge range of health conditions as imposing "significant costs and/or demands" on health or education services and use this as grounds to deny applications.

An applicant for permanent residency will usually fail if they:

- Have condition(s) that will likely require health services worth over \$41,000; or
- Have condition(s) that will likely require health services where current demand is not being met; or
- Are likely to qualify for any special education services funded by the Ongoing Resourcing Scheme (ORS); or
- Have condition(s) that fall within the extensive range of conditions listed at A4.10.1 – including conditions ranging from uncontrolled epilepsy to autistic spectrum disorders, from paraplegia to any psychiatric illness that has required hospitalisation (see Appendix 1 for the full list).

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<sup>1</sup> [List of issues prior to submission of the combined second and third periodic reports of New Zealand. \(2018. March 23\)](#)

People with any of those disabilities or health conditions must be granted a medical waiver in order to obtain a visa, including to obtain subsequent visas (e.g. to become a resident after being on a work or student visa)<sup>2</sup>. Anyone deemed to not meet the ASH criteria must have their visa declined unless granted a medical waiver. In addition, there are some conditions which the ASH criteria state never qualify for a medical waiver at all. This restriction also impacts disabled people, particularly because it excludes people who "have a physical, intellectual, cognitive and/or sensory incapacity that requires full time care, including care in the community", as well as those requiring dialysis, or who have tuberculosis or severe haemophilia<sup>3</sup>. This is a particularly egregious breach of human rights.

For those who are potentially eligible for a medical waiver, there are various considerations, apart from the cost or demand to health and education services, such as having family in NZ, or being able to make a "significant contribution" to the country, which Immigration NZ are meant to consider in their decision-making<sup>4</sup>.

In practice, experience from a significant number of migrants shows that it is incredibly difficult to get the needed medical waiver, even with a favourable medical assessment from a GP or Specialist and letters of recommendation from friends and colleagues. Sometimes, a waiver is granted for a study or work visa and then is not when applying for residency. If a waiver is not granted, migrants will generally need to hire a lawyer to assist with appeals processes, which is expensive and not something everyone can afford. Some people will also be forced to stop studying or working because their existing visa has run out during this process.

Appealing involves first going to the Immigration and Protection Tribunal, which typically requires people to be able to afford a lawyer and the tribunal fee. If that avenue has been exhausted, it is possible to request the intervention of the Associate Minister of Immigration. Some are forced to seek asylum after their visa is rejected to remain in NZ, most often observed for migrants who were infected with HIV while living in NZ, and transgender, nonbinary and intersex people, as they face persecution and discrimination in their country of origin due to their health condition, sexuality, and gender identities. Such issues also have the potential to arise for people with highly stigmatised disabilities, for instance psychiatric conditions, albinism, leprosy etc.

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<sup>2</sup> Medical requirements were significantly reduced for the 2021 residency Visa and also do not apply to some categories of refugees including quota refugees.

<sup>3</sup> [Immigration New Zealand. \(2022, 20 June\). Operational manual. A4.60 Medical waivers \(applicants for residence class visas\)](#)

<sup>4</sup> [Immigration New Zealand. \(2022, June 20\). Operational manual.](#)

A4.70 Determination of whether a medical waiver should be granted (residence and temporary entry)



# Impacts of the Acceptable Standard of Health requirements

## Examples of migrants affected

ASH affects a huge range of people, including adults with many disabilities, health conditions or health needs, as well as families with children who are likely to qualify for education support funding (Ongoing Resourcing Scheme funding).

Here is a small selection of examples of people impacted accompanied by media links where available. This is only the tip of the iceberg, and speaking out publicly is for many a last resort.

- Eugene Liapin, a wheelchair user, is a Russian migrant who first started studying in NZ on a student visa, and subsequently applied for a work visa. Even though he had secured a job and met all other requirements, he was denied the visa because of his physical impairment. He spent thousands of dollars on lawyers and appealed for reconsideration. On appeal, he was granted the work visa.<sup>5</sup>
- Juliana Carvalho is a Brazilian migrant who is paraplegic and has lupus. She endured a seven-year-long battle in order to be able to stay in the country. It involved being denied residency twice, a work visa refusal, appealing to the Immigration and Protection Tribunal, the Tribunal ruling that a reassessment was needed, the reassessment again being negative, staying unlawfully in the country after this for a time, another appeal - now against deportation on humanitarian grounds, repeated media exposure, setting up a petition, and eventually being granted ministerial intervention to get residency.<sup>6,7</sup> Juliana has also focused on systemic advocacy, including petitioning Parliament to uphold the UNCRPD in immigration requirements, which is described in more depth below.<sup>8</sup>
- Aisling Smyth is an Irish migrant with multiple sclerosis. She was denied residency in 2019 on health cost grounds. After multiple work visa extensions, she petitioned and engaged with the media & continuous pressure put on the minister, she was then granted ministerial intervention for an interim visa which would eventually secure her a pathway to residency via the 2021 one-off Residency visa, which has less stringent health requirements.<sup>9</sup>
- The Vasquez family have a daughter Ignacia with an intellectual disability. The parents have been living in NZ for seven years, but both children were forced to return to their home country of Chile for three years because Ignacia had been

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<sup>5</sup> [Tan, L. \(2021, Jun 29\). Immigration New Zealand U-turn on visa decision, disabled Russian graduate wants apology for discrimination. NZHerald.co.nz](#)

<sup>6</sup> [Connor, F., & Grigg, L. \(2020, January 22\). Paraplegic woman facing deportation from New Zealand blames 'a system that discriminates'. Newshub](#)

<sup>7</sup> [Clent, D. \(2020, September 14\). Auckland woman with disability wins years-long immigration battle. Stuff.co.nz](#)

<sup>8</sup> [Petition of Juliana Carvalho: End discrimination on disability grounds in the immigration system. \(2021, May 18\).](#)

<sup>9</sup> [Nadkarni, A. \(2021, December 8\). Renewed Hope for Migrant Fighting to Change the 'Ableist' System. Newsroom](#)

denied a student visa on education cost grounds.<sup>10</sup> While in Chile, Ignacia suffered ongoing physical and psychological domestic violence and there were no other safe options for her care there. The siblings were able to return to NZ in 2019 when Ignacia was granted a student visa via ministerial intervention which lasted a year and a half, followed by subsequent visas. However, despite battling with Immigration NZ for seven years, Ignacia still does not have residency and it is likely that Immigration NZ may deny it, arguing that she requires full-time care, even though she is not using nor planning to use any publicly funded disability support and will continue to live with her family. Among other measures, the family's ongoing advocacy has included petitioning Parliament and seeking ministerial intervention again.<sup>11</sup>

- The Alfonzo family have been split between NZ and the Philippines for more than six years because daughter Arianna, who is autistic, has been denied a visa on the basis of cost to education.<sup>12</sup> Both parents have permanent residence and father Allan, who colleagues describe as hard-working, has well-established employment in the construction industry in NZ. The family's advocacy is ongoing, having sought ministerial intervention twice and petitioned Parliament.<sup>13</sup>
- The family of four-year-old Ruby Rose O'Connor, who has complex health conditions, were forced out of the country in 2022.<sup>14</sup> Ruby Rose was blocked from obtaining residency on health cost grounds, despite being born in NZ, and despite the family having established roots in NZ for seven years.
- Sagar Narayan, 20 at the time, has an intellectual disability and in 2017, was set to be forced to leave the country due to education costs and the fact he requires full-time care.<sup>15</sup> His support was entirely provided by his family in Auckland, and there were no options for his care and wellbeing in Fiji. After the involvement of lawyers, he was eventually granted permanent residency.<sup>16</sup>
- The ASH criteria also discriminate on non-disability-specific grounds which nonetheless can compound the harms caused to disabled migrants in intersectional ways.
  - Migrants with high BMI (body mass index) are discriminated against based on the often incorrect presumption that their weight poses undue health risks.<sup>17,18</sup>
  - We are aware of cases of transgender and nonbinary migrants being forced to go through ASH processes. This is because of the general assumption that they require certain expensive gender affirming healthcare, such as surgeries,

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<sup>10</sup> [Shivas, O. \(2022, February 28\). After seven years in New Zealand, family stuck in visa limbo over daughter's disability. \*stuff.co.nz\*](#)

<sup>11</sup> [Petition of Juliana Carvalho: Let Ignacia stay in New Zealand. \(2022, May 10\).](#)

