PARISH PATIENCE IMMIGRATION LAWYERS

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Student Visa Cancellations Overturned

The latest immigration scandal involving the invalid cancellation of up to 8,000 student visas may cost the Australian government hundreds of thousands of dollars in compensation pay-outs. In a recent decision of the Federal Magistrates Court, it was held that the format of notices sent to students since May 2001 was ineffective because it failed to comply with mandatory legislative requirements. Thousands of students were told by the Department of Immigration that their visas were cancelled when legally that was not correct. Many affected students had to abandon their studies and plans for permanent residence as skilled migrants, and had to leave the country. Following the court decision in which overseas student, Mr Uddin, had his visa restored, the Department of Immigration has admitted that its error resulted in up to 8,000 student having their visas unlawfully cancelled.

Mr Uddin's Sydney lawyer, Nick McNally, of Parish Patience Immigration Lawyers today said ***"The government has made a lot of noise about a skills shortage in Australia, and educational institutions have benefited greatly from full fee-paying foreign students. The student visa regime is a key component of the response to the skills shortage in this country, and yet thousands of students affected by this decision had their life's plans thrown off course by a bungle of massive proportions. We are exploring the option of compensation for our clients."***

Mr McNally's colleague, Nigel Dobbie, also noted that many foreign students are only able to study in Australia through the hard work and support of their families and local communities. ***"A lot of students leave their home country, bound for Australia to study, as the pride and joy of their family and local communities, only to be sent back in shame because they were thrown out of the country by an invalid exercise of power,"*** said Nigel Dobbie.

Mr McNally noted that it may be very difficult to restore the victims to the position they would have been had the mistakes not occurred. ***"Merely giving students their visas***

back won't necessarily redress their suffering. In many cases, they will struggle to obtain re-enrolment to the university or college they attended, and many others won't be able to rewind their lives to pick up the life that had been taken away from them unlawfully. I have no doubt that the interruption to these students' lives has been catastrophic in some cases. Compensation must flow for their loss of opportunities and actual costs."

The Uddin case has exposed another important aspect of the student visa regime in Australia. The notice that sets in train the automatic visa cancellation process is prepared by education providers. The notice sets in train a process that may result in the student's visa being cancelled, without anybody in the Department of Immigration having any role. Once the visa is cancelled, the student is liable for detention and deportation at any time. It is claimed that the regime places too much power and obligation in the hands of education providers.

"Although education providers include large universities, many are simply small independent colleges in the back streets of our cities. The education providers effectively determine if a student has breached certain visa conditions. The provider issues a notice, and 28 days later, their visa having been automatically cancelled, the student may end up in immigration detention in the deportation queue. I wouldn't want my liberty to be in the hands of many of these colleges," said Mr McNally.

Mr McNally concluded, ***"Education providers are not delegates of the Minister, and they should not be given the power to cancel visas, or to set in train an automatic or mandatory cancellation procedure by writing a letter. If Australia wants to portray itself as an attractive destination for foreign students, and if we are serious about addressing the skills shortage in this country, a complete overhaul of the student visa regime is needed."***

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