

**From:** 9(2)(g)(ii)  
**To:** [Nicole Campbell \(Parliament\)](#)  
**Subject:** Case for AMOI's consideration - MIN 24/1883 - FARMER Candace Owens 9(2)(a) ~~IN-CONFIDENCE~~  
RELEASE-EXTERNAL]  
**Date:** Friday, 6 December 2024 2:52:04 pm  
**Attachments:** [CASNOTE - 9\(2\)\(a\) - FARMER Candace Owens 9\(2\)\(a\) .docx](#)  
[CASNOTE - 9\(2\)\(a\) - FARMER Candace Owens 9\(2\)\(a\) .pdf](#)  
Out of scope  
[FW Free Speech Union - CANDACE OWENS FARMER REQUEST FOR SPECIAL DIRECTION.msg](#)  
[9\(2\)\(a\) - Representations.pdf](#)  
[FW Candace Owens Appeal letter to Australian Immigration Minister.msg](#)  
[9\(2\)\(a\) - Authority to Act.pdf](#)  
[9\(2\)\(a\) - NZHC 1966.pdf](#)  
[TAG A - PPI letter.pdf](#)  
[TAG B - Australian visa refusal letter.pdf](#)  
[TAG B - PPI response \(01\).pdf](#)  
[TAG B - PPI response \(02\).pdf](#)  
[TAG C - High Court ruling on section 15.pdf](#)  
[TAG D - Decision rationale.pdf](#)  
[TAG D - Decline letter.pdf](#)  
[TAG E - 9\(2\)\(a\) - Further letter from Free Speech Union.pdf](#)  
[TAG F - 9\(2\)\(a\) - Gillis Delaney Lawyers letter.pdf](#)  
[TAG G - RA1 assessment.pdf](#)

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Dear Nicole,

Attached is a case to be considered by the Associate Minister of Immigration.

Please let me know if you have any questions or concerns.

Kind regards,

9(2)(g)(ii)

IMMIGRATION RESOLUTIONS

Associate Deputy Secretary Immigration, Immigration New Zealand  
Ministry of Business, Innovation & Employment

9(2)(g)(ii)

Level 5, 15 Stout Street, PO Box 1473, Wellington 6140, New Zealand

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## REQUEST FOR MINISTERIAL INTERVENTION

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**MIN:** 9(2)(a)

**AN:** 9(2)(a)

**CN:** 9(2)(a)

**Representative:**

Jonathan Ayling, Senior Executive and Hannah Clow, Senior In-house Counsel, Free Speech Union New Zealand with supporting letter from Anthony Jefferies (Mr), Partner, Gillis Delaney Lawyers

**Request:**

Special direction under section 17 of the Immigration Act 2009 (s17) and the grant of a work visa

**CLIENT**

**Name**

Candace Owens FARMER  
(Ms)  
(aka Candace OWENS)

**DOB**

29 April 1989 (35)

**Citizenship**

United States of America (USA)

**Immigration status:**

Offshore

**Health:**

No information held

**Character:**

No information held

**Other family:**

Partner and two children offshore.

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### Immigration history

On **9 September 2024** Ms Farmer applied for a Specific Purpose work visa for Entertainers and Associated Workers to travel to New Zealand as part of her Australia/New Zealand speaking tour in Auckland between **13 and 15 November 2024**.

*On **25 October 2024** the Australian Minister for Home Affairs and Minister for Immigration and Multicultural Affairs refused to grant Ms Farmer's Australian visa application. Ms Farmer's Australian visa was refused pursuant to section 501(3)(a) of the Australian Migration Act 1958 (MA 1958) on the grounds that the Minister reasonably suspects that the person does not pass the character test and is satisfied it is in the national interest to refuse her visa. The particular character test which the Australian Minister found Ms Farmer did not meet was section 501(6)(d)(iv) of the MA 1958, in that there was a risk she would incite discord in the Australia community or in a segment of that community.*

On **29 October 2024** Immigration New Zealand (INZ) asked Ms Farmer's representative whether her show in New Zealand was still taking place. They confirmed the show was proceeding but that her Australian visa application was encountering some issues, that were being challenged.

On **1 November 2024** INZ sent a potentially prejudicial information (PPI) letter, **tagged A**, noting that recent media reports indicated that Ms Farmer's Australian visa application for her planned speaking tour had been refused, and that she had failed to inform INZ of this significant change in her circumstances, as required by section 58(3) of the Immigration Act 2009 (s58(3)).

INZ also stated that based on media reporting, it appeared Ms Farmer's Australian visa application was refused in accordance with section 501(6)(d)(iv) of the MA 1958 and she was not entitled to enter or be in Australia for a period of three years. INZ stated that as Ms Farmer had been excluded from Australia, she was subject to section 15(1)(f) of the Immigration Act 2009 (s15(1)(f)). S15(1)(f) states that no visa or entry permission may be granted, and no visa waiver may apply, to any person who has, at any time, been removed, excluded, or deported from another country.

Letters from Ms Farmer's New Zealand lawyer and Australian lawyer were received in response, stating that Ms Farmer did advise INZ of the change in her circumstances through the communication of **29 October 2024**. Submissions were also made about why Ms Farmer was not considered 'excluded' from Australia and therefore was not subject to s15(1)(f). The responses are **tagged B** and includes the refusal letter Ms Farmer received from the Australian Minister for Home Affairs, Minister for Immigration and Multicultural Affairs. INZ later received further information that her New Zealand event had been rescheduled for **28 February 2025**.

In assessment, INZ considered the representative's responses, advice from the Risk Assessment Team (RAT), internal legal advice, and the 2019 High Court decision of 'EM', **tagged C**, which discusses the application of s15(1)(f) to 'excluded persons' to Australia. INZ determined that Ms Farmer is subject to s15(1)(f) and therefore she is ineligible for a visa or entry permission to New Zealand unless granted a special direction under s17. INZ did not consider granting a special direction under s17 and Ms Farmer's application was declined on **19 November 2024**. The decision rationale and decline letter are **tagged D**.

### Representations

The representative submits INZ has incorrectly interpreted s15(1)(f) leading to the decline of Ms Farmer's application and that the decision is inconsistent with the High Court ruling in the case of 'EM.' The representative writes that the High Court concluded in this case that if a person's rights to re-enter a country are not completely removed, they have not been excluded. The representative refers to section 503 of the MA 1958, which determines certain persons who are excluded from Australia. This includes people deported for committing criminal offences or people who have been refused entry for a failure of the character test provided for by the legislation.

The representative advises that Ms Farmer applied for a Temporary Activity (Class GG) visa to enter Australia, to carry out work on a short-term, temporary basis. Her application was refused pursuant to section 501(3)(a) of the MA 1958. The representative states that in order to rely on s15(1)(f) to decline Ms Farmer's application, INZ must carefully assess whether the refusal of Ms Farmer's Australian visa is considered exclusion. The representative submits there is no evidence to suggest that Ms Farmer would not be allowed entry into Australia under other non-work visas or if the purpose of her visit changed to a holiday.

The representative advises that Ms Farmer appealed the refusal of her Australian visa to Australia's Department of Home Affairs as the decision maker had actual and apprehended bias and that her visa should be granted as she passes the character test. Ms Farmer is awaiting the outcome of this appeal. The representative argues that the facts of Ms Farmer's case do not support the assertion that she is excluded from Australia and requests that she be granted a work visa.

The representative Jonathan Ayling (Mr), Chief Executive of the Free Speech Union (New Zealand) Inc, has written another letter, **tagged E**, condemning INZ's decision to decline Ms Farmer's application. He writes that shutting down dialogue around certain ideas achieves nothing but polarisation, division, undermining of trust in institutions and the erosion of free

speech and democracy. He suggests that INZ's decision to decline Ms Farmer's a visa be reconsidered in light of the decision in Australia being contested, and the inconsistency of INZ's decision with the New Zealand Bill of Rights Act. He advises that based on the concern that INZ has acted unlawfully, they are actively taking legal advice and are considering judicial review in the High Court.

*A letter from Mr Jefferies, Partner, Gillis Delaney Lawyers has been provided with the representations, **tagged F**. This letter is addressed to the Australian Department of Home Affairs and is Ms Farmer's appeal against the refusal of her Australian visa application. It has been briefly summarised below.*

Mr Jefferies states that the decision of Ms Farmer's Australian visa should be revoked as it was made by a person who was biased against Ms Farmer, had formed the view to refuse the application before she applied, and who made the decision with the purpose of ingratiating himself to the public. Mr Jefferies submits that the decision has legal unreasonable conclusions, and that Ms Farmer does pass the character test.

Mr Jefferies discusses issues with the reasoning for the decline of Ms Farmer's Australian visa on **pages 3-9** of **tag F**. Mr Jefferies writes that Ms Farmer's Australian visa was refused on nothing more than the ground that her views are controversial, which he believes is a scant basis for the decision as she is an eminently qualified speaker of outstanding character.

The representations and supporting documents are **tagged 1883**.

#### **Relevant instructions and legislation**

*Immigration Act 2009*

**Section 15** Certain convicted or deported persons not eligible for visa or entry permission to enter or be in New Zealand

**Section 17** Exceptions to non-eligibility for visa or entry permission

*Australian Migration Act 1958*

**Section 501** Refusal or cancellation of visa on character grounds

**Section 503** Exclusion of certain persons from Australia

#### **Relevant issues**

INZ has determined Ms Farmer is subject to s15(1)(f) as she is excluded from Australia for three years following the refusal of her Australian visa on 25 October 2024. S15(1)(f) states that no visa or entry permission may be granted, and no visa waiver may apply, to any person who has, at any time, been removed, excluded, or deported from another country. She requires a special direction under s17 in order to be granted entry permission or a visa to New Zealand.

The RAT provided an assessment as to how s15(1)(f) applied to Ms Farmer's case in line with the considerations provided in the High Court 'EM' decision (refer to **tag C**), related to exclusion from Australia. The RAT assessment is **tagged G**.

The representative has submitted that INZ incorrectly interpreted the application of s15(1)(f) and that Ms Farmer is not considered an 'excluded person' as it does not appear she would not be allowed entry to Australia under other visas or if the purpose of her visit changed. Ms Farmer has challenged the decision to refuse her Australian visa, seeking that the decision is revoked. There is no indication how quickly matters in Australia will be resolved, however RAT noted that if Ms Farmer is successful in her appeal, she would no longer be considered an 'excluded person'.