<sup>12</sup> [McClure, T. \(2022, April 28\). New Zealand denies entry to autistic daughter of immigrant couple. \*The Guardian\*](#)

<sup>13</sup> [Petition of Juliana Carvalho: Let Arianna stay in New Zealand, Published date: 2022 May 4](#)

<sup>14</sup> [Gillies, A. \(2022, February 27\). Christchurch family being 'inhumanely' forced out of country because 4yo disabled daughter can't get residency. \*Newshub\*](#)

<sup>15</sup> [Morrah, M. \(2017, October 10\). Seriously disabled man faces deportation despite no support network. \*Newshub\*](#)

<sup>16</sup> [Pepera, R. \(2017, December 23\). Disabled Fijian man facing deportation granted Christmas reprieve. \*Newshub\*](#)

<sup>17</sup> [Gillies, A. \(2022, April 01\). Mexican man claims he was rejected for New Zealand residency because he's too fat. \*Newshub\*](#)

<sup>18</sup> [Pausé, C. \(2019\). Frozen: A fat tale of immigration. \*Fat Studies\*. 8\(1\), 44-59.](#)

which in reality many transgender and nonbinary people do not want or need to receive.<sup>19</sup>

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<sup>19</sup> [A summary of media coverage of ASH impacts and analysis can be found on the Migrants Against ASH website.](#)

## How refugees are affected

For refugees, there are also serious impacts, though the situation is more complex. Migrants Against ASH are aware that Community Sponsorship refugees and many Convention refugees are being subjected to the full ASH criteria in their residency applications, even after health checks have been part of the initial asylum-seeking process and are irrelevant to their residency decisions.<sup>2021</sup> This prolongs their resettlement, sometimes for years, during which time they are unable to access many support services.

A Migrants Against ASH member is a Convention refugee who sought asylum in NZ. He is autistic, and has a history of another health condition. Being a refugee means he is recognised as having no choice but to indefinitely remain in New Zealand. Even though legally he cannot be deported on health grounds,<sup>22</sup> and there was no other reason to reject his residency, he was forced to go through the ASH medical assessment process anyway and had to pay for lawyers to end the process in a more timely way after it dragged on for over two years. During that time, he was forced to drop out of his study as a domestic student due to his study condition being tied to his visa status.

For UNHCR Quota refugees, the entire quota in NZ currently stands at 1500 refugees per year starting in 2020<sup>23</sup>, and of this, 75 refugees or 5% can be disabled. This quota is likely to be far below a proportionate number, given that globally about 15% of people are disabled (24% in NZ), that refugees and displaced people are more, not less, likely to be disabled, and given that if the ASH policy is any guide, disability may be very broadly and medically defined.<sup>24</sup> In addition, it appears all refugees are subjected to the list of blanket ban health conditions and full-time care provisions listed in A4.74.<sup>25</sup> Health screening for refugees was introduced from 2014. Since then, 46 people have been declined across 14 applications based on medical grounds for the Refugee Quota Programme and Refugee Quota Family Reunification Category.<sup>26</sup>

We are aware that the full-time care provision, in particular, prejudices older refugees and family members including children who are more likely to require care. Despite the above considerations, only a quarter (19/75) of the disability quota spots were filled in 2021.<sup>27</sup>

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<sup>20</sup> [Ferns, M., Stephens, M., Sama, B. N., Maurice, T., Perinpanayagam, U., Stocker, F., Malihi, Z., & Marlowe, J. \(2022\). 'Safe Start, Fair Future: Refugee Equality'. Centre for Asia Pacific Refugee Studies and Asylum Seeker Support Trust, February. P. 21](#)

<sup>21</sup> [Immigration New Zealand. \(2022, June 20\). Operational Manual.](#)

A4.74.1 Medical and Chest X-ray Certificates for mandated refugees, Refugee Quota Family Reunification category and Community Organisation Refugee Sponsorship category applicants

<sup>22</sup> Immigration Act 2009, ss 129(2), 164(3); United Nations Convention Relating to the Status of Refugees 1951, Articles 32.1, 33.

<sup>23</sup> [New Zealand Refugee Quota Programme, Immigration New Zealand](#)

<sup>24</sup> [Statistics New Zealand. \(2014\). Disability Survey 2013.](#)

<sup>25</sup> [Immigration New Zealand. \(2022, June 20\). Operational Manual.](#)

A4.74 Health requirements for mandated refugees and Refugee Quota Family Reunification Category applicants

<sup>26</sup> [New Zealand Parliament. \(2022, May 18\). Written question 15552 \(2022\). Ricardo Menéndez March to the Minister of Immigration.](#)

<sup>27</sup> [New Zealand Parliament. \(2022, June 09\). 2. Question No. 2—Immigration.](#)

## Mental and physical health impacts

The psychological impacts of the lengthy, degrading, expensive and uncertain ASH-related processes cannot be overstated. Multiple ASH members, including those who eventually did gain residency, say it was the most stressful ordeal they have ever had to endure. This stress is naturally also felt by family members and others close to those impacted.

The fear of ASH penalties also dissuades migrants from seeking physical and mental healthcare when needed or being tested or screened for conditions such as HIV or cancer. A Joint Statement by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and the Committee on the Rights of Persons with Disabilities highlights this point and recommends that States "should provide access for persons with disabilities, including migrants and refugees with disabilities, to all necessary support services, on an equal basis with other citizens".<sup>28</sup> In one NZ example, a Migrants Against ASH member did not seek medical attention in an emergency that occurred after his surgery for cancer and wanted to withdraw from his life-saving treatments as he became suicidal due to the fear and stress caused by ASH. This additionally poses a real risk of undermining public health goals such as eliminating HIV transmission by 2025.<sup>29</sup>

Ironically, the high stress of the ASH processes itself can also make migrants sick. For instance, for Juliana Carvalho who has lupus which had been in remission for ten years, the stress of being denied a residency visa for the second time after years of fighting triggered a lupus flare. Also, migrants with very high BMI are told they have to lose weight in order to get a visa, which has the potential to adversely impact their health.

## Criminalisation

In at least one case, Immigration NZ has gone so far as to explicitly criminalise a migrant family because of their remaining unlawfully in NZ given their son's health conditions and disability by arguing that the parents were aiding and abetting him to do so. Correspondence sent to the parents from Immigration NZ in 2017, as cited in a subsequent Immigration and Protection Tribunal decision, states<sup>30</sup>:

"From our conversations, and your history with Immigration New Zealand, it is apparent that you were clearly aware of your child's unlawful visa status and his health conditions. He has been unlawfully in the country for some time now and it appears you have been aiding and abetting him to remain unlawfully. The fact you were aware of this situation and still continued to look after him while being unlawful in New Zealand is an offence under section 343(1)(d) of the Immigration Act which is punishable by imprisonment.

Therefore, under section 16(1)(a)(i) of the Immigration Act it is considered that you are "likely to commit an offence punishable by imprisonment" and therefore ineligible

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<sup>28</sup> [European Union Agency for Fundamental Rights \(n.d.\). Joint Statement by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families \(CMW\), and the Committee on the Rights of Persons with Disabilities \(CRPD\)](#)

<sup>29</sup> [New Zealand AIDS foundation. \(2017, February 01\). ENDING HIV: NZAF's New Campaign Aims to Eliminate New HIV Infections By 2025](#)

<sup>30</sup> [Justice.govt.nz. \(2018\). IMMIGRATION & PROTECTION TRIBUNAL. RESIDENCE DECISION. P.7](#)

for a visa under immigration instructions A5.20(c). This means that you may not be eligible for the grant of any type of visa unless it is granted by special direction.”

The family lodged an appeal with the Immigration and Protection Tribunal to challenge this and the Tribunal ruled in their favour, though the ruling covered only the criminalisation and not the ASH requirements themselves.<sup>31</sup>

## Life disruption

Uncertainty caused by the bureaucratic and drawn-out ASH policy processes can drag on for years. Being in limbo for six or seven years is not unusual. The limbo is sometimes prolonged by the fact that temporary visas are more likely to get granted as opposed to residency, resulting in a greater number of visa application rounds as well as the ongoing stress of instability.

## Financial impacts

To obtain a medical waiver or appeal an ASH-related decision, people usually need a lawyer. Given the bureaucracy and drawn-out nature of the ASH requirements, lawyers' fees can cost tens of thousands of dollars.

In addition, when a migrant's visa gets denied including on ASH grounds, they are not able to study, work, or access income support, putting their life on hold and leaving them in a financially precarious and unsustainable position.

## Impact on families

ASH leaves affected migrants, refugees and their families in limbo for years, with some families split across borders and unable to reunite as a result (see Appendix 3). The stress and uncertainty impact the entire family, their ability to settle and sometimes the education and employment options available to them.

The ASH requirements can place parents in the unenviable position of having to explain to their child with disabilities and/or health conditions that immigration requirements consider them unwelcome in NZ, seeing only the financial cost of their education or health support. The requirements can place significant strain on family relationships.

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<sup>31</sup> [Justice.govt.nz. \(2018\). IMMIGRATION & PROTECTION TRIBUNAL RESIDENCE DECISION.](https://www.justice.govt.nz/immigration-and-protection/tribunal/residence-decision/)

# UNCRPD compliance and human rights protections in immigration policy

## ASH UNCRPD breaches

The ASH requirements breach a number of UNCRPD articles.<sup>32</sup>

- Article 5 – non-discrimination: ASH directly discriminates against migrants on disability and health grounds. Entering into the medical waiver process and fighting against that discrimination is costly (involving lawyers), time-consuming, highly stressful, terrible for mental health, and exhausting. Many migrants, and especially refugees, do not have the combination of language skills, support networks, education, financial resources and time needed to even consider entering into this process, effectively prolonging their resettlement or barring them from living in NZ. Furthermore, some disabled people are prevented from even attempting to enter into the process because of being considered to require full-time care including in the community. This also infringes on Article 19: Living independently and being included in the community. Section 392 of the Immigration Act 2009 strips migrants of human rights protections, taking away this legal option to fight such discrimination.<sup>33</sup>
- Article 18 – Liberty of movement and nationality: Disabled migrants are deprived of the rights to "liberty of movement, to freedom to choose their residence and to a nationality, "on an equal basis with others" as set forth in Article 18. The "on an equal basis with others" aspect is salient here. Article 18 also stipulates that "[c]hildren with disabilities shall be registered immediately after birth and shall have [...] the right to acquire a nationality" However, cases such as that of Ruby O'Connor, where Ruby was born in NZ and still denied residency let alone citizenship, show that ASH breaches this right. Other ASH members with babies born in NZ have also had to fight the medical waiver process under the ASH requirements, showing that the O'Connor's situation was not a one-off. Refugees with conditions listed in A4.74 are also denied resettlement in NZ. Refugees living in NZ are unable to reunite in NZ with family members abroad who have a listed condition, due to the restrictions.
- Article 19 – Living independently and being included in the community, in particular given the blanket ban on migrants and refugees requiring full-time care.
- Article 23 – Respect for home and the family, taking into account the best interest of the child, and in particular (4) that "[i]n no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents."
- Article 24 – Education, because the ASH requirements are both prejudicial on education support grounds, and in addition because disruptions caused by them can leave migrants without a visa and interrupt education in doing so.
- Article 25 – Health, in breaching the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. The ASH requirements infringe upon access to healthcare and dissuade migrants and refugees from seeking such care when needed.

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<sup>32</sup> [Convention on the Rights of Persons with Disabilities and Optional Protocol](#)

<sup>33</sup> [New Zealand Legislation. \(n.d.\). Immigration Act 2009. S392.](#)

## Breach of other human rights instruments

A recent Human Rights Council resolution also reminds states about their obligations to migrant and refugee children as follows, including disabled migrants:

"Recalling States' obligations to respect, protect and fulfil the human rights of refugee and migrant children at all stages of the migration cycle, and underscoring the importance of ensuring that children separated from their families and children with disabilities receive appropriate protection and assistance and of providing for their well-being and for their enjoyment of the highest attainable standard of physical and mental health, including but not limited to sexual and reproductive health and psychosocial health, as well as access to health information and health-care services, education and psychosocial development, ensuring that the best interests of the child are a primary consideration in policies on integration, return and family reunification"<sup>34</sup>

However, the ASH requirements breach the human rights of disabled migrant and refugee children in many respects, as set out under the UN Convention on the rights of the Child (UNCRC).<sup>35</sup>

- Article 2, which prohibits discrimination on the basis of the child's or guardian's disability
- Article 3 and 18 state that the child's best interest and wellbeing must be upheld by States but this is not the case with the ASH criteria.
- Article 8 which ensures preservation of nationality, is contravened for children born in NZ and unable to get NZ residence let alone citizenship<sup>36</sup>
- Article 9(1), stating that children should not be separated from their parents against their will, is arguably contravened when families are split specifically because of the ASH criteria<sup>37</sup>
- Article 10(1) states that applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner." The ASH criteria clearly breach this in the case of family reunification for disabled migrants.
- Article 23, focusing on the full social integration of disabled children, is not upheld.

The ASH instructions also violate a range of human rights, including civil and social rights, as set out in the Universal declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Political Declaration on HIV and AIDS.

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<sup>34</sup> [Resolution adopted by the Human Rights Council. \(1 April 2022\). 49/20. Rights of the child: realizing the rights of the child and family reunification G2230404.pdf \(un.org\)](#)

<sup>35</sup> [United Nations. \(1989\). Convention on the Rights of the Child.](#)

<sup>36</sup> [Pownall, S. \(2022, March 13\). Irish family living in New Zealand forced to leave due to daughter's disability. Irish Mirror.](#)

<sup>37</sup> [McClure, T. \(2022, April 26\). New Zealand denies entry to autistic daughter of immigrant couple. The Guardian.](#)



## Human rights access for migrants and non-discrimination based on personal characteristics

Section 392(2) of the Immigration Act 2009 prohibits migrants from bringing human rights complaints under the Human Rights Act regarding decisions made on the basis of the Immigration Act or associated regulations.<sup>38</sup> Green Party MP Ricardo Menéndez March has drafted a Private Member's Bill which would rectify this.<sup>39</sup> Significantly, it would also repeal section 392(3), removing the provision stating that "immigration matters inherently involve different treatment on the basis of personal characteristics". Thus, if this Bill were to become law, the ASH instructions would by necessity be repealed. However, the Government has thus far not shown support for this Bill.

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<sup>38</sup> [New Zealand Legislation. \(n.d.\). Immigration Act 2009 No 51, Public Act 392 Relationship between this Act and Human Rights Act 1993.](#)

<sup>39</sup> [New Zealand Parliament. \(2022\). Immigration \(Relationship with Human Rights Act\) Amendment Bill. Ricardo Menéndez March.](#)

## UN Committee and IMM

In 2018 when NZ was last reviewed, the UN Committee on the rights of Persons with Disabilities (CRPD Committee) raised migrant discrimination in the List of Issues.<sup>40</sup> Under Article 5, it requested information on "Measures taken to ensure that the anti-discrimination framework in the State Party encompasses all forms of discrimination on the basis of disability, including the denial of reasonable accommodation, discrimination by association and multiple and intersectional discrimination faced by children, women, migrants, refugees, asylum seekers, Māori and Pacific and lesbian, gay, bisexual, transgender and intersex persons with disabilities". However, in the response to Article 5, the Government does not address migrant discrimination, only discussing the Human Rights Act, which is not applicable to immigration application decisions as set out under Section 392 of the Immigration Act 2009.<sup>4142</sup>

Under Article 18, the CRPD Committee further requested information on "(a)Measures taken to reduce the denial of residency in New Zealand on the grounds of impairment, appeals against such decisions and successful or unsuccessful decisions in the past five years; (b)Measures taken and planned to reduce discrimination against persons with disabilities on the elements of immigration policy and its procedures."

The Government response (paras 193 to 201) argues that the current ASH instructions are justifiable under the UNCRPD. It states:

"The Government considers its immigration health policy is appropriate under the CRPD due to the public health risks associated with imported diseases and the need to manage excessive cost to, and demand on, the public health system."

Other countries, including Australia and the UK, have lodged interpretative declarations limiting their application of Article 18 of the UNCRPD.<sup>43</sup> NZ has not done so, and indeed should not do so, but should instead work with disabled migrants and Disabled People's Organisations to ensure real alignment between all immigration legislation and instructions and the UNCRPD.

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<sup>40</sup> [Committee on the Rights of Persons with Disabilities. \(2018, 23 March\). List of issues prior to submission of the combined second and third periodic reports of New Zealand.](#)

<sup>41</sup> [The Office of Disability Issues. \(2019\). New Zealand's second review against the UN Convention on the Rights of Persons with Disabilities.](#)

<sup>42</sup> [Immigration Act 2009, S392.](#)

<sup>43</sup> [United Nations Treaty Collections. \(2022\). All UNCRPD interpretative declarations, reservations and objections.](#)

In addition, the Government stated in their 2019 response that "193. Immigration NZ does not record whether applications for residency and associated appeals were declined on health and disability grounds". However, data from Immigration NZ obtained via an internal parliamentary briefing shows that between 2016 and 2021, 1682 temporary or residency visas have been declined due to not meeting ASH requirements. Details are provided in the following table, keeping in mind that the decreased numbers in 2020 and 2021 are during the pandemic period with significantly reduced inbound travel and visa processing.<sup>44</sup>

Application Type	2016/17	2017/18	2018/19	2019/20	2020/21	Total
<b>Residence visa applications</b>	61	59	63	16	10	<b>209</b>
<b>Temporary visa applications</b>	339	434	361	292	47	<b>1,473</b>

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Systematic data collection is integral to understanding how migrants with disabilities and health conditions are impacted by the discrimination caused by the ASH criteria.

In 2020, New Zealand's CRPD Independent Monitoring Mechanism, consisting of the Disabled People's Organisations' (DPO) Coalition, the Ombudsman, and the New Zealand Human Rights Commission, recommended as follows<sup>45</sup>:

- "47. Review relevant legislation and policy to ensure that disabled people do not experience additional barriers over and above others when applying for entry into New Zealand, including but not limited to:
- a. ensuring that immigration officers have regard to the Disability Convention when making decisions under the Immigration Act; and
  - b. repealing section 392 of the Immigration Act to enable the Human Rights Commission to receive complaints about immigration matters.
48. Work with disabled people to create immigration instructions that fulfil the Government's obligations under the Disability Convention and the Disability Strategy."

Migrants Against ASH agrees with these recommendations.

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<sup>44</sup> Data obtained via Official Information Act request of Lachlan Patterson to Immigration New Zealand. (2021, July 27).

<sup>45</sup> [Ombudsman. \(2020\). Making Disability Rights Real 2014 - 2019.](#)

## Canadian review

Until recently, Canada's immigration Medical Inadmissibility Criteria were largely similar to NZ's ASH instructions. However, in 2017 a Parliamentary Committee review recommended, in stages, the abolishment of these criteria which bar those who "might reasonably be expected to cause excessive demand on health or social services".<sup>46</sup> While the provisions have not yet been repealed in their entirety, the federal Government has provisionally signalled its agreement with the recommendation, and has taken significant steps to narrow the scope of the criteria.<sup>47,48</sup> The social and health services cost threshold for disabled migrants has increased to three times the national yearly average, where previously, like in NZ and Australia, it was set to equal the per capita average over a five-year period. Additionally, the definition of social services now excludes special education, social and vocational rehabilitation services, and personal support services. After a pilot of these changes, they became permanent in 2022.<sup>49</sup>

The Canadian parliamentary review additionally found that existing settings were out of touch with 'modern Canadian values', commenting that "Canadians value diversity and inclusiveness and the Government should recognise the abilities and contributions of its citizens, newcomers and potential immigrants as it moves forward with reviewing the medical inadmissibility". The only barrier preventing the NZ Government from drawing similar conclusions appears to be a lack of political will.

## Parliamentary petition and advocacy

In 2019, Juliana Carvalho, a disabled migrant who faced a 7-year-long battle to stay in the country, petitioned Parliament. The petition request was:

"That the House of Representatives recommend to the Government that it end systemic discrimination in the Immigration Systems by complying with the Convention on the Rights of Persons with Disabilities, which New Zealand is signatory, specifically comply with the principle of non-discrimination and the Article 18 of the Convention, and honour the convention by removing all sections in the policy A4 that affect negatively people with disabilities when applying for visas; and note that 34,747 people have signed an online petition in support of this."<sup>50</sup>

The petition was delivered to Parliament in 2021. In responding to Juliana's petition, the Education and Workforce Select Committee recommended "that the acceptable standard of health is reviewed so that the health requirements will be aligned to a strengths-based approach for disabilities and only screen for the most serious health conditions". The second part of this recommendation would continue to permit some health, and possibly disability,

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<sup>46</sup> [Standing Committee on Citizenship and Immigration. 2017. 'Building an Inclusive Canada: Bringing the Immigration and Refugee Protection Act in Step with Modern Values.' House of Commons Canada.](#)

<sup>47</sup> [O'Doherty, H. \(2022, April 12\). Canada reduces barriers to disabled immigrants. Moving2Canada.](#)

<sup>48</sup> [Government of Canada. 2021. 'Immigration and Refugee Protection Act: Regulations Amending the Immigration and Refugee Protection Regulations \(Excessive Demand\).' Canada Gazette Part 1, 155, no. 13, 27 March 2021.](#)

<sup>49</sup> [Government of Canada. \(2022, March 16\). Changes to the medical inadmissibility policy of the Immigration and Refugee Protection Act take effect](#)

<sup>50</sup> [New Zealand Parliament. \(2021\). Petition of Juliana Carvalho: End discrimination on disability grounds in the immigration system.](#)

discrimination, which Migrants Against ASH opposes. However, this recommendation represented a significant departure from the deficit-based focus of the policy and, if implemented, would result in substantial positive change.

## Analysis of Government response

The gist of the Government's response is that it does not believe substantive change to the ASH requirements is needed and instead, it is reviewing only the ASH cost threshold.<sup>51</sup>

Migrants Against ASH believe this is not acceptable because the discriminatory, deficit-based policy framework remains unchanged. The Government has thus chosen not to act on the recommendation of the cross-party Education and Workforce Select Committee. The Government has furthermore failed to address the non-alignment of the ASH requirements with the UNCRPD, as specifically requested in the petition.

The Government's response shows a disregard for its role in creating a non-disabling society not only for NZ citizens but for migrants too. It states:

"The Government values the contribution that disabled people bring to society and is always willing to take steps towards making New Zealand a non-disabling society. However, as this goal pertains to the current "Acceptable Standard of Health" (ASH) immigration settings, the Government considers these settings appropriate."

Furthermore, the response suggests that it is inherently necessary and acceptable to discriminate against disabled migrants and migrants with health conditions. It states: "While the immigration settings endeavour to ensure that human rights legislation is complied with, section 392 of the Immigration Act 2009 identifies the relationship between the Immigration Act 2009 and the Human Rights Act 1993, recognising that immigration matters are inherently discriminatory as individuals will need to be treated based on personal characteristics."

The response also condones this discrimination and suggests it remains inevitable by making it clear that the review of the health cost threshold is not meant to change the overall thrust of the policy. It states:

"Some conditions will likely always remain an impediment to being found to have an acceptable standard of health because of their cost and/or demand on limited resources, e.g. the need for cochlear implants, students requiring Ongoing Resource Scheme funding, conditions which require care in the community/residential care, and medical conditions requiring treatment with high-cost medications."

While this evidently amounts to disability discrimination, the response claims that such discrimination due to ASH is not occurring on the spurious grounds that if that discrimination is not stated outright, it does not exist. It reads:

"The current settings are not specifically discriminatory against disabled people, but instead focus on assessing the public health impact an individual will have. The current settings test

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<sup>51</sup> [New Zealand Parliament. \(2022\). Government Response to Referral of petition from Juliana Carvalho to "End discrimination on disability grounds in the immigration system" J.1.](#)

whether applicants have health conditions that will have significant costs and/or demands on New Zealand's health or education services, which ensures that applicants are not placing additional demands on areas that are already in high demand and under resourced."

This is despite the obvious and pervasive disability discrimination caused by the application of the policy to disabled people. Also, an extensive range of long-term physical, mental, intellectual or sensory impairments, described in medical terms, are listed in a4.10.1: Medical conditions deemed to impose significant costs and/or demands on New Zealand's health and/or education services (see Appendix 1 for the full list).<sup>52</sup> Thus, it is highly misleading, if not outright wrong, to suggest disability discrimination is not occurring.

## Recommendations to NZ Government

In the wake of the Government's response, Migrants Against ASH wrote to a number of officials including the Minister of Immigration setting out our dissatisfaction with the response and our recommendations for next steps.<sup>53</sup> We sought, and were declined, a meeting with the Minister of Immigration.<sup>54</sup>

An extract from our response including our recommendations is copied below.

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We believe the most appropriate action the Government can take is to end all disability and health discrimination in Aotearoa's immigration system, including by immediately and permanently removing the Acceptable Standard of Health Immigration Instructions. In the interim, we urge the Government to widen the scope of the proposed review, working on this basis and in alignment with the UNCRPD.

Specifically, we strongly recommend the following measures:

1. Immediately exempt all refugees, regardless of resettlement pathway, from all of the Acceptable Standard of Health requirements. Clearly publicise this change and ensure organisations supporting refugees are briefed on the change.
2. Grant visas to all of those currently impacted by the ASH requirements while the review is being conducted.
3. Implement the Independent Monitoring Mechanism recommendations (47 and 48) set out above.
4. Review the Acceptable Standard of Health instructions in their entirety with a view to enabling a strengths-based approach which upholds disabled people's rights under the UNCRPD, as well as upholding the human rights of all those impacted.
5. Proactively involve the Office for Disability Issues, the CRPD Independent Monitoring Mechanism bodies, migrant organisations, refugee organisations, and stakeholders such as ourselves directly impacted by this policy in this wider review.
6. Ensure the experiences of those directly affected by ASH are directly and explicitly accounted for in shaping the review's recommendations.

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<sup>52</sup> [Immigration New Zealand. \(2022, June 20\). Operational Manual.](#)

A4.10 Acceptable standard of health (applicants for residence)

<sup>53</sup> [Migrants Against the Acceptable Standard of Health Aotearoa. \(2022, March 29\). Letter to Minister Faafoi and colleagues re Govt response to Juliana Carvalho petition.](#)

<sup>54</sup> At the time, the Minister was Kris Faafoi and it is now Hon Michael Wood, who we have also written to and not heard back from.

7. Carry out the review as transparently as possible, including publishing the Terms of Reference, expected timelines and the review findings.
8. In line with the Government's Accessibility Charter, ensure all publicly-available information about the review is made available in accessible formats.
9. Adequately resource the review in line with these recommendations.

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## Other forms of disability-related migrant discrimination

Even though the character requirements pertaining to NZ visas and being able to remain in NZ do not directly discriminate against disabled people, including people experiencing mental distress, the application of these requirements has the potential to do so.

Migrant Narinderjit Singh has been living in NZ for 22 years, along with much of his family. However, at the time of writing, he has been facing the threat of imminent deportation for months.

Narinderjit has explained that being bullied on account of his race and disability, combined with an episode of acute mental distress, eight years ago led him to drive his car into a neighbour's car. No one was injured and he has indicated that this is not at all representative of his character. His lawyer has argued that he didn't receive adequate legal representation at the time either.

As a disabled polio survivor and person experiencing paranoid schizophrenia, Narinderjit is currently well supported by his family, specialist medical team and community. Narinderjit and his lawyer have both indicated that deporting Narinderjit to India, where he will lack the care and support networks his quality of life and even survival depends on is effectively a death sentence. The punishment is vastly disproportionate to the crime - a punishment which is also xenophobic.

A Parliamentary petition and arguments by Narinderjit's lawyer have thus far all been ignored by the Government.<sup>55</sup>

Given that the relevant incident took place in the context of Narinderjit's mental distress, the deportation order both criminalises mental illness and is a form of discrimination against a person experiencing mental distress. This only serves to increase stigma against those experiencing mental distress including Narinderjit. Migrants against ASH find such treatment, coupled with disregard for Narinderjit's extremely strong ties to NZ, unacceptable. His right to live independently in the community (UNCRC Article 19) has also been infringed.

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<sup>55</sup> [New Zealand Parliament. \(2022, May 24\). Petition of Sukhdeep \(Sona\) Kaur: Stop Narinderjit Singh from being deported.](#)



# Recommendations

Migrants Against ASH seeks an end to both disability and health-based migration policies and practices, including via the removal of the ASH instructions and the legislative framework enabling such instructions to be created.

Migrants Against ASH recommends that the Committee on the Rights of Persons with Disabilities:

- Recognises the extent and injustice of the impacts of the ASH requirements on disabled migrants and their families, especially on disabled refugees;
- Highlights that the discrimination disabled migrants face due to the ASH policy breaches the human rights of disabled migrants under the UNCRPD and other international human rights instruments;
- Calls for an immediate halt to applying health or disability limitations to asylum seekers and all categories of refugees at any point during asylum seeking and resettlement processes, including visa applications for residency and family reunification;
- Indicates its support for the migration-related NZ IMM recommendations from 2020, which are
  - "47. Review relevant legislation and policy to ensure that disabled people do not experience additional barriers over and above others when applying for entry into New Zealand, including but not limited to:
    - a. ensuring that immigration officers have regard to the Disability Convention when making decisions under the Immigration Act; and
    - b. repealing section 392 of the Immigration Act to enable the Human Rights Commission to receive complaints about immigration matters.
  - 48. Work with disabled people to create immigration instructions that fulfil the Government's obligations under the Disability Convention and the Disability Strategy."

## Conclusion

It is difficult to overstate the extent of, and harm caused by, the discriminatory ASH requirements. The rules disregard the strengths and contributions of sick and disabled migrants, refugees and by extension, their families. Instead the Government strips them of their human rights during migration decisions and sees them as financial burdens to the state. The ASH-related processes are degrading, lengthy, expensive, exhausting and terrible for mental and physical health. Migrants Against ASH hopes that this report has given the UNCRPD Committee sufficient understanding of the extent to which the ASH immigration instructions are incompatible with disabled people's rights under the UNCRPD, and other international human rights instruments, in order to condemn these discriminatory and ableist requirements in the strongest of terms.

# Appendix 1: Medical conditions deemed to impose significant costs and/or demands on New Zealand's health and/or education services<sup>56</sup>

- Hepatitis B-surface antigen positive and meeting criteria for anti-viral treatment in New Zealand
- Hepatitis C-RNA positive and meeting criteria for anti-viral treatment in New Zealand
- Malignancies of organs, skin (such as melanoma) and haematopoietic tissue, including past history of, or currently under treatment. Exceptions are:
  - treated minor skin malignancies
  - malignancies where the interval since treatment is such that the probability of recurrence is <10 percent
- Requirement for organ transplants (with the exclusion of corneal grafts), or following organ transplant when immune suppression is required (with the exclusion of corneal grafts)
- Severe, chronic or progressive renal or hepatic disorders
- Musculoskeletal diseases or disorders such as osteoarthritis with a high probability of surgery in the next five years
- Severe, chronic or progressive neurological disorders, including but not exclusive to:
  - any dementia including Alzheimer's disease
  - poorly controlled epilepsy
  - complex seizure disorder
  - cerebrovascular disease
  - cerebral palsy
  - paraplegia, quadriplegia
  - poliomyelitis
  - Parkinson's disease
  - motor neurone disease, Huntington's disease, muscular dystrophy
  - prion disease
  - relapsing and/or progressive multiple sclerosis
- Cardiac diseases, including but not exclusive to:
  - severe ischaemic heart disease
  - cardiomyopathy
  - valve disease with a high probability of surgical and/or other procedural intervention in the next five years
  - aortic aneurysm with a high probability of surgical and/or other procedural intervention in the next five years
- Chronic respiratory disease, including but not exclusive to:
  - severe and/or progressive restrictive (including interstitial) lung disease
  - severe and/or progressive obstructive lung disease
  - cystic fibrosis
- Significant or disabling hereditary disorders, including but not exclusive to:
  - hereditary anaemias and coagulation disorders

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<sup>56</sup> [Immigration New Zealand. \(2022, June 20\). Operational Manual.](#)  
A4.10 Acceptable standard of health (applicants for residence)

- primary immuno-deficiencies
- Gaucher's disease
- Severe autoimmune disease which may require treatment in New Zealand with immune-suppressant medications other than Prednisone, Methotrexate, Azathioprine or Salazopyrin
- Severe (71-90 decibels) hearing loss or profound bilateral sensori-neural hearing loss after best possible correction at country of origin, where significant support is required, including cochlear implants
- Severe vision impairment with visual acuity of 6/36 or beyond after best possible correction at country of origin, or a loss restricting the field of vision to 15-20 degrees where significant support is required
- Severe developmental disorders or severe cognitive impairments where significant support is required, including but not exclusive to:
  - physical disability
  - intellectual disability
  - autistic spectrum disorders
  - brain injury
- Major psychiatric illness and/or addiction including any psychiatric condition that has required hospitalisation and/or where significant support is required
- Those with a history, diagnostic findings or treatment for MDR-TB or XDR-TB, unless they have been cleared by a New Zealand Respiratory or Infectious Diseases specialist upon review of their file or review of the applicant according to the New Zealand Guidelines for Tuberculosis Treatment

Note: The list above at A4.10.1 is not an exhaustive list of conditions which may indicate that an applicant does not have an acceptable standard of health.

# Appendix 2: Relevant Parliamentary questions and responses

## Human rights and UNCRPD Alignment

**Question:** Is the Minister satisfied that the Immigration NZ's "health requirements" align with Article 18 of the UN Convention on the Rights of Persons with Disabilities, and if not, why not?

**Reply:** Yes, I am satisfied that the requirement in immigration instructions that applicants for visas are of an acceptable standard of health aligns with Article 18 of the UN Convention on the Rights of Persons with Disabilities.

This requirement is intended to ensure that applicants for visas, and particularly resident visas, are unlikely to impose significant costs or demands on New Zealand's publicly-funded health services or special education services. It is therefore not based on disability per se, but on the costs that an individual might impose.

However, Immigration NZ staff can, where appropriate, grant waivers of the requirement to be of an acceptable standard of health, and it is also possible for visas to be granted as exceptions to instructions.

People who are seeking temporary visas and are not eligible for publicly funded health or special education services, and who therefore are not likely to impose costs on those services, are not required to meet the same threshold as a resident visa applicant. In addition, there is no prohibition on the ability to apply for a visa or entry permission based on disability. There is considerable pressure on the relevant Votes and it is important that New Zealand citizens and residents are prioritised for access to both health and special education services.

**8 Feb 2022:**

**Reply 1666 (2022) has been answered**

**Portfolio:** Immigration (Hon Kris Faafoi)

**Question:** Does the Minister agree with the Office for Disability Issues submission on Juliana Carvalho's petition recommending that the Education and Workforce Select Committee "consider how to better align current immigration operational policy relating to the 'acceptable standard of health' criteria with the: United Nations Convention on the Rights of Persons with Disability (UNCRPD), the Human Rights Act 1993, the United Nations Convention on the Rights of Children (UNCROC), and the direction of travel for transforming the disability support system in Aotearoa New Zealand - all of which takes a strengths-based, rather than a deficit-based, approach to disabled people and their whānau."?

**Reply:** Testing whether applicants have health conditions that will have significant costs and/or demands on New Zealand's health or education services ensures that applicants are not placing additional demands on areas that are already in high demand and capacity is fully subscribed. However, the criteria are also flexible allowing immigration officers to grant waivers based on the particular personal circumstances, this includes both the cost and demands on the New Zealand services, and whether the applicant's potential contribution to New Zealand will be significant. **The Ministry of Business, Innovation and Employment alongside the Ministry of Health, are currently reviewing aspects of the Immigration Health screening – which includes reviewing the \$41,000 threshold.**

**Question:** Does the Minister support that the Human Rights Commission is prohibited from bringing proceedings or taking complaints regarding the content or application of the Immigration Act 2009, and if so, why?

**Reply:** Yes, because I am advised that our immigration regime has comprehensive review and appeal functions, which are focused on providing appropriate access to justice while being transparent, efficient and flexible, and maintaining an appropriate level of fairness. These include:

- the ability to seek a reconsideration of decline decisions for in certain circumstances (where applicants are in New Zealand, hold temporary visas, and have applied for a further temporary visa)
- an internal complaints mechanism, if the applicant considers that a biased or incompetent decision may have been made
- the ability to appeal to the Immigration and Protection Tribunal, an independent body administered by the Ministry of Justice and established to hear appeals against immigration decisions (including refugee status claims and residence declines) and o appeals on humanitarian grounds against deportation from New Zealand
- the ability to make requests for intervention from the Minister, who can make decisions as exceptions to instructions · the ability to seek judicial review of certain decisions in the High Court - the ability to make a complaint to the Office of the Ombudsman

9 June 2022

Ricardo Menéndez March: Does he think migrants should be able to access the full functions of the Human Rights Commission and be covered by the Human Rights Act of 1993?

Hon KRIS FAAFOI: Well, yes. We obviously want to make sure that we are keeping to our commitments that we've made to those, which is why one of the issues we are looking at is whether or not the threshold is appropriate, and also in terms of making sure that we balance our immigration settings with the demands on the health system.

## Policy and refugee data

18 May 2022

15552 (2022). Ricardo Menéndez March to the Minister of Immigration

How many, if any, people have been declined a residence class visa due to not meeting the health requirements for mandated refugees who have been put forward for consideration to be resettled in New Zealand under the Refugee Quota Programme and Refugee Quota Family Reunification Category applicants since 2008, by year?

Hon Kris Faafoi (Minister of Immigration) replied: I am advised that health screening for refugees was only introduced in 2014. Since it was introduced, Immigration New Zealand has recorded 14 applications (46 people) that have been declined based on medical grounds. Due to the way declined applications are recorded in the system, the figures are indicative only.

I refer the Member to the attached table.

[\[Table available here.\]](#)

9 June 2022

RICARDO MENÉNDEZ MARCH (Green) to the Minister of Immigration: Does he stand by his statement that "this Government supports inclusive policies for migrants with disabilities"; if so, what are some of these immigration policies?

Hon KRIS FAAFOI (Minister of Immigration): Kia ora, Mr Speaker. Yes, this Government supports inclusive policies for migrants with disabilities. The kinds of polices [sic] I'd like to point out are: since reopening the refugee quota in February of last year, we have brought to New Zealand 19 urgent referrals from the United Nations High Commissioner for Refugees where a person or their family member has a disability. Up to 75 places of the 1,500 places in the refugee quota programme can be used for refugees with medical conditions and disabilities. The immigration system needs to ensure it manages the demands it puts on our health system, and this is why we have had a threshold for some time. Partners and dependent children of New Zealand citizens, residents, and refugees will ordinarily be granted a waiver. The Government is currently reviewing whether the threshold is appropriate.

Ricardo Menéndez March: Does he believe that it is inclusive for the visa application of disabled children born in New Zealand to migrant parents to be rejected in the first instance, such as the case of a two-year-old with Down's syndrome?

Hon KRIS FAAFOI: There are always going to be difficult cases, but there's always a balance to be had with those cases and the demand on our health system. As I say, we are

currently looking at the acceptable standard of health thresholds and whether they are appropriate.

**Reply 19922 (2022) has been answered**

**Portfolio:** Immigration (Hon Michael Wood)

**Question:** How many, if any, people have been declined a residence class visa due to not meeting the health requirements for people applying as Community Sponsored Refugees since 2008, by year?

**Reply:** I am advised that, since 2008, no applicants for a residence visa under the Community Organisation Refugee Sponsorship category have been declined residence because they did not meet the health requirements.

## ASH health cost threshold review timeline

**22 December 2021:**

**Reply 55816 (2021) has been answered**

**Portfolio:** Immigration (Hon Kris Faafoi)

**Question:** When does the Minister plan to review the Acceptable Standard of Health policy?

**Reply:** Earlier this year I stated that the Government **plans to review the Acceptable Standard of Health threshold for migrants**, but that COVID-19-related work has taken priority over the past 18 months. This situation has not changed meaning **that it is unlikely any review will be able to take place next year**.

**18 Feb 2022:**

**Reply 2925 (2022) has been answered**

**Portfolio:** Immigration (Hon Kris Faafoi)

**Question:** When does the Minister expect to finish the Government's review into the acceptable standards of health policy?

**Reply:** Immigration New Zealand (INZ) and the Ministry of Health (MoH) are reviewing aspects of immigration health instructions. I am advised **that over the course of 2022, INZ and the MoH will be progressively working through the aspects of immigration health instructions identified for review, including the current cost threshold of \$41,000 which deems a medical condition to be high cost, and the list of medical conditions deemed to impose significant costs** on New Zealand's health and special education services.

**Reply 2927 (2022) has been answered**

**Portfolio:** Immigration (Hon Kris Faafoi)

**Question:** When did the Government's current review of the acceptable standards of health begin?

**Reply:** I am advised that Immigration New Zealand (INZ) is working with the Ministry of Health (MoH) to review aspects of immigration health instructions. I am advised that the review of the medical conditions on the list of high cost medical conditions commenced in July 2021.

**Reply 4850 (2022) has been answered**

**Portfolio:** Immigration (Hon Kris Faafoi)

**Question:** Is there any consultation happening with disabled people as part of the review referred to in PWQ 1666 (2022)?

**Reply:** I am advised that Immigration New Zealand (INZ) and the Ministry of Health (MoH) intend to engage with relevant parties such as the Office for Disability Issues during the course of reviewing the list of high cost medical conditions.

**Reply 4869 (2022) has been answered**

**Portfolio:** Immigration (Hon Kris Faafoi)

**Question:** Is the Office of Disability Issues involved in any capacity in the review referred to in PWQ 1666 (2022)?

**Reply:** I am advised that Immigration New Zealand and the Ministry of Health intend to engage with the Office for Disability Issues and other stakeholders during the course of reviewing the list of high cost medical conditions

**Reply 4852 (2022) has been answered**

**Portfolio:** Immigration (Hon Kris Faafoi)

**Question:** What are the terms of reference of the review referred to in PWQ 1666 (2022)?

**Reply:** Immigration New Zealand (INZ) and the Ministry of Health (MoH) have undertaken to work together to review and update the \$41,000 threshold for determining high-cost medical conditions, and the high-cost medical conditions list as soon as possible given competing work streams. INZ is providing the required insights and expertise around the immigration



framework and the MoH is providing health-related expertise and data required to calculate the costs of medical conditions and to update the figure of \$41,000 (the threshold).

9 June 2022

Ricardo Menéndez March: Does he agree with the Labour Party members of the Education and Workforce Committee who said that we need to review the acceptable standards of health so that it is strengths based; if so, will he broaden the scope of the review of the acceptable standards of health policy to look beyond the cost threshold?

Hon KRIS FAAFOI: Yes, that's why we're doing it.

## Appendix 3: Testimony from Alfonzo family

This testimony is from Gail and Allan Alfonzo and is a transcript of their speech from the hand-over of their Parliamentary petition.

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My name is Lorigail Alfonzo and my husband is Allan Alfonzo. We both presently hold a New Zealand permanent resident visa. Allan has been living and working in New Zealand for 6 years. But because of the unfortunate and discriminatory immigration situation, our family have been forcefully separated during this period.

Let me introduce to you my daughter Arianna Gail Alfonzo. Arianna is 12 years old. She is Autistic. Arianna is a sweet , loving, funny, obedient and happy child. Her life is very meaningful and colourful. She taught me many lessons in life including on how to become patient, strong and a more loving person.

Like many disabled people, Arianna has faced discrimination regularly.

In fact, before she was even born, doctors did tests and saw she might be disabled. They told me she wouldn't live a normal life and that I should abort her. We could not allow my child to be judged like this so we opposed the doctor's advice. We believe that she will live a meaningful and inspiring life.

Living in a third world country where disabled children are not freely recognised in society has been very traumatic for us. Disabled people are the lowest priority in our country. When we thought we had the chance to move to New Zealand, we expected that would be different. Especially under this Government, where Prime Minister Jacinda Arden talks about ruling with kindness and compassion.

In 2018 Arianna was discriminated again because Immigration New Zealand told us that she might likely impose significant costs on the health and education services of New Zealand.

This discrimination sends a message that autistic people and disabled people are a burden on society. Immigrants like Arianna and our family are not treated with dignity in this system. Because of this discrimination, our family have been separated for 6 years, with Arianna and I having to stay in the Philippines. We had to pay lawyers fees and go through years of stress and uncertainty, just to fight for Arianna's basic human rights.

In 1940, under the Nazi's Policy-T4 programme, children with disabilities and mental illness, including autism, were considered burdens, unworthy, and as financial drains on society. They did medical experiments on them and then murdered them in gas chambers. History told us this should never, ever repeat again.

And yet, the message behind these hateful acts, that disabled people are a burden and a financial drain on society, is very strong in New Zealand's Immigration rules.

These beliefs are not okay. We need to respect the human rights of people with disabilities.

April 2 was World Autism Awareness Day. The United Nations Secretary General (António Guterres) said "We need to ensure that the rights, perspectives and well being of persons with disabilities, including those with Autism, are an integral part of building forward better from the pandemic." Let us reaffirm our commitment to an inclusive, equitable and sustainable world for persons with Autism.

Arianna is entitled to all rights guaranteed to children under the United Nations Convention on the Rights of the Child (UNCROC). Article 2 of the UNCROC asserts that children should never be discriminated against on grounds of disability. Article 23 emphasises the rights and freedoms of children and the importance of promoting their full enjoyment of life experiences and of exercising their independence to the greatest extent possible.

Children with disabilities are also specifically cited in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Article 7 of the UNCRPD ensures their full enjoyment of all human rights and fundamental freedoms on an equal basis with all other children. The UNCRPD also demands measures to protect the equal rights of children with disabilities in respect of inclusive *education, family life, opportunities for play, access to justice* among others. New Zealand signed and ratified these conventions. As signatory to these two conventions New Zealand is bound to them by international law and must comply.

### **My husband Allan Alfonzo says:**

New Zealand is a home to me. New Zealand is a better place to live and raise a family. It is deeply painful that I was not able to reunite with my family in New Zealand. I believed New Zealand would value family, extend kindness and compassion to children like Arianna. I know Arianna enjoys the natural beauty, simple life, fresh and clean environment.

Now our family had a simple wish, reuniting our family in New Zealand and recognising Arianna's human rights. Thank you.

# Appendix 4: Testimony of Juliana Carvalho

The following testimony was included within Juliana Carvalho's written submission to the Education and Workforce Select Committee.

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## Introduction

I am an immigrant with a disability from Brazil. I moved to NZ in October 2012 to join my family and faced a huge legal battle with immigration to finally in September 2020 be granted residency through ministerial intervention. The whole process had a huge impact on my life, my mental health and led me to create a [campaign](#) [3] to change a system that clearly is unjust and inconsistent with our international humanitarian obligations and causes harm to immigrants with disabilities and their families.<sup>57</sup> The campaign #LetHerStay gathered nearly 35 thousand signatures and received media attention in Brazil and New Zealand. Let me tell you how I got here.

## Becoming a (disabled) rhino

Whenever I have a challenge, I see myself as a big, strong, furious rhino. A rhino with tough skin that puts its head down and aims its horn to charge against the obstacle.

I had a healthy life until May 2001 when one day I felt unwell. After a week I went to hospital and 48 hours later I was totally paralyzed. It started with pins and needles in my legs, then my arms, then nothing, I just could move my head. I was dying in the Intensive Care Unit. The doctors tried everything and prepared my family for the worst. I survived. But it took a long time until I got a possible diagnosis: transverse myelitis caused by Lupus. TM incidence is 1.34 in a million but caused by lupus there are fewer than 100 cases described in the medical literature. In plain English, I had a massive inflammation in my spinal cord caused by an autoimmune disease.

I remember asking the doctor, how long am I going to stay here? I have university and work... three days, she said. After 37 days I went home. My first reaction was to cry. There was an overwhelming pain in my heart. Nothing could change the reality that surrounded me: I was 19 years old, was in a wheelchair and could not move or feel ¼ of my body.

As you can imagine, the road to recovery was not easy, but slowly through intensive physiotherapy and exercise I managed to recover the movement of my arms and hands. I've learnt how to live independently in a wheelchair. With the support of my family and friends, I got my life back on track.

I pushed myself very hard for eight years fiercely pursuing my goal to walk again. And truly believing that I would recover 100% and overcome the biggest challenge of my life I decided that I would achieve whatever I dreamed about. I finished my studies and graduated from university in Communication Studies. I created a TV show named '*Make a Difference*' and I ran it for four years until I moved here. I produced and presented it with the help of a great

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<sup>57</sup> [Chang.org. \(n.d.\). End discrimination and help Juliana stay in New Zealand with her family #letherstay.](#)

team. The show's main goal was to give disabled and underprivileged people a voice and also shed light on difficult subjects like discrimination, human rights abuse and inequality.

In 2010, my autobiographical life journey, before and after becoming paraplegic, was published. The book, *'In my chair or yours?'* was a best-seller and the Ministry of Education in Brazil distributed it to public schools. As you can see, I had a well-established career in the disability and communication sector. I started doing inspirational speeches, I won awards for the best true story. Everything was possible.

After the book I received an email of a mother of a girl called Bruna. She was 9 years old and she was in a wheelchair. Her mother asked if we could meet, so Bruna would have a successful woman in a wheelchair to be a role model for her daughter. And that changed everything.

If you have a disability the message everywhere, is you can't, you are less, you are a burden. A lot of kids with disability grow up believing that they are less because of the message we as society are communicating all the time. I realise to walk again wasn't that important. All the energy, passion, drive and focus I had to walk again I could now direct into something else. To fight for the rights of people with disabilities.

It was not easy. Living as a disabled woman in Brazil, offered plenty of challenges and I faced discrimination several times. But I always fought back, and the rhino was fulfilling his mission.

## Coming to New Zealand

Then at the beginning of 2012 I came to NZ on holiday to visit my siblings. As a tourist I travelled all over NZ and there was always accessible restaurants, places, things to do. I thought I could live in a country that was perfect and would never ever again face discrimination.

When I moved to New Zealand, I was full of confidence. In 2 months I sat the IELTS and scored 7.5. A month later, I took a job as a Personal Assistant in the disability sector, a role with national scope. From my Queen Street, 10<sup>th</sup> floor window I could see the sea. I was on top of my game.

In 2014 I applied for residency under the Skilled Migrant Category. Back then, to qualify you needed 100 points, I had 175. However, I hit a barrier with meeting the health requirements as set out in the immigration policy. The policy list conditions, including all types of disabilities and some chronic health issues, which are deemed to impose high cost to the health system. If you have any of those conditions: lucky me I had two: severe immune disorder and paraplegia. Immigration MUST decline the residency unless you are granted an exemption from the Health Requirement.

The medical waiver weighs up the cost you are likely to impose against your ties to NZ (I had family here), your potential contribution to the country (I had full-time employment, and I had evidence of a high-profile career in Brazil), and the level of cost you could impose, my lupus had been stable for a decade, and I could live independently in a wheelchair. Rhino mode on, and I thought I had a chance.

The process was lengthy, bureaucratic, costly and stressful. Sometimes during the process, the bubbly and confident woman that I am was doubted my worth as a human being and wonder if persisting was the right decision. The uncertainty and dehumanization of the process took a toll on my health and at end of 2015, I had a lupus flare triggered by stress. I was in hospital when I received the immigration letter declining my residency.

## The Rhino was broken

One day after my discharge I was in the lawyer's office preparing the appeal to the Immigration and Protection Tribunal. I decided to appeal not only because I love NZ and I want to be here with my family but also because giving up goes against my core values.

I also appealed because I thought it was not acceptable that in 2015, we were still discriminating against others on any grounds. This has not changed since, and I cannot accept that so many others and I are less worthy and seen as a burden just because they/I have an impairment.

The underlying message can have a devastating impact on someone's life. It had in my life, and I don't want to see others going through the same thing. It makes me sad to think that many people might end up believing that they are unworthy and that they cannot contribute to society and humanity. This INZ policy almost made me believe that...

After 10 months, I partially won the appeal, and the tribunal decision was to refer it back to immigration for a fair and correct assessment. It took another 19 months of me trying to prove my value. Unfortunately, in September of 2018 immigration said the second NO.

My first reaction was to cry my eyes out with my family. Then I decided to apply for another work visa and keep on fighting. What I'm going to ask you now is not easy. However, I urge you to please try to empathise. Close your eyes and imagine yourself in the same situation. Having to leave your family behind because you have an impairment that you cannot change, and through no fault of your own. Despite all obstacles your condition imposes, you keep fighting and you keep functioning and contributing to society. However, that does not matter, because some see you as a burden. How would you feel?

The Rhino was broken. To fight the system was the hardest thing I ever faced in my life. The medical waiver process annihilated my self-esteem and destroyed my joy to live. The emotional toll was worse than becoming paraplegic. I was exhausted. I could not take it anymore. But that was just the beginning of the worst year of my life. Within a 12 month period I went to hospital 8 times. I had meningitis, influenza, pneumonia, you name it. I spent my birthday, Christmas, and New Year's Eve in hospital. I was laying down for so long my hair got so messy I had to cut it – and that was really sad. I also fell from my chair and broke my foot and then out of nowhere, my eardrum burst. When I applied for a new work visa, immigration look at my health story and said nope.

I have hit the bottom, I had nothing left to give. The unconditional love of my mother, the support of my family and friends kept me breathing. I went back to therapy, and I learnt many lessons, including that we choose our response to what happens in our lives. For quite some time I chose to be upset, I chose to let the battle against immigration affect my mental health and my physical health. I've learnt that believing "you have no choice" is a choice in itself.

I changed my mindset, and slowly got back on my wheels. But I had a pretty hard decision to make. I had to choose, should I stay or should I go?

## Appeal and campaign

With my work visa about to expire, my only chance to remain in New Zealand was to overstay to become liable for deportation and then eligible to appeal on humanitarian grounds. That meant that I would be here unlawfully, would not be able to work, would have to live on my savings, and then borrow some--thanks brother--and had no timeframe or certainty of success.

There was also the fear of getting sick again. Without a visa I could not apply for health insurance. It was scary, but fear does not decide my life. There is a certain level of achievement that only comes with persistence and courage. Extraordinary things happen for those brave enough to take risks and never give up. I put my fear aside and I chose to fight to stay in NZ until the end.

From September 2019 to February 2020 I was unlawful. I bet all my resources pursuing my dream to stay in New Zealand. But this fight was not only about me. This is way bigger than me. So I created a petition to change the policy, using my personal story as a vector for transformation. I thought about what I could do to raise awareness and get attention? I decided to do things that people do not expect to see someone in a wheelchair doing while having some fun. Rhino mode was back on, and I have made this video for the campaign #LetHerStay.



After we lodged the appeal against deportation I had to wait. Crisis means opportunity and I reflected about this crazy journey and its lessons.

I've learned that a system that discriminates can take away from you everything you love and need to survive. I lost my job, my health, was on the brink of being separated from my family. But there was one thing the system could not take away: my hope. Because that's a power within.

I've learned that I should never allow life circumstances to affect my health and mental health.

I learnt the importance to be vigilant and aware and to pay attention when we are letting the outside world interfere with the way we feel about ourselves. I learnt the importance of being alert and catching yourself thinking only negative thoughts and heading into a low vibrational state. You can consciously decide to replace what your inner voice is saying.

Finally, our family, friends and connections are the foundation that support us through the unthinkable. February 2020, the unthinkable came. My appeal was denied, and I made this video.



## Ministerial intervention in lockdown

My last legal option to stay in NZ was ministerial intervention. The same week my appeal was lodged in the Minister's office, NZ went on full lockdown because of Covid-19.

Life is strange, every single person in NZ is now having a taste of what it is like to live in uncertainty and to deal with something we have no control of. However, crisis means opportunity and my temporary visa was extended giving me a bit of time to wait for the Minister's decision.

On 22 July 2020, 11:52 I was working when my phone rang. It was my lawyer and he said: 'The Minister said yes. I said 'What?' "The Minister said yes. I said another 'What?' It was only the third time that he repeated, 'the Minister has granted you residency' that the information started to sink in. I thanked him profusely and started to cry, I said, 'I have to tell my family!' But I decided to tell them in person, as soon as we were all together for dinner. You can watch their reaction in this video.





## Won the battle, not the war

If it wasn't for the unconditional love of my family and friends, the effort of the legal team and the support of the nearly 35 thousand people who signed my petition, I would not have won the battle. But the war is not over. My case was an exception to the policy. To fulfil my mission, I will advocate for change no matter how long it takes. This policy caused me so much harm, despite my amazing network of support.

Imagine a kid with a disability going through all I had to face these last years?

It is inhumane. This policy is also unwise – talented people like Elon Musk, Albert Einstein, Van Gogh, Thomas Edison, Franklin Delano Roosevelt, Beethoven, Stephen Hawking and Frida Kahlo (just to name a few) would not be accepted to live in New Zealand following the current immigration instructions.

This policy needs to evolve. Remember that not long ago, women could not vote. Full stop. That was the law. Slavery was the law. Racial segregation was law.

But what is legal is not always what is right... or fair. And because of the courage and resistance of people like Rosa Parks, as a society, we keep evolving.

My dream is that, in the future, we would be able to say, discrimination against disability was law in 2021, can you believe it?