Sunil Dixit v. Australia

U.N. Doc. CCPR/C/77/D/978/2001 (Apr. 28, 2003).

Country: Australia
Region: Oceania
Year: 2003
Court: United Nations Human Rights Committee United Nations Human Rights Committee
Health Topics: Child and adolescent health, Chronic and noncommunicable diseases, Health care and health services, Health systems and financing
Human Rights: Freedom from discrimination, Right to acquire nationality, Right to due process/fair trial, Right to privacy

Facts

The author challenges the refusal of his visa application as a violation of his right to equality before the law as provided for in article 26 (equal before law) of the International Convenant on Civil and Political Rights (the Covenant) in addition to article 2, paragraph 3, (right to remedy); article 14, paragraph 1 (right to fair trial); article 17 (right to privacy); and article 24 (child's right to acquire nationality) of the Covenant.
In 1996, Mr. Dixit, an American citizen, had filed for immigrant visa to Australia along with his wife and his daughter Sonum, who suffered from a mild case of spina bifida. Their applications were denied on the grounds that Sonum's ailment, which according to the Australian Authorities was "a disease or condition that would be likely to result in significant cost to the Australian community in the areas of health care and community services." According to the Australian authorities, even upon the most optimistic of predictions Sonum's costs to the community would be significant (defined as A$ 16,000 over the next 5 years or longer if foreseeable). This was based upon costs associated with close supervision by a multidisciplinary team, repeated investigations over her lifetime and foot surgery, as well as disability allowances of A$ 1,950 a year until she reached 16 years of age. This assessment was made without regard as to whether the person would effectively use those services. Based on this Mr. Dixit made a number of protests against the authorities involved with success. In 2000, he applied for another class of visa for himself and his family, entitling them to lawful permanent residency in Australia and was eventually granted access.
As a result, the author informed the Committee on 4 June 2001 that he was willing to withdraw his communication if the State party's Government confirmed that the commencement of their status as permanent residents is pre-dated to 1997 - when the first application for Migrant Visa was denied - instead of 2000 and waived the residency requirement for his family so that they can file applications for Australian citizenship.

Decision and Reasoning

The Committee held the communication inadmissible on the grounds that the author had failed to exhaust all domestic remedies afforded by Australia before bringing the communication before the Human Rights Committee. The Committee considers that the author has not demonstrated any effort to engage the State party's judicial remedies. A later visa application was proven successful.

Decision Excerpts

"The Committee observes that the author appears to accept that there was, in principle, a remedy available to his daughter in the State party's Federal Court. Although formal time limits now have expired, the Committee considers that the author has not demonstrated any effort to engage the State party's judicial remedies. Furthermore and in respect of the present time, the Committee observes that the author has not shown that an application for leave to appeal out of time would be unavailable and also observes that a later visa application has meanwhile proven successful. The communication is accordingly inadmissible under article 5, paragraph 2(b)."