**Legal advice**  
[LEGALLY PRIVILEGED]

9(2)(h) [Redacted]

[Redacted]

9(2)(h) [Redacted]

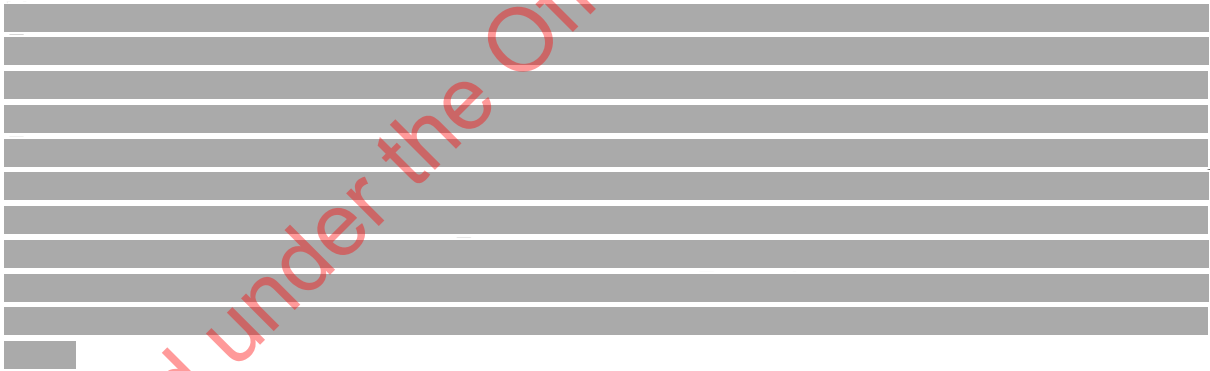
9(2)(h) [Redacted]

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9(2)(h)



9(2)(h)



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9(2)(h)

### International Obligations

In making this decision, you may consider New Zealand's international obligations, for example those relating to the best interests of any child.<sup>1</sup> You have been briefed regarding the role of international obligations in decision making on immigration related cases.

***The decision maker may request that officials/Resolutions provide additional information or specific advice at any time.***

**Case note prepared by**  
Ministerial Team  
Immigration Resolutions, INZ

**For**  
Hon Chris Penk  
Associate Minister of Immigration

6 December 2024

### OPTIONS

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Possible options include:

- A) Grant Ms Farmer a special direction under section 17 for her three-year exclusion from Australia following the refusal of her Australian visa on 25 October 2024. Also grant Ms Farmer a work visa, subject to her meeting the relevant instructions under *WS Specific Purpose or Event Instructions*.
- B) Request further information from Free Speech Union and Ms Farmer as to why a special direction should be granted, or why a visa is required at this time.
- C) Decline to intervene.

Note: If you chose an option that grants a visa subject to certain requirements, and the processing branch determines that those requirements are not met, this case may be referred back to you for direction on how to proceed.

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<sup>1</sup> Art 3(1) of the Convention on the Rights of the Child provides that "in all actions concerning children...the best interests of the child shall be a primary consideration".

*Letters to be prepared once a decision has been made*

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27 November 2024

Hon Erica Stanford  
Minister of Immigration  
[E.Stanford@ministers.govt.nz](mailto:E.Stanford@ministers.govt.nz)

Cc: Hon Chris Penk  
Associate Minister of Immigration  
[Chris.Penk@parliament.govt.nz](mailto:Chris.Penk@parliament.govt.nz)

## Immigration New Zealand follows Australia's appalling example

Good evening,

1. The Free Speech Union is a registered trade union with a mission to fight for, protect, and expand New Zealanders' rights to freedom of speech, conscience, and intellectual inquiry. We believe that freedom of speech is not only a legal principle, but a social good that allows for people in modern liberal democracies to peacefully, freely advocate for the causes they care about without risking unjust retribution.
2. We write to condemn Immigration New Zealand's (INZ) decision to deny Candace Owens a Entertainers Work Visa. Following Australia's decision to deny Ms Owens a visa, we hoped INZ would take a democratic stance and protect both Ms Owens' right to free speech and Kiwis' right to decide who and what they want to listen to. Unfortunately, INZ has buckled under pressure from those calling for censorship of views they don't like.
3. INZ's acting deputy chief operating officer, Jock Gilray, has said the decision to deny Ms Owens' visa was based on section 15(1)(f) of the Immigration Act which states, "*No visa or entry permission may be granted, and no visa waiver may apply, to any person...who has, at any time, been removed, excluded, or deported from another country.*" Australia's Immigration Minister Tony Burke denied her visa on character grounds, specifically, that in his opinion her 'controversial' views could potentially incite "*discord*" in society.
4. This is not a justifiable reason to deny a person entry into a country. It simply impoverishes healthy debate that is crucial to a society where we discuss, criticise and critique what we believe ideas. Many people may consider Ms Owens ideas to be tasteless, perhaps even abhorrent, but shutting down dialogue around certain ideas achieves nothing but polarisation, division, undermining of trust in our institutions and the erosion of free speech and democracy. INZ has taken New Zealand down that path today – a path where the government decides what ideas Kiwis should or shouldn't hear.

5. In saying that, it is likely INZ has misapplied section 15(1)(f) of the Immigration Act as it refers to any person who has been "*removed, excluded, or deported*" from another country. Under section 16 of the Immigration Act, an excluded person is someone who the Minister has reason to believe:
  - a. is likely to commit an offence in New Zealand that is punishable by imprisonment; or
  - b. is, or is likely to be, a threat or risk to security; or
  - c. is, or is likely to be, a threat or risk to public order; or
  - d. is, or is likely to be, a threat or risk to the public interest; or
  - e. is a member of a terrorist entity designated under the Terrorism Suppression Act 2002.
  
6. In light of the decision in Australia being contested, and the inconsistency of your decision with the New Zealand Bill of Rights Act, we strongly suggest you reconsider your decision to deny Ms Owens entry into New Zealand. Based on our concern that Immigration New Zealand has acted unlawfully, we are actively taking legal advice, and considering requesting a judicial review in the High Court.
  
7. We look forward to your response.

Yours faithfully,

**Free Speech Union (New Zealand) Inc.**



**Jonathan Ayling**

Chief Executive

[jonathan@fsu.nz](mailto:jonathan@fsu.nz)

s9(2)(a)

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**From:** [Nicole Campbell \(Parliament\)](#)  
**To:** [xxxxxx@xxx.xx](#); [xxxxxx@xxx.xx](#)  
**Cc:** [Chris Penk](#)  
**Subject:** FW: Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION  
**Date:** Monday, 2 December 2024 11:10:08 am  
**Attachments:** [241129 CANDACE OWENS FARMER REQUEST FOR SPECIAL DIRECTION.pdf](#)  
[\[2019\] NZHC 1966.pdf](#)  
[Letter to Minister of Immigration 1 November 2024 \(S2612869xD43CF\).PDF](#)

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Kia ora Hannah and Jonathan,

On behalf of Hon Chris Penk, Associate Minister of Immigration, thank you for your email concerning Ms Farmer.

We acknowledge that your letter attached states that you act for Candace Owens Farmer, however we have not received evidence of your authority to act. For us to progress this request can we please ask for a letter signed by Ms Farmer stating that you hold the authority to act on her behalf in regards to immigration matters.

We understand that this is a time sensitive issue, therefore once the authority to act is provided we will be progressing this request through with urgency.

Please do reach out if you have any questions or concerns.

Kind Regards,



**Nicole Campbell**

**Private Secretary – Associate Immigration** | Office of Hon Chris Penk  
Minister for Building and Construction  
Minister for Land Information  
Minister for Veterans  
Associate Minister of Defence  
Associate Minister of Immigration  
Email: [Nicole.Campbell@parliament.govt.nz](mailto:Nicole.Campbell@parliament.govt.nz)  
Website: [www.Beehive.govt.nz](http://www.Beehive.govt.nz)  
Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

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**From:** Hannah Clow <[xxxxxx@xxx.xx](mailto:xxxxxx@xxx.xx)>  
**Sent:** Friday, 29 November 2024 4:54 PM  
**To:** Chris Penk <[xxxxx.xxxx@xxxxxxx.xxx.xx](mailto:xxxxx.xxxx@xxxxxxx.xxx.xx)>  
**Cc:** Jonathan Ayling <[xxxxxxxx@xxx.xx](mailto:xxxxxxxx@xxx.xx)>  
**Subject:** Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION

Good afternoon,

Please see **attached** correspondence from Jonathan Ayling, Chief Executive of the Free Speech Union requesting special direction to grant Ms Farmer an Entertainers Work Visa.

We await your response.

Kind regards,

**Hannah Clow**

Senior In-house Counsel | Free Speech Union

Mob [S9\(2\)\(a\)](#) Email: [xxxxxx@xxx.xx](mailto:xxxxxx@xxx.xx)

Free Speech Union (New Zealand) Incorporated | PO Box 10512, The Terrace, Wellington 6143 [www.fsu.nz](http://www.fsu.nz)

The Free Speech Union is a registered trade union under the Employment Relations Act 2000. If you would like to stand with us to protect and promote free speech, [click here to receive our updates](#)

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IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-A-TARA ROHE

CIV-2017-404-2651  
CIV-2017-404-2652  
[2019] NZHC 1966

UNDER THE Immigration Act 2009, ss 245 and 249

IN THE MATTER OF an application for leave to appeal and to bring judicial review

BETWEEN CHIEF EXECUTIVE OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT  
Applicant

AND EM  
Respondent

IMMIGRATION AND PROTECTION TRIBUNAL  
Second Respondent

Hearing: 6 May 2019

Appearances: N Fong for Applicant  
D Calvert, J Petris, J Cottrell, A Harris for First Respondent  
W L Aldred counsel assisting the Court

Judgment: 13 August 2019

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**JUDGMENT OF COOKE J**

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**Table of Contents**

<b>Background facts</b>	[4]
<b>First Issue: Was the Tribunal's jurisdiction excluded by 187(2)(d)(i)?</b>	[8]
<b>Second issue: Exclusion under s 15(1)(f)</b>	[21]
<i>Analysis</i>	[25]
<i>Conclusion on meaning</i>	[35]
<i>Application to the present case</i>	[38]

**Additional jurisdiction issue**

[46]

**Conclusion**

[52]

[1] The Chief Executive of the Ministry of Business, Innovation and Employment (the Chief Executive) seeks to challenge a decision of the Immigration and Protection Tribunal (the Tribunal) which allowed an appeal in relation to a decision affecting EM, the first respondent.<sup>1</sup> EM had been declined a residence class visa, and the Tribunal allowed the appeal and ordered reconsideration.

[2] The challenge is on two principal grounds: that the Tribunal had no jurisdiction to consider EM's appeal as a consequence of s 187(2)(d)(i) of the Immigration Act 2009 (the Act); and that the Tribunal misinterpreted s 15(1)(f) of the Act which the Chief Executive says prevented the granting of the residence class visa contemplated here. This Court has granted the Chief Executive leave to appeal the decision of the Tribunal under s 245 of the Act to the extent it had jurisdiction, and leave to bring judicial review proceedings under ss 245 and 249 of the Act to contend the Tribunal had no such jurisdiction.<sup>2</sup>

[3] On 18 December 2018 the first respondent was granted a residence visa (partnership-based) by way of a special direction under s 17(1)(a) of the Act. This challenge is accordingly no longer of direct significance to him. Counsel who acted on his behalf, including before the Tribunal, have nevertheless appeared and made argument in relation to the issues that arise. In addition, Ms Aldred was appointed as counsel assisting the Court to ensure that all arguments were fully addressed. This was appropriate as the matters raised by the Chief Executive in this challenge involve important points of principle which may affect other cases. I accept that the case is not to be regarded as moot in those circumstances.<sup>3</sup>

### **Background facts**

[4] EM is an Irish citizen, and an architect by profession. Before moving to New Zealand he had been living in Australia. He was on a temporary visa which expired on 7 September 2009 but he overstayed on that visa by just over two months.

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<sup>1</sup> *EM (Skilled migrant)* [2017] NZIPT 204065.

<sup>2</sup> *Chief Executive of Ministry of Business, Innovation and Employment v EM* [2018] NZHC 2437.

<sup>3</sup> See *Baker v Hodder* [2018] NZSC 78, [2019] 1 NZLR 94 at [32]–[33].

When he and his partner left Australia on 18 December 2009 they did so voluntarily. There was an automatic three year suspension on his ability to re-enter Australia on that kind of visa as a consequence of him overstaying pursuant to Schedules 2 and 4 of the Migration Regulations 1994. Those Regulations set out Public Interest Criteria (PIC) and Special Return Criteria (SRC) controlling immigration decisions. The suspension did not prevent him re-entering Australia on other visas to which the PIC and SRC exclusion did not apply.

[5] On 6 April 2016 EM submitted an expression of interest to be considered for a residence class visa in New Zealand. In the character section of the relevant form he was asked whether he had ever been “excluded or removed or deported” from any country, or “refused entry into any country” and he answered “no” to both questions. He nevertheless provided further information related to these answers in the following terms:

... I have answered ‘NO’ to this question but would like to include the following: At the end of my time in Australia, I overstayed on my visa by just over 2 months. The details of which were as follows: I was trying desperately to find a job that could sponsor me as an Architect so I could stay on and work in the country for longer but I was unable to do so. I was granted a temporary visa on 6 July 2009-7 Sept 2009 to find a job and apply for a work permit to enable me to work again but was unable to find one in time because of the short length of time I had left on the then current visa and the fact that I was not able to start work immediately due to restriction on my visa, not to mention this was the height of the financial crisis and companies were very reluctant to hire new staff until they saw how the recession was going to affect them.

I was given another 30 days to book flights and organise my departure. Unfortunately, the condition on the temporary I had been granted did not entitle me to work and I had no way of raising the funds for the flight. My family at home are on low income and couldn’t help me financially. I did explain this to immigration but there was nothing further they could do to help. In the end my partner at the time paid for my departing flights on 18 December 2009 and I paid her back at a later date.

The result of me overstaying was a 3 year ban from Australia which is mandatory with any overstay and has long since expired. I have since been granted a temporary holiday visa for Australia and I am now even eligible to apply for skilled migration visa and resident’s visa for Australia. So in answer to the question, because I left of my own free will and explained the situation upon departure, I do not believe I was ever refused entry, excluded, removed or deported. I just got caught out financially and left myself no option and was given the minimum punishment. I’m not sure if I needed to answer this at this point but again want to be 100% honest.

[6] EM's expression of interest was selected by Immigration New Zealand and he was invited to apply for residence. He made an application under the skilled migrant category. At this stage in a subsequent form he changed one of his answers to the questions concerning removal, deportation or exclusion to "yes". After exchanges between Immigration New Zealand and EM's immigration advisor, by letter dated 23 March 2017 his application for residence under the skilled migration category was declined. There is some debate as to the basis upon which that decision was made, but two matters are referred to in the letter:

- (a) Section 15(1) of the Act providing that no entry permission could be granted to any person who has at any time "been removed, excluded, or been deported from another country"; and
- (b) The provision of false or misleading information, or the withholding of relevant and potentially prejudicial information in relation to exclusion.

[7] EM appealed the decision to the Tribunal. By decision dated 20 September 2017 the Tribunal allowed the appeal and directed Immigration New Zealand to reconsider its decision. Two key conclusions reached by the Tribunal are now challenged by the Chief Executive, namely:

- (a) That s 187(2)(d)(i) did not apply to exclude the jurisdiction of the Tribunal as, contrary to Immigration New Zealand's decision, the information provided by EM had in fact been correct; and
- (b) That EM had not been excluded from Australia within the meaning of s 15(1)(f) of the Act.

**First Issue: Was the Tribunal's jurisdiction excluded by 187(2)(d)(i)?**

[8] EM had a right of appeal under s 187(4) of the Act which relevantly provides:

- (4) The grounds for an appeal under this section are that—
  - (a) the relevant decision was not correct in terms of the residence instructions applicable at the time the relevant application for the visa was made; or

- (b) the special circumstances of the appellant are such that consideration of an exception to those residence instructions should be recommended.

[9] But there are limitations on this jurisdiction. In particular s 187(2)(d) provides:

**187 Rights of appeal in relation to decisions concerning residence class visas**

...

- (2) However, no appeal lies under this Act in respect of—

...

- (d) a refusal of the Minister or an immigration officer to grant a residence class visa to a person who has been invited to apply for a visa, if a ground for the refusal is that the Minister or officer determines that the person,—
  - (i) whether personally or through an agent, in expressing his or her interest in obtaining an invitation to apply for a visa, submitted false or misleading information or withheld relevant information that was potentially prejudicial to the person; or

[10] The information said to be false or misleading within s 187(2)(d)(i) are EM's answers on the expression of interest form responding "no" to the question whether he had been excluded from any country. The letter from Immigration New Zealand expressed the following conclusion:

From our assessment, we are satisfied that you fall within the provisions of the Immigration Act 2009, section 15(1) whereby

"no visa or entry permission may be granted, and no visa waiver may apply, to any person-

- (f) who has, at any time, been removed, excluded, or deported from another country."

Therefore, you are ineligible for a residence class visa unless you are granted a special direction under section 17 of the Immigration Act 2009.

In addition, we are also unable to approve this residence application as you fall within the provisions of instruction SM3.5, for having provided false and misleading information as part of an EOI (SM3.5.a.i), and withheld relevant, potentially prejudicial information from an EOI (SM3.5.a.ii).

For the above reasons, your residence application has been declined.



[11] On the face of it this suggests that “a ground” for the refusal was that EM had “submitted false or misleading information” as contemplated by s 187(2)(d)(i). But that is not what the Tribunal found in its decision. It first considered whether EM was an excluded person, and it reached the conclusion that he was not. This led the Tribunal to reach the following decision:

[93] The Tribunal finds that the appellant is not an excluded person as defined by section 15 of the Act. The Tribunal therefore has jurisdiction in relation to section 187(2)(b).

[94] Given that the appellant was not excluded, it follows that his answer to question 84 in his EOI was correct, and he did not provide false or misleading information in, or withhold prejudicial information from, his EOI. Immigration New Zealand therefore erred when it relied on SM3.5 to decline the application. The Tribunal finds it has jurisdiction in relation to section 187(2)(d).

[12] The submissions for the Chief Executive are that this approach inappropriately avoids the limitation on jurisdiction set out in s 187(2)(d)(i). In effect the Tribunal has first assessed whether the information provided by the applicant was false, and having concluded that it was not false, concluded that it had jurisdiction accordingly. By that technique the limitation on jurisdiction was illegitimately circumvented.

[13] In seeking to support the Tribunal’s decision, counsel for the first respondent argued that a decision that information was false or misleading needed to be made fairly. Counsel referred to a paper provided by the Tribunal putting matters in the following way:<sup>4</sup>

13. Finally, the instructions create a discretionary power to decline, not an obligation to decline. As with any discretionary power, INZ must exercise it reasonably and fairly. On rare occasions, the Tribunal has found that INZ’s exercise of its discretion has been so unreasonable that it was contrary to the intended purpose of the instructions. It is incumbent on INZ to address concerns it has over the information provided in an EOI at the earliest opportunity in the assessment process so it can decline applications which fail at the first hurdle.

[14] An approach of this kind appears to have been adopted by the Tribunal in other cases in which the Tribunal has concluded that the conclusion being challenged was unfair.<sup>5</sup>

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<sup>4</sup> Jeanne Donald *Jurisdiction Matters: IPT Residence Appeals* (2018).

<sup>5</sup> See, for example, *Re BC (Skilled Migrant)* [2017] NZIPT 204066).

[15] I accept the submissions of counsel for the Chief Executive, which were effectively supported by counsel assisting the Court, that this approach is circular and illegitimate. The purpose of s 187(2)(d)(i) is to prevent the Tribunal conducting an inquiry into a finding made to refuse an application on this ground. A Tribunal cannot open an inquiry on appeal in order to determine whether the conclusion is fairly reached, and thereby bestow jurisdiction upon itself to engage in that very inquiry. I accordingly accept that the Tribunal's reasoning was wrong in law.

[16] It is nevertheless necessary to determine whether the decision is, in fact, a decision which has "a ground for the refusal" that the applicant has provided "false or misleading information or withheld relevant information that was potentially prejudicial to the person". Some scrutiny of the decision by the Tribunal is necessary to determine whether s 187(2)(d)(i) is engaged. It is also the substance, rather than the way the decision is worded, that will determine whether s 187(2)(d)(i) applies. The fact that a decision purports to be based on the false/misleading information ground does not necessarily mean that this was in fact a ground for the decision — the labels the decision-maker has used are not conclusive. But if it is a substantive ground for the decision the Tribunal cannot scrutinise the decision further, even if it has concerns that the conclusions might be wrong.

[17] Here there is no dispute about the facts. EM did answer the question "no" in the form when asked whether he had been excluded from any other country. But he also provided comprehensive information to be read alongside this answer which explained the full circumstances. Indeed it is difficult to imagine how EM could have been more forthcoming. It is not suggested that read together this information was in any way false or misleading, and neither was that the conclusion of the decision-maker. The substantive reason why the application was declined was that Immigration New Zealand had concluded, based on this very information, that he had, in fact, been excluded from Australia. Thus the true ground for the refusal was s 15(1)(f) of the Act. As a matter of substance there was no further or additional ground based on EM providing false or misleading information.

[18] The decision of the immigration official did purport to say that there was an additional ground for declining based on EM providing false or misleading information. But that was artificial. Just as it is wrong for the Tribunal to artificially

bestow upon itself jurisdiction by circular reasoning, it is equally wrong for a decision-maker to purport to exclude the jurisdiction of the Tribunal by similar techniques. As a matter of substance there was only one ground of refusal. The expression of an additional ground of refusal was illegitimate, just as the technique adopted by the Tribunal to avoid it was.

[19] Before leaving this topic, I wish to emphasise that the Court's rejection of the Tribunal's technique for avoiding the limits on its jurisdiction should not be taken as a rejection of the Tribunal's view that a finding that an applicant has submitted false or misleading information needs to be made fairly. I agree with that view. In addition, information is not false or misleading simply because an applicant has ticked the wrong box when it is apparent from the application overall that this was a mistake. Real care is needed when making such findings, particularly given the absence of any appeal right as a consequence. But only the High Court would have jurisdiction to address such matters and quash such a decision for procedural unfairness, or mistake of law.

[20] Nevertheless, here I conclude the Tribunal had jurisdiction, but for different reasons from those adopted by the Tribunal. For that reason I do not accept the Chief Executive's argument.

**Second issue: Exclusion under s 15(1)(f)**

[21] Section 15 of the Act provides (emphasis added):

**15 Certain convicted or deported persons not eligible for visa or entry permission to enter or be in New Zealand**

(1) No visa or entry permission may be granted, and no visa waiver may apply, to any person—

- (a) who, at any time (whether before or after the commencement of this section), has been convicted of an offence for which the person has been sentenced to imprisonment for a term of 5 years or more, or for an indeterminate period capable of running for 5 years or more; or
- (b) who, at any time in the preceding 10 years (whether before or after the commencement of this section), has been convicted of an offence for which the person has been sentenced to imprisonment for a term of 12 months or more, or for an

indeterminate period capable of running for 12 months or more;  
or

- (c) who is subject to a period of prohibition on entry to New Zealand under section 179 or 180; or
- (d) who at any time (whether before or after the commencement of this section) has been removed or deported from New Zealand under any enactment; or
- (e) who is excluded from New Zealand under any enactment; or
- (f) who has, at any time, been removed, excluded, or deported from another country.

...

- (3) Subsection (1)(d) does not apply to a person who—
  - (a) has been deported from New Zealand under section 158 of the Shipping and Seamen Act 1952; or
  - (b) was subject to a removal order under section 54 of the former Act, if the removal order has expired or been cancelled; or
  - (c) was deported under this Act but is not, or is no longer, subject to a period of prohibition on entry under section 179 or 180; or
  - (d) has been deported from New Zealand under section 20 of the Immigration Act 1964 on the grounds of being convicted of an offence against section 14(5) or 15(5) of that Act.

[22] In its decision the Tribunal concluded that the subsection did not apply because the nature of the limitation imposed upon EM did not amount to exclusion within the meaning of s 15(1)(f). The Tribunal held:

[81] ... the appellant's exclusion period from Australia was far from a complete prohibition on entry. It is true that during that three-year exclusion period, the appellant was unable to apply for visas that required specific PIC or SRC criteria. This precluded him from applying for most temporary visas (absent demonstrating compelling circumstances to have the exclusion waived). However, he was not prevented from applying for a number of permanent visas, as these did not require those specific criteria. For example, while the appellant was precluded from applying for a working holiday visa, he was able to apply for a residence visa on the basis of partnership.

[82] In contrast, information on the Australian Department of Immigration and Border Protection's website ([www.border.gov.au/about/corporate/information/factsheets/79character](http://www.border.gov.au/about/corporate/information/factsheets/79character)) indicates that Australian law allows for permanent and complete exclusion:

A person who is removed from Australia after their visa is cancelled on character grounds will be permanently excluded from being granted another visa to re-enter Australia.

...

[89] Given the partial nature of the exclusion period to which the appellant was subject; the fact that the Australian government's position was that the appellant had not been "formally excluded" from Australia; and the overall focus of section 15 on excluding individuals from New Zealand who have committed serious offences or immigration transgressions, the Tribunal is not satisfied that, in the particular circumstances of this case, the appellant had "been excluded" in the context of section 15(1)(f) of the Act.

[23] The Chief Executive argues that this approach is wrong, and that prohibition on re-entry, even partial prohibitions, amount to exclusion. The Chief Executive's criticism of the approach adopted by the Tribunal has three interrelated aspects, namely:

- (a) that the Tribunal's approach involved an elaborate case by case assessment, rather than the application of a clear and definitive concept evident from s 15;
- (b) that it will ultimately involve giving effect to foreign law rather than New Zealand law; and
- (c) that it is inconsistent with the text, context and purpose of the relevant provision.

[24] In responding to those submissions both the first respondent and counsel assisting argued that s 15 itself contemplated that there were different types of immigration restriction that applied in New Zealand and other countries, and the nature of the restriction imposed under Australian law on EM here did not qualify as exclusion within the meaning of s 15(1)(f).

#### *Analysis*

[25] The Chief Executive argues that to be "excluded" has a limited and clear meaning in New Zealand law that does not require a case by case assessment of the laws and practices of foreign countries. The written submissions for the Chief Executive put this point in the following way:

- 32. ... the Tribunal's approach entails an overly nuanced analysis, which requires an immigration officer to make case-by-case judgements

based on factors not apparent from s 15 of the Act, including the duration of the exclusion period and the seriousness of transgression giving rise to the exclusion period. Whether or not a person is “excluded” under s 15(1)(f) should be susceptible to a clear answer.

[26] The text on enactment must always be interpreted in light of its purpose.<sup>6</sup> The Court’s ultimate function is to make the statute work as Parliament must have intended.<sup>7</sup> The place of s 15 in the overall scheme of the Act is accordingly important.

[27] Section 15(1)(f) refers to a person who has been excluded from another country. Section 15(1)(e) refers to a person excluded from New Zealand. It is apparent that the two subsections are referring to essentially the same concept, and identifying the nature of exclusion from New Zealand will inform what is meant by being excluded from a foreign country. A consideration of exclusion from New Zealand demonstrates, however, that it does not have a meaning that leads to a clear answer in all cases as the Chief Executive contends. Some of the features of s 15 are significant in this context:

- (a) There is no definition of “excluded”. The only defined term is “excluded person” (in s 4), and it refers back to a person to whom ss 15 and 16 apply. It is accordingly circular. Neither is there precise machinery within the Act that identifies when someone will become an excluded person under New Zealand law for immigration purposes.
- (b) Section s 15(1)(e) also speaks of someone excluded from New Zealand “under any enactment”, and accordingly can encompass other legislative provisions that operate to so exclude a person. Such provisions were not identified in a complete way by the Chief Executive in argument, although reference was made to persons excluded under a number of United Nations sanctions regulations. But even in New Zealand law, identifying when someone is excluded is not obvious.

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<sup>6</sup> Interpretation Act 1999, s 5(1); and *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767.

<sup>7</sup> *Northern Milk Ltd v Northland Milk Vendors Association Inc* [1988] 1 NZLR 537 (CA).

- (c) It is also apparent from s 15 that determining whether a person is “excluded” may involve some subtlety. It contemplates something different than being deported or removed as s 15 refers to these three ideas as separate concepts. It would also appear that the legislation contemplates that there is a difference between “a period of prohibition on entry” and being “excluded” as those two concepts are referred to as separate matters in s 15(1)(c) and (e).
- (d) The concepts of removal, deportation and exclusion referred to in s 15 do not have mutually exclusive meanings. They appear closely interrelated, so that the meaning of each term is coloured by the others. Each is contemplating an adverse measure resulting in the person being unable to be in the relevant country.
- (e) The other grounds of disqualification referred to in s 15 also involve significant transgressions only. That is particularly evident from the convictions referred to in ss 15(1)(a) and (b). So a person is only an excluded person if the significant transgressions are committed. This also provides context, and colour for the meaning to be given to the concept of being “excluded” from another country under s 15(1)(f).

[28] The Chief Executive argued, however, that the relevant provisions did identify a test providing clear answers notwithstanding a circular nature of the definition of “excluded person”. The argument was put in the following way in written submissions:

35. While the word “excluded” is not defined, s 4 of the Act defines an “excluded person” as “a person to whom section 15 or 16 applies”. As the respective headings of ss 15 and 16 state, these sections are concerned with persons who are “not eligible for visa or entry permission” to enter or be in New Zealand. Both sections begin with the words, “no visa or entry permission may be granted ...”. They specify who may not be granted a visa or entry permission, notwithstanding they may otherwise meet the relevant requirements. Provisions of this kind can also be found in immigration legislations of other jurisdictions. Further, both sections are subject to s 17, which vests an “absolute discretion” in a decision-maker, including the Minister of Immigration, to grant a visa or entry permission to persons who fall within ss 15 and 16.

[29] The reference at the end of this paragraph to the Minister's discretion to allow entry under s 17 illustrates the difficulty with the Chief Executive's argument as it contemplates that entry might still be permitted. As Mr Fong submitted, in ordinary usage being "excluded" from a place means that you cannot go there. It has an absolute connotation. That seems to me to provide an appropriate meaning of the word in s 15(1)(f). In the context of decisions affecting immigration rights, therefore, the statute appears to be contemplating a situation where the immigration measures of a foreign country prevent entry into that country. The key point, however, is that the measures must prohibit, rather than simply restrict entry.

[30] In many, perhaps most cases, the position may well be straightforward because the transgression involved is serious and the restriction on re-entry likely to be complete. But that was not so in EM's case. He had committed a transgression under Australian law, and his rights of re-entry were adversely affected as a consequence. But given they arose from only a short period of overstaying at the conclusion of his visa period, and that he left Australia voluntarily, his chances of re-entering may have been reasonably good. That is reflected by the Minister's decision to give a special direction which resulted in EM obtaining a residence visa in New Zealand, notwithstanding the transgression. A decision in Australia may well have been similar. A consideration of the detailed facts and circumstances seems unavoidable in the circumstances of EM's case.

[31] Whilst it appears clear that s 15(1)(f) is contemplating a decision under foreign law, or the operation of foreign laws that curtail rights of entry otherwise available, such curtailment may involve matters of degree, ranging from a limitation or restriction upon the rights of entry on one end of a spectrum right through to complete prohibition. The concept contemplated by s 15(1)(f) seems to me to be at the prohibition end of the spectrum, when re-entry is not allowed. As with removal and deportation, it contemplates the situation when you are not allowed in the country. There will be cases where it is obvious a person has been excluded without the need for elaborate analysis, but in other cases the answer will not be so obvious, and a deeper analysis is needed.

[32] In the present case, for example, two material questions arose. First if a person is only prevented from entering a country for a period of time is the person excluded



within the meaning of s 15(1)(f)? Secondly, if the prohibition is not absolute, and entry is permitted in certain circumstances (but is more limited than usual) is the person excluded within the meaning of the section? It seems to me that the answer to those questions will depend on the particular circumstances involved in the restriction arising in the foreign country. In such circumstances it seems to me unavoidable that the analysis will require an understanding of the foreign country's regime, and the restriction that has arisen. Only then can it be determined whether a person had been "excluded" within the meaning of s 15(1)(f). I accept that this potentially involves complexity in the application of that provision in such cases. But that seems to me to be inherent in the requirements of the section.

[33] Mr Fong referred to broader materials, including international materials, indicating that overstaying was a serious transgression with serious consequences. He contended that this provided strong contextual support for the submission that any consequential limitation of re-entry, including partial or incomplete prohibitions, were within what Parliament contemplated by "excluded". But even under New Zealand law overstaying by itself does not result in a person being "excluded" from New Zealand. Only more serious transgressions are set out in ss 15 and 16 leading to those persons being defined as an "excluded person". That is also the situation in Australia. For other countries regimes a case by case assessment will be required to evaluate whether the consequences of a transgression has led to a prohibition on re-entering the country, which is the standard that should be applied.

[34] I do not accept the Chief Executive's related argument that the Tribunal's approach involves the application of foreign law rather than New Zealand law. It is evident that the meaning of s 15(1)(f) is a question of New Zealand law. Whether the measure of a foreign country meets the requirements of the New Zealand law is a question of fact. For that reason I do not accept the Chief Executive's criticism that the approach of the Tribunal is based on what excluded might mean under Australian law, rather than New Zealand law. The inquiry s 15(1)(f) contemplates requires an analysis on the meaning and effect of the laws of the foreign country, and the implications of decisions made under them. Considering those matters is a necessary element of the application of New Zealand law. Analysing what has happened to EM as a matter of fact under Australian law, and discretionary decision-making under that law, was accordingly necessary.

*Conclusion on meaning*

[35] The real issue in this case is not ultimately the correct meaning of being “excluded ... from another country” under s 15(1)(f). It is the difficult application of that meaning in borderline cases where rights of re-entry are restricted, but not eliminated.

[36] I do not accept the Chief Executive’s contention that the Tribunal misinterpreted s 15(1)(f). To be excluded from another country contemplates a prohibition on re-entry into that country. If a person has committed some transgression that adversely affects their rights to re-enter a foreign country but it does not remove those rights, they will not have been excluded. In many cases the position will be clear. But in some it may become necessary to make a detailed assessment on whether the curtailment amounts to exclusion. Whilst that may amount to a difficult and detailed factual assessment in such cases, that seems to me to be unavoidable.

[37] It also needs to be remembered that the relevant immigration transgression in the foreign country will be relevant to the assessment of the individual on the merits under the immigration instructions. It may well be that in such cases that is the more appropriate place for the transgression to be taken into account.

*Application to the present case*

[38] The difference between the obvious case, and the more difficult case, is illustrated by the provisions of the laws of Australia that applied to EM.

[39] Under Australian law there is a clear category of person that is expressly treated as an excluded person under Australian law. Under s 503 of the Migration Act 1958, certain persons are excluded from Australia. They include people who have been deported for having committed criminal offences, or have been refused entry for a failure of the character test provided for by the legislation. This appears to be squarely the type of persons that s 15(1)(f) is contemplating — those who have committed serious transgressions of a kind that would lead to someone being deported, and/or not otherwise allowed to re-enter Australia.

[40] EM was not in that category. He had committed none of the transgressions identified in s 503 that would lead to him being classified as excluded from Australia by that provision. But he nevertheless engaged in a period of overstaying whilst in Australia on a visa, and by doing so he adversely affected his ability to re-enter in the future. But it only adversely affected that ability, rather than eliminating it.

[41] There were two limitations or qualifications attached to the decisions made under Australian law in terms of EM's ability to re-enter Australia under the requirements set out in the schedules to the Migration Regulations 1994. First under PIC 4014 the restriction applied for only a three year period. Secondly that restriction did not prevent EM applying for types of visas not covered by PIC 4014, or obtaining a visa under PIC 4014 if the relevant Minister was satisfied of certain special circumstances. The position was summarised in the following terms in Ms Aldred's submissions as counsel assisting the Court:

17. ... as a matter of fact, the first respondent cannot be held to have been "excluded from" Australia in terms of s 15(1)(f) on its natural meaning. Rather, by virtue of his overstaying, his ability to obtain special categories of visa for Australia was curtailed, meaning that his options for re-entry were, for the subsequent three years, limited to:
  - 17.1 Applying for other kinds of visa (including a residence class visa) that did not require satisfaction of PIC 4014; or
  - 17.2 Establishing the existence of compelling or compassionate circumstances justifying re-entry within the three year period.

[42] In my view, the fact that the restriction was only for a temporary period of time does not, by itself, mean that EM was not excluded. It will be relevant to the overall assessment. But if there was a total prohibition on him re-entering Australia for that period of time, it seems to me that he would have been excluded from Australia.

[43] It also seems to me that if EM had tried, and failed, to obtain re-entry into Australia under the remaining avenues available to him because of the matter that had led to the restriction on his rights of entry, he would also have been excluded in the way contemplated by s 15(1)(f). That is not the case in the circumstances of this case, however.

[44] I also accept that, if the reality was that he would not have been able to obtain re-entry into Australia under the rights of entry avenues remaining available to him,

he would properly have been regarded as an excluded person. Put another way, if the restriction that had been placed on him made it apparent he would not be able to re-enter Australia for three years, then it seems to me that s 15(1)(f) would have applied. But if there remained a real prospect that he could re-enter within the three years notwithstanding the transgression that led to the limitation on his rights, then it seems to me that s 15(1)(f) did not arise. I do not understand the Chief Executive to contend that EM's case was in the category of effective exclusion in this way.

[45] All this means that in the present case the Tribunal correctly interpreted s 15(1)(f), and it reached the correct conclusion on the facts of EM's case. I accordingly dismiss the Chief Executive's challenges on this ground.

#### **Additional jurisdiction issue**

[46] During the course of argument, Mr Fong for the Chief Executive identified a further issue concerning the jurisdiction of the Tribunal. It was not one that had been addressed in the pleadings, or the written submissions of counsel. Given that I did not invite counsel for the first respondent or counsel assisting to address it orally, I do not think it is appropriate for the Court to issue a formal decision on the point given the way it emerged. But it is appropriate to record the submission, to provide some preliminary comment.

[47] Mr Fong pointed out that the Tribunal's jurisdiction under s 187(4) is limited to the application of the residence instructions, or to the existence of special circumstances where an exception to those instructions should be recommended. Mr Fong argued that the question whether someone is excluded from another country under s 15(1)(f) does not involve the interpretation or application of any of the residence instructions themselves. It is a preceding point of interpretation of the Act. He accordingly submitted that the Tribunal had no jurisdiction to address the point. It could only be addressed by the Court on an application for judicial review.

[48] Having considered the terms of the residence instructions that applied during the events of this case, I can see that Mr Fong's point that the correct meaning of s 15(1)(f) is not part of them appears to be correct. There is reference in the introductory paragraphs in the instructions to persons excluded by a foreign country

(RA6), but the instructions say these paragraphs were not part of the instructions themselves (introductory words – RA). Importantly the instructions have since been changed.

[49] But Mr Fong's point only goes so far. The Tribunal does not have a judicial review function. Neither the Tribunal, or the Chief Executive has jurisdiction to conclusively interpret the meaning of the Act. That is the function of the Court. But in exercising the powers given by the Act, it is necessary for both the Chief Executive and the Tribunal to apply the Act as they understand it. The Tribunal has the function of considering an appeal on the basis set out in s 187(4). Whilst that does not include a jurisdiction to correct the Chief Executive's errors of law in the interpretation of the Act, it may nevertheless be necessary for the Tribunal to form its own view of the meaning of the Act in order for it to exercise its appeal jurisdiction. Its view may be different from the view taken by the Chief Executive. For example, in the present case, the Tribunal formed the view that the residence instructions did apply to EM as he was not an excluded person disqualified for consideration. That being its view, the Tribunal could have considered his case under the instructions on the merits. If the Chief Executive wanted to challenge the Tribunal's approach in this respect, it could then do so by way of judicial review (as it has done in the present case).

[50] That does not appear to be what actually occurred in the present case. Rather the Tribunal has reached the conclusion that the Chief Executive has misinterpreted s 15(1)(f) and made orders requiring the Chief Executive to reconsider his decision. The Tribunal may have thought it had little alternative in the absence of any decision by the immigration officers on the merits. But by doing so it appears to have exercised a judicial review function, rather than the appeal jurisdiction under s 187(4), which may not have been technically correct.

[51] These points illustrate the difficulties with these kinds of jurisdiction argument, however, and further illustrate why a formal decision should not to be made on this point. Given it was not squarely raised in the case, I do not make any decision on this basis. The point also does not have much practical significance given the present case has come before the Court by way of judicial review in any event.

## Conclusion

[52] Accordingly, for the reasons identified above I have reached the following conclusions:

- (a) That the Tribunal did have jurisdiction to consider EM's appeal notwithstanding s 187(2)(d)(i) of the Act.
- (b) That the Tribunal correctly interpreted s 15(1)(f) of the Act, and reached the correct conclusion on the application of the provision on the facts of EM's case.

[53] The Chief Executive's appeal, and judicial review challenges are accordingly dismissed.

[54] The Chief Executive did not seek costs if it were successful. EM sought costs if successful. EM participated in the case notwithstanding having obtained residence on other grounds because of his counsel's knowledge of the case and so that they could provide assistance. In the circumstances it seems to me to be appropriate to award EM costs on a 2B basis, but with an allowance for only one counsel.

**Cooke J**

Solicitors:  
Crown Law, Wellington for Appellant and Second Respondent  
Cotterell Law, Wellington for First Respondent



Hon Chris Penk  
Associate Minister of Immigration  
[Chris.Penk@parliament.govt.nz](mailto:Chris.Penk@parliament.govt.nz)

## CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION

1. We act for Candace Owens Farmer and refer to the decision of Immigration New Zealand's ("INZ") Chief Operating Officer, Jock Gilray, to deny her an Entertainers Work Visa pursuant to section 15(1)(f) of the Immigration Act 2009 ("the Decision").
2. This letter constitutes a request for a special direction under section 378 of the Immigration Act 2009 that Ms Farmer's application for an Entertainers Work Visa be granted. This request is made on the grounds that INZ has incorrectly interpreted section 15(1)(f) of the Immigration Act and reached the incorrect conclusion on the application of this provision on the facts of Ms Farmer's case.

*Section 15(1)(f) - removed, excluded, or deported from another country*

3. The Decision is inconsistent with the leading authority, the High Court's decision in *Ministry of Business, Innovation and Employment v EM* [2019] NZHC 1966 (**attached**) where the Court analysed the application of this provision and concluded:
  - a. Identifying the nature of exclusion from New Zealand will inform what is meant by being excluded from another country.<sup>1</sup> To be excluded from a country means being banned from re-entering. If a person commits an offense that affects their ability to return, but doesn't completely remove that right, they have not been excluded.<sup>2</sup>
  - b. Under Australian law, there is a category of person expressly treated as an excluded person. Under section 503 of the Migration Act 1958, certain persons are excluded from Australia: people deported for committing criminal offences or people who have been refused entry for a failure of the character test provided for by the legislation. This is the type of persons that section 15(1)(f) is contemplating — those who have committed serious transgressions of a kind that would lead to someone being deported, and/or not otherwise allowed to re-enter Australia.<sup>3</sup>

<sup>1</sup> *Ministry of Business, Innovation and Employment v EM* [2019] NZHC 1966 at [27](a).

<sup>2</sup> At [36]

<sup>3</sup> At [39]



*Application to Ms Farmer's case*

4. Ms Farmer applied for a Temporary Activity (Class GG) visa to enter Australia to carry out work on a short-term, temporary basis. Her application was refused pursuant to section 501(3)(a) of the Migration Act 1958. However, as the above authority states, to rely on section 15(1)(f) in refusing to grant Ms Farmer her Entertainers Work Visa, Immigration New Zealand must carefully assess whether Australia's refusal to grant the Class GG visa is considered exclusion. There is no evidence to suggest Ms Farmer would not be allowed entry into Australia under other non-work visas for example, if the purpose of her visit changed to a holiday.
5. Ms Farmer appealed to Australia's Department of Home Affairs to revoke its decision (a copy of the letter dated 1 November 2024 **attached**). As you will see, Ms Farmer asserts the decision maker had actual and apprehended bias and the visa should be granted because she passes the character test, and the discretionary factors favour the granting of the visa. Ms Farmer is still awaiting the outcome of this appeal.

*Conclusion*

6. INZ has relied on section 15(1)(f) to justify its decision to deny Ms Farmer an Entertainers Work Visa without correctly interpreting this provision, specifically, what constitutes exclusion in New Zealand. The facts do not support the assertion Ms Farmer has been excluded from Australia. Further, the decision in Australia is currently under review.
7. We ask the Minister direct that Ms Farmer's Entertainers Work Visa be granted.
8. We look forward to hearing from you.

Yours faithfully,  
**Free Speech Union (New Zealand) Inc.**

**Jonathan Ayling**  
Chief Executive  
[jonathan@fsu.nz](mailto:jonathan@fsu.nz)  
s9(2)(a)

**Hannah Clow**  
Senior In-house Counsel  
[hannah@fsu.nz](mailto:hannah@fsu.nz)  
s9(2)(a)



Our Ref: 9(2)(a)  
Your Ref: 9(2)(a)

Level 10  
179 Elizabeth Street  
SYDNEY NSW 2000  
AUSTRALIA

1 November 2024

Telephone: (02) 9394 1144  
Facsimile: (02) 9394 1100  
www.gdlaw.com.au

National Character Consideration Centre  
Department of Home Affairs  
PO Box 241  
Melbourne VIC 3001

By Email: vaccu@homeaffairs.gov.au

Attention: 9(2)(g)(ii) (Position number 9(2)(g)(ii))

Dear Sir

**Candace Owens FARMER (DOB 29 April 1989)**

1. We act for Candace Owens Farmer (DOB: 29 April 1989, Client ID: 9(2)(a) and File Reference: 9(2)(a)).
2. We refer to the letter dated 25 October 2024 informing our client that the Minister for Home Affairs and Minister for Immigration, the Hon Tony Burke MP (**Mr Burke**), had decided to refuse to grant Ms Farmer a Temporary Activity (Class GG) visa (**the visa**) pursuant to s 501(3)(a) of the *Migration Act 1958* (**the decision**).
3. This letter constitutes Ms Farmer's representations pursuant to s 501C(3) and/or (4) of the *Migration Act 1958* (**the Act**). In outline, Ms Farmer's position is as follows:
  - a. Mr Burke's actual and apprehended bias against Ms Farmer means he should recuse himself from any further involvement with Ms Farmer's attempt to obtain a visa to visit Australia. Mr Burke's continuing involvement in this process has a tendency to bring Australia's migration system into disrepute. In Mr Burke's place, a minister authorised to revoke the decision under s 501C(4) of the Act should consider these representations. If no other minister except Mr Burke is so authorised, arrangements should be made with the Governor-General to remedy that situation.
  - b. The minister considering this application – preferably not Mr Burke, but Mr Burke if he declines to recuse himself – should revoke the decision under s 501C(4) of the Act and in its place, decide to grant the visa to Ms Farmer.
  - c. The decision should be revoked because it was made by a person who was actually and apparently biased against Ms Farmer and who made the decision with the improper purpose of ingratiating himself to the public. The decision

should also be revoked because it is replete with irrational fact-finding, legally unreasonable conclusions and errors of law.

- d. Ms Farmer's visa should be granted because she passes the character test and because in any event the discretionary factors favour the granting of the visa.

#### **Minister Burke's bias and improper purpose**

4. The starting point of these representations is that to date (i) Mr Burke has been actually and apparently biased against Ms Farmer; and (ii) made the decision with the improper purpose of ingratiating himself to the public. From before Ms Farmer applied for the visa, Mr Burke has engaged in a campaign of denigration against Ms Farmer and her attempt to obtain the visa in order to enter Australia.
5. The relevant facts are as follows:
  - a. On or around 23 August 2024, in response to advertising for Ms Farmer's event, Mr Burke told media outlets that he hoped Ms Farmer "*had a good refunds policy*". Although the application process for a Temporary Activity (Class GG) visa is private unless the visa applicant wishes to speak about it publicly, Mr Burke revealed to the media that it had appeared Ms Farmer had yet to make an application for a visa. Mr Burke also told the media that he had committed to personally reviewing Ms Farmer's application. Finally, Mr Burke told the media the following: "*My opposition to anti-Semitism and Islamophobia has always been on the record. I have clear legal powers to knock back a visa to anyone who would incite discord*".
  - b. On 12 September 2024, Ms Farmer applied for the visa.
  - c. On 25 October 2024, Mr Burke made the decision. It is apparent that the decision is the product of substantial efforts to comb historical media reporting of Ms Farmer with the goal of maligning her with grave allegations. Many of those allegations were made without a proper basis. Some reached the level of being scandalous, including that Ms Farmer caused the Christchurch massacre. The quality of the fact-finding is so poor that it is inconsistent with an obligation to consider the application in an open-minded and impartial way. The content of the reasons for the decision is the subject of more detailed analysis below.
  - d. Later on 25 October 2024, Mr Burke or his office announced the outcome of the decision to the press, again noting that the application process is private unless the visa applicant wishes to speak about it publicly.
  - e. On 27 October 2024, Mr Burke again made comments about Ms Farmer's visa application to the media. Mr Burke told the media "*[f]rom downplaying the impact of The Holocaust with comments about Mengele through to claims that Muslims started slavery, Candace Owens has the capacity to incite discord in almost every direction*". Mr Burke added: "*Australia's national interest is better served when Candace Owens is somewhere else*".
6. The preceding facts show the following:

- a. Mr Burke had formed the concluded view that Ms Farmer's visa application was to be refused before she had applied. That is the only way to understand his comment to the media that he hoped Ms Farmer had a "*good refunds policy*". Further, despite an application for a Temporary Activity (Class GG) visa being a matter routinely handled by junior public servants, Mr Burke – a Minister of the Crown – arranged for himself to make the decision. He then told journalists that he was doing so. Taking these facts together, it is clear that Mr Burke was determined to refuse Ms Farmer's application from the outset.
  - b. At all relevant times, Mr Burke acted with the improper purpose of making a decision that he thought would ingratiate himself to the public. Again, that is the only way to understand his statement about certain of his views being "*on the record*". Mr Burke's record is wholly irrelevant to the assessment of Ms Farmer's application. It was only said because Mr Burke had an intention ulterior to the rational assessment of Ms Farmer's application, being the ingratiation of himself to the public. That is also consistent with Mr Burke arranging for himself to make the decision, his numerous public statements to the media, and his revealing of Ms Farmer's personal information to the media on at least one occasion (namely, the fact that she had not at a certain point made an application for a visa).
7. As the above demonstrates, Mr Burke is irreparably biased against Ms Farmer and her attempt to obtain a visa. It is clear that if he were to consider these representations, he would continue to act with the improper purpose of seeking to ingratiate himself to the public.
  8. Mr Burke's continuing involvement in Ms Farmer's attempt to obtain a visa has a tendency to bring Australia's migration system into disrepute. His conduct throughout the application process has been immature, self-serving and disrespectful. Australians are entitled to expect that their ministers will soberly assess applications for visas in a calm and considered way - not engage in orchestrated displays to the media in a misguided bid for public approval.
  9. There are two consequences of the above:
    - a. Mr Burke should recuse himself. In his place, a minister authorised to revoke the decision under s 501C(4) of the Act should consider these representations. If no other minister except Mr Burke is so authorised, arrangements should be made with the Governor-General to remedy that situation.
    - b. The decision cannot stand. Ms Farmer passes the character test, would in any event have the discretion exercised in her favour and should be granted the visa.

#### **The decision**

10. Ms Farmer is an internationally recognised commentator and speaker of outstanding character. She poses no threat to Australians whatsoever. It is good for Australia that speakers of Ms Farmer's calibre come to this country and share their ideas. Ms Farmer has been in the public sphere for nearly a decade and has spoken and travelled all across the world. Within the last 6 years, she has visited and spoken in the United Kingdom, Hungary, France, Israel, South Africa, the Netherlands, and Romania. It is of note that none of these countries has ever reported any public discord on account of her multiple visits. Similarly, despite speaking at over 100 university campuses in the United States, Ms. Farmer has not

been accused by those campuses of having created any obstacles for the various administrations or student bodies, despite ample political disagreements.

11. Mr Burke's alleged suspicion that Ms Farmer's presence in Australia would incite discord was drawn on an infirm basis, involving bias, irrational fact-finding and errors of law. This suspicion is legally unreasonable; Ms Farmer passes the character test. If she does not, then the discretionary factors favour the granting of the visa. Any conclusion to the contrary is legally unreasonable.

12. We turn then to the reasoning of the decision.

**"Holocaust denial" ([9] to [12])**

13. There are two core problems with the reasoning.

14. *First*, despite the heading "*Holocaust denial*", not a single one of the examples of Ms Farmer's alleged statements amount to Holocaust denial. Holocaust denial is a belief that the Nazis' genocide of Jewish people and other minorities did not occur. None of the statements cited in this section of the decision have that character:

a. The statements in [9] are arguments that there are other historical atrocities or dictators that were more evil or killed more people. That is a matter of debate. Furthermore, the reasoning fails to mention key facts, including that the episode "*Literally Hitler. Why can't we talk about him*" is still freely available on YouTube for all age groups to watch, in circumstances where YouTube has strict Holocaust denial policies. The quoted statements are not capable of amounting to denial of the Holocaust.

b. The analysis of Ms Farmer's statements in [10] uses the word "*reportedly*", which evidences that Mr Burke failed to perform the required step of seeing for himself what Ms Farmer actually said. We are instructed that the truth is the opposite of what Mr Burke contends. Ms. Farmer never mentioned Josef Mengele, anywhere at all in the episode. Rather, she mocked Nazis for engaging in nonsensical types of evils and then, most crucially, launched into a defence of American Jews by asking why these sinister doctors were then rescued and transported to America via a covert CIA operation known as "*Operation Paperclip*". We are instructed that Ms Farmer actually said:

*Why did we bring [those scientists] here thereafter? What was 'operation paperclip'? We took all of those top nazi scientists and brought them here to America. I wonder why we did that. Maybe for MORE experimentation...*

c. The statements in [11] amount to an accusation that the Allies ethnically cleansed millions of Germans during and after World War II. Assertion of that event has nothing to do with denial of a completely separate event, being the Holocaust.

15. *Secondly*, the complaint at [12] that "*according to media reporting*", Ms Farmer's remarks appeared to reduce the Holocaust and the extermination of six million Jews and million other human beings to "*ethnic cleansing*" is troubling at a number of levels:

- a. A minister of the Crown should not be relying on “*media reporting*” to interpret a visa applicant’s past statements.
  - b. “*The media reporting*” relied on is one article.
  - c. Characterising the Holocaust as “*ethnic cleansing*” is not “*reducing*” it; ethnic cleansing is the genocidal destruction of an ethnicity. Only a biased decisionmaker could think that describing the Holocaust with a term that accurately captures the horror of it is “*reducing*” it.
16. Based on the above, none of the reasoning in [9] to [12] provides a basis for refusing Ms Farmer’s visa.

**“Islamaphobia” ([13] to [22])**

17. There are two core problems with the reasoning.
18. *First*, on the material referred to in the decision, the assertion that Ms Farmer caused the Christchurch Massacre because her views were mentioned in an alleged manifesto by the perpetrator (an allegation repeated at [55]) is scandalous:
- a. The source for the “factual” material underpinning the claim are two media articles on the alleged manifesto, none of which purport to have any direct knowledge of it. The alleged manifesto’s reference to Ms Farmer remains unauthenticated. Similarly, the alleged manifesto reference to the deceased Nelson Mandela, Donald Trump and the children’s cartoon character “*Spiro the Dragon*” – all who have been reported to be in the manifesto – remains unauthenticated.
  - b. Rather than relying on two media articles, Mr Burke ought to have relied on the official report of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019. That report makes no reference to Ms Farmer, let alone a link between Ms Farmer’s public statements and the attack. Similarly, the report does not attribute the crime to Nelson Mandela, Donald Trump or Spiro the Dragon. The report does, however, postulate a number of other causes of the perpetrator’s behaviour.
  - c. Even if Ms Farmer was mentioned in the manifesto – and that is a seriously generous assumption given the current state of evidence to support it – it is wholly unclear how a decisionmaker could rationally accept, without any corroboration whatsoever, the assertion of a severely deranged individual who murdered dozens of people as to what caused his behaviour. That is especially the case when there are clear indications that such an assertion is self-evidently false, including that it makes no sense that a white supremacist would be influenced by the views of a black commentator.
  - d. The above makes clear that this allegation should never have been made on the infirm material annexed to the decision. It is scandalous and ought to be withdrawn.

19. *Secondly*, the other alleged statements made by Ms Farmer about Muslims are criticisms of various cultural aspects of Islam. Such criticisms, rightly or wrongly, are commonly made by many members of the community. While many members of the community would also not share these views, mere disagreement is not a ground for refusing a visa.
20. Based on the above, none of the reasoning in [13] to [22] provides a basis for refusing Ms Farmer's visa.

***Anti-racism, Black Lives Matter and anti-Semitism ([23] to [32])***

21. Not a single one of the alleged examples of Ms Farmer's alleged statements amounts to a racist or extremist view:
  - a. At [23], the statement that George Floyd "*was not an amazing person*" and that he was high at the time of his death have nothing to do with his race. The statement that he "*was not an amazing person*" is not an extremist view, given his convictions for at least nine crimes, including aggravated robbery involving a home invasion, pistol-whipping a woman and then placing the barrel of the gun to her abdomen while her toddler watched. The statement that Mr Floyd was high at the time of his death is not an extremist view, given the official autopsy report found that Mr Floyd's blood was positive for fentanyl and methamphetamine at the time of his death, and the evidence of the Hennepin County Chief Medical Examiner at the homicide trial that the drugs in Mr Floyd's system played a role in his death.
  - b. At [24], the media reporting that "*The Daily Wire*" separated ties with Ms Farmer due to her anti-Semitic comments is false. Further, Ms Farmer's statement that the Jewish government (meaning, the Israeli government) is committing "*genocide*" in Gaza is not racist or extremist. In fact, it is consistent with a decision of the International Court of Justice, which has found plausible grounds for that assertion. The allegation that Ms Farmer said there is a "*small ring*" of Jewish people in Hollywood and Washington DC involved in something "*quite sinister*" is false. Mr Burke wholly relies on an article from CNN for that assertion. In that article, CNN only attributes the words "*small ring*" and "*quite sinister*" to Ms Farmer. Every other word is written by the journalist, who does not provide any source for his embellishment. Needless to say, Ms Farmer never said there was a ring of Jewish people in Hollywood and DC that are involved in something sinister.
  - c. The assertion at [25] is false. Ms Farmer was never slated to speak at Donald Trump's presidential rally and has never been uninvited to speak at one of these rallies. This is nothing more than a rumour that began on Twitter and has no basis in reality.
  - d. In relation to the allegations [26], [27] and [28], Ms Farmer's views are not the same as her guests. Nor is it logical for Mr Burke to substitute the views of others about Ms Farmer's conduct with his own. More specifically:

- i. [26] – Ms Farmer’s interview of Mr West remains posted to Apple and Spotify. Ms Farmer has appealed YouTube’s determination and is due to receive the determination next week. Further, Ms Farmer has never hosted Rabbi Shmuley on her podcast show. It is therefore impossible that YouTube demonetised her video involving him and determined that it violated its hate speech policies is false.
    - ii. [27] – The allegation that Kanye West claimed in the video that “*Jewish people control the media*” is false.
  - e. At [29] and [30], the fact that a small number of people that Mr Burke has called “*Jewish leaders*” oppose Ms Farmer’s entry into Australia does not mean that Ms Farmer is antisemitic or racist. It is not logical to decide Ms Farmer’s character by reference to an informal poll of a small number of people, instead of the actual facts.
22. Based on the above, none of the reasoning in [23] to [32] provides a basis for refusing Ms Farmer’s visa.

**Women’s and LGBTQIA+ rights ([33] to [38])**

23. All of the statements referred to in this section are views that many members of the community hold. While Mr Burke might not share these views, they are not grounds for refusing a visa. Specifically:
- a. At [33], the statement that the #MeToo movement was premised on the idea that “*women are stupid, weak and inconsequential*” is consistent with widely held concerns about the effect of the movement on the advancement of women. Further, Ms Farmer believes in due process, because she thinks that neither men nor women should be made to suffer immediate consequences when an allegation is made. This view is not extremist.
  - b. At [34], the statement is consistent with widely held concerns about the effect of abortion on Black people. Ms Farmer is a devout Catholic. She does not support abortion because one of its progenitors – Margaret Sanger – was an avowed eugenicist. These concerns are a matter of legitimate debate.
  - c. At [35]-[37], Ms Farmer’s concerns are shared by many members of the community. Her concern with the “*mass drugging*” of children is now the subject of mainstream medical opinion in the United Kingdom, which has moved to ban puberty blockers. While Mr Burke may disagree with Ms Farmer’s views, they are a matter of legitimate debate.

**COVID-19 and anti-vaccination ([39] to [40])**

24. The first alleged statement of Ms Farmer is consistent with a widely reported view, which emerges plainly from the article relied on. Again, many would disagree with it, but it is not grounds for refusing someone a visa.
25. The second alleged statement of Ms Farmer is plainly a tongue-in-cheek joke. It is not grounds for refusing someone a visa.

***Inciting discord ([41] to [59])***

26. There are a number of problems with this reasoning.
27. *First*, due to Ms Farmer's enormous online presence, Ms Farmer's views are already the subject of mass dissemination in Australia on a minute-by-minute basis. Despite that, there is no evidence whatsoever that her views have led to any "*discord*" in Australia.
28. *Secondly*, Ms Farmer's physical presence in Australia has no capacity to increase the amount of "*discord*" from the amount of zero. It is wholly unexplained in the decision how "*community tensions*" would be "*galvanised*" by Ms Farmer's attendance. Instead, the decision relies on a number of large unproven logical leaps between various community tensions, Ms Farmer's attendance and discord. The fact is that Australians are well-used to listening to and assessing the views of many public figures without "*discord*". The position is no different in relation to Ms Farmer.
29. *Thirdly*, Mr Burke alleges that Ms Farmer's presence "*would attract onshore media attention, including mainstream media and her shows would garner interest*". However, the person who has ensured that eventuality to come true is Mr Burke. Mr Burke has turned a routine matter of a visa application into a matter of significant publicity. No allowance is made in the reasoning for the effect of Mr Burke's own conduct.
30. *Fourthly*, and most fundamentally, in this section and generally, Mr Burke repeatedly conflates disagreement or controversy on the one hand with discord within the meaning of s 501C(6)(d)(iv) on the other. Assuming the provision is constitutionally valid at all (a matter in relation to which Ms Farmer reserves her rights), "*discord*" must be read as consistently with the implied freedom of political communication as is possible. It must also be read as consistently as possible with common law rights (including freedom of expression). That being so, "*discord*" in this context must mean something much more than disagreement or controversy. However, the highest the material relied on by Mr Burke goes is that Ms Farmer's views might risk disagreement or controversy. That is not a matter with which the provision is concerned. It certainly does not provide a ground for refusing a visa.

***National interest ([60] to [104])***

31. There are a number of problems with this reasoning:
- a. Protection of the community ([64] to [68]): The decision fails to articulate in a logical way what it is that refusing Ms Farmer's visa protects the community from. The candidates from [64] to [68] include vilification, strong expressions of disagreement and condemnation, discord or unrest. However, there is no allegation in the decision that Ms Farmer's conduct has a risk of vilification (and no proof of it), there is no harm in strong expressions of disagreement and condemnation, and the evidence does not support a conclusion that Ms Farmer's conduct will cause "*discord*" or "*unrest*" in the requisite sense.
  - b. Nature and seriousness of Ms Farmer's conduct ([69] to [76]): The high point of this reasoning is that Ms Farmer's comments are "*controversial*". Neither that conclusion, nor anything else in the decision, justifies the further conclusion Ms Farmer's presence in Australia has the potential to incite "*discord*", much less



*“cause physical and/or psychological harm to segments of the Australian community, or our society in general”*. It must be accepted that Ms Farmer’s conduct is not of a serious nature.

- c. Risk to the Australian community: This section of the reasoning is strewn with error:
- i. [78] – this reasoning is erroneously focused on the effect of the proliferation of Ms Farmer’s views on social media, instead of the effect of Ms Farmer’s presence in Australia.
  - ii. [79] – Ms Farmer’s *“prolific use of social media and tendency to criticise powerful and well-organised groups”* has nothing to do with causing a risk to the Australian community. To the contrary, it is plainly a factor that militates in favour of Ms Farmer’s application. On any view, it is good for the Australian community that all powerful and well-organised groups are held to account. Other allegations made in this paragraph – including that Ms Farmer’s views *“have the capacity to unpick Australia’s tolerant fabric and values”* – are hyperbolic assertions without foundation.
  - iii. [80] – the allegation that Ms Farmer caused the Christchurch Massacre is scandalous on the material referred to in the decision.
  - iv. [89]-[91] – the evidence only establishes that some of Ms Farmer’s views have been the subject of disagreement, debate and controversy. They are not grounds for refusing the visa.
  - v. [92] – the proposition that *“granting a visa to a person who promotes social discord and downplays important social issues and/or historical events, risks sending the wrong message about Australia as a free nation”* only needs to be stated to be rejected. To the contrary, it is the notion that a leading free nation would refuse a visa to an internationally renowned speaker and commentator because some of her views are controversial that sends the wrong message.
  - vi. [95]-[97] – the evidence only establishes that some of Ms Farmer’s views have been the subject of disagreement, debate and controversy. They are not grounds for refusing the visa.
32. Expectations of the Australian community: The Australian community expects that a person will not be refused entry into Australia because of having controversial views.
33. Conclusion on national interest: The conclusion that it is in the national interest to refuse to grant Ms Farmer the visa is legally unreasonable.

#### **Discretion**

34. Even if it were true that Ms Farmer’s presence in Australia created a risk of inciting discord, such discord does not overwhelm the many discretionary features pointing in favour of Ms Farmer being granted a visa. These discretionary features emerge from this submission and Ms Farmer’s original application material.

**Conclusion**

35. Ultimately, it is clear from the decision that Ms Farmer was refused a visa on nothing more than the ground that some of her views are controversial. That is a scant basis for refusing Ms Farmer, an eminently qualified speaker of outstanding character, a visa to visit Australia.
36. Ms Farmer should be granted the visa forthwith.
37. Please direct all future correspondence to the writer.

Yours faithfully

**GILLIS DELANEY LAWYERS**

9(2)(a)



**Anthony Jefferies**

Partner

Email: [ajj@gdlaw.com.au](mailto:ajj@gdlaw.com.au)

Direct Line: 9(2)(a)

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**From:** [Jonathan Ayling](#)  
**To:** [Nicole Campbell \(Parliament\)](#); [Chris Penk \(MIN\)](#); [Hannah Clow](#)  
**Subject:** FW: Candace Owens: Appeal letter to Australian Immigration Minister  
**Date:** Thursday, 5 December 2024 2:31:08 pm  
**Attachments:** [241202\\_CANDACE\\_OWENS\\_FARMER\\_AUTHORITY\\_TO\\_ACTI581.pdf](#)

---

Hi Nicole,

As requested, please see attached an authority to act form signed by Ms. Farmer.

Would you please provide an indication as to when we should expect a decision from the Minister?

Regards,

**Jonathan Ayling**

Chief Executive | Free Speech Union

Mob [s9\(2\)\(a\)](#) | Email [xxxxxxx@xxx.xx](#)

**Free Speech Union (New Zealand) Incorporated** | PO Box 10423, The Terrace, Wellington 6143 | [www.fsu.nz](http://www.fsu.nz)

**The Free Speech Union is a registered trade union under the Employment Relations Act 2000. If you would like to stand with us to protect and promote free speech [click here to receive our updates](#).**

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## AUTHORITY TO ACT

To: Hon Chris Penk  
Associate Minister of Immigration  
[C.Penk@ministers.govt.nz](mailto:C.Penk@ministers.govt.nz)

I, **CANDACE OWENS FARMER**, give authority to the Free Speech Union (New Zealand) Incorporated to act on my behalf as required in relation to appealing the decision of Immigration New Zealand to decline my application for an Entertainers Work Visa based on section 15(1)(f) of the Immigration Act 2009.

A handwritten signature in cursive script, appearing to read "Candace Owens Farmer".

**CANDACE OWENS FARMER**

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Duplicate of page 48

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**Application number:** 9(2)(a)

**Client number:** 9(2)(a)

1 November 2024

Nicola Tiffen  
Duncan Cotterill  
Duncan Cotterill Plaza ,148 Victoria Street  
Christchurch Central  
Christchurch 8013  
New Zealand  
NZBN: 9429033144375

Kia ora Candace Farmer

**Application for a work visa for:**

**Applicant:**

Candace Farmer

**Date of birth:**

29 April 1989

Thank you for your application for a work visa - Entertainers and Associated Workers. We received your application on 09 September 2024.

**Our assessment of your application**

We have completed an assessment of your application and have identified issues which may negatively impact the outcome of your application:

- You did not inform Immigration New Zealand of significant changes in circumstances after you made your application.
- Persons who at any time have been removed, excluded or deported from a country are not eligible for a visa or entry permission

**Significant changes in circumstances**

In accordance with section 58(3) of the Immigration Act 2009, all applicants for visas have a responsibility to inform “an immigration officer of any relevant fact, including any material change in circumstances that occurs after the application is made, if that fact or change in circumstances may affect the decision on the application”.

It has come to our attention through recent media reporting,<sup>1</sup> that your Australian visa application for your planned speaking tour has been declined as you have the “capacity to incite discord”.

Having a visa application declined by another country is considered to be a relevant fact which is material to your application for a visa. We also understand that you intend to appeal this decision.

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<sup>1</sup> See, for example: [Australia rejects visa application by rightwing US pundit Candace Owens | US news | The Guardian](#); accessed 31 October 2024.



### Not eligible for a temporary entry class visa unless granted a special direction

Under section 15(1)(f) of the Immigration Act 2009, a person “who has, at any time, been removed, excluded, or deported from another country” is ineligible for a visa or entry permission. Based on media reporting, it appears that your application for an Australian visa was refused in accordance with section 501(6)(d)(iv) of the Australian Migration Act 1958.

#### MIGRATION ACT 1958 - SECT 501

(3) The Minister may:

- (a) refuse to grant a visa to a person; or
- (b) cancel a visa that has been granted to a person;

if:

- (c) the Minister reasonably suspects that the person does not pass the character test; and
- (d) the Minister is satisfied that the refusal or cancellation is in the national interest.

(6) For the purposes of this section, a person does not pass the *character test* if:

(d) in the event the person were allowed to enter or to remain in Australia, there is a risk that the person would:

(iv) **incite discord in the Australian community** or in a segment of that community; or

[MIGRATION ACT 1958 - SECT 501 Refusal or cancellation of visa on character grounds](#)

If so, section 503 of the Migration Act 1958 applies:

#### MIGRATION ACT 1958 - SECT 503

##### Exclusion of certain persons from Australia

(1) A person in relation to whom a decision has been made:

(b) under section [501](#), [501A](#), [501B](#) or [501BA](#); or

is not entitled to enter Australia or to be in Australia at any time during the period determined under the regulations.

(2) The period referred to in [subsection](#) (1) commences, in the case of a person who has been deported or removed from Australia, when the person is so deported or removed.

(3) Different periods may be [prescribed](#) under [subsection](#) (1) in relation to different situations.

[MIGRATION ACT 1958 - SECT 503 Exclusion of certain persons from Australia](#)

From the Home Affairs website:

<https://immi.homeaffairs.gov.au/entering-and-leaving-australia/entering-australia/can-i-go-to->

On this basis it appears you are not entitled to enter or be in Australia for a period of three years.

It therefore appears that you have been excluded from Australia, and may be, in accordance with section 15(1)(f) an excluded person under New Zealand's Immigration Act. In order to make a determination on this matter, we request any documentation that you may have about your application for an Australian visa. We would also appreciate any updated information you may have about any appeal that you have made against this decision. We also welcome any further comment you wish to make on this matter.

### **We have not made a final decision**

We are bringing these issues to your attention as they may affect the outcome of your application. You have the opportunity to make any comments and submit any additional evidence or information in relation to these issues. Note that we have not yet made a decision on your application.

### **You may provide further information by 11:59pm Tuesday 5 November 2024 NZT**

Any comments or further information must be provided by the above date.

Your response should be uploaded to your online application. To upload documents:

1. Log into your account through [www.immigration.govt.nz](http://www.immigration.govt.nz).
2. Click on 'Submitted' and select your submitted application.
3. Click 'Upload additional document' and select [document type] from the list of document types.
4. Click on 'Browse' to select the document for upload and 'Submit'.

All supporting documents must be original or certified copies of originals. Any documents not in English must be translated into English by a recognised and independent translation service.

### **Providing English translations of supporting documents**

<https://www.immigration.govt.nz/new-zealand-visas/preparing-a-visa-application/english-language/translating-supporting-documents-into-english>

### **If you do not send any comments or additional information**

If you do not send any comments or information by the date requested, we will make a decision on your application based on the information we have. On the basis of this information, we are unlikely to approve your application.

### **What happens if your circumstances change?**

You must tell us about any changes to your circumstances that may affect your application for a visa, including but not limited to changes to the following:

- the personal or family circumstances of any person included in the application
- your address or contact details (including postal address, email address, and telephone number)
- your business or employment
- your course of study if you are applying for a student visa.

If you do not tell us about changes to your circumstances, we may decline to grant you a visa or you may become liable for deportation. You must make sure you hold a valid visa at all times while you are in New Zealand.

**Contact us**

If you have any questions, you can:

- email me at 9(2)(g)(ii)
- call our Immigration Contact Centre on 0508 55 88 55 or 09 914 4100, or for those outside of New Zealand +64 9 914 4100, or
- visit our website [www.immigration.govt.nz](http://www.immigration.govt.nz)

You will need to tell us your application and client numbers (see the top of this letter). Please be ready to quote them when you phone.

Ngā mihi,

9(2)(g)(ii)

Immigration New Zealand

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**DECISION BY A MINISTER UNDER SECTION 501(3) OF THE MIGRATION ACT 1958**

The following is my decision under s501(3) of the *Migration Act 1958* (the Act) in relation to Ms Candace Owens FARMER's Temporary Activity (Class GG) visa, having read and considered all of the material.

(Please indicate the option you select)

***Non-refuse to grant outcomes***

(a) I do not reasonably suspect that Ms FARMER does not pass the character test. Visa refusal under s501(3) of the Act is not available.

OR

(b) I reasonably suspect that Ms FARMER does not pass the character test. However, I am not satisfied that it is in the national interest to refuse to grant Ms FARMER a Temporary Activity (Class GG) visa, with the result that the power under s501(3) of the Act is not available to me in this case.

OR

(c) I reasonably suspect that Ms FARMER does not pass the character test and I am satisfied that it is in the national interest to refuse to grant Ms FARMER a Temporary Activity (Class GG) visa. However, I have decided not to exercise my discretion under s501(3) of the Act to refuse to grant Ms FARMER's Temporary Activity (Class GG) visa application. She is to be warned about her future conduct in relation to s501 of the Act.

OR

***Refuse to grant outcome***

(d) I reasonably suspect that Ms FARMER does not pass the character test and I am satisfied that it is in the national interest to refuse to grant Ms FARMER a Temporary Activity (Class GG) visa. I have decided to exercise my discretion under s501(3) of the Act to refuse to grant Ms FARMER's visa application. I hereby refuse to grant Ms FARMER a Temporary Activity (Class GG) visa. My reasons for this decision are set out in the attached Statement of Reasons.

THE HON TONY BURKE MP

Minister for Home Affairs, Minister for Immigration and Multicultural Affairs

9(2)(a)

Date 25/10/2024

Time: 4:38am

Place: CPD Sydney

Total time taken in considering submission and attachments: 2 hours 25 minutes

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**INDEX OF RELEVANT MATERIAL FOR MS FARMER**

<b>Attachment</b>	<b>Description of Attachment</b>
Attachment A	Article from the 'New York Post' – Candace Owens blames 'Zionists' after she's suspended from YouTube over Kanye West interview dated 10 September 2024
Attachment B	Article from 'The Australian' – Jewish leaders call for ban on US provocateur Candace Owens from entering the country dated 22 August 2024
Attachment C	Article from the 'JewishInsider' – Candace Owens no longer attending Trump event following backlash dated 23 July 2024
Attachment D	Article from the '7 Israel National News' – Candace Owens claims Hitler wasn't just the most evil, Mengele experiments 'bizarre propaganda' dated 11 July 2024
Attachment D1	Article from the Jewish Chronical – 'Pro-Trump commentator Candace Owen accused of going 'full-blown neo-Nazi' over Hitler rant
Attachment E	Article from 'uinterview' – Conservative Pundit Candace Owens blasted for minimizing The Holocaust dated 11 July 2024
Attachment F	Article from 'Free Black Thought' - Candace Owens and the problem of Antisemitism dated 3 June 2024
Attachment G	Article from 'CNN Business' – Ben Shapiro's The Daily Wire severs ties with Candace Owens after her embrace of anti-Semitic rhetoric dated 22 March 2024
Attachment H	Article from 'The Advocate' – After Iowa shooting, Candace Owens says LGBTQ+ community is 'sexual plague on our society' dated 6 January 2024
Attachment I	Article from 'PinkNews' – Candace Owens suspended from YouTube for 'violating hate speech policy' with anti-LGBTQ+ content dated 18 September 2023
Attachment I1	Article from the 'Independent' –Candace Owens absurdly says parents who are cool with drag queens are 'underqualified to have children'
Attachment J	Article from the 'Guardian Australia' – Rightwing US pundit Candace Owens compares Australian government to the Taliban, calling it a 'tyrannical police state' dated 22 October 2021

Attachment K	Article from 'The Conversation' – To shut down far-right extremism in Australia, we must confront the ecosystem of hate dated 8 February 2021
Attachment L	Article from 'BuzzFeed.news' – Bill Gates Conspiracy Theories have circulated for years. It took the Coronavirus Pandemic to turn him into a fake villain dated 26 June 2020
Attachment M	Article from 'Newsweek' – Everything Candace Owens has said about George Floyd so far dated 8 June 2020
Attachment N	Article from the 'Punditfact' – Candace Owens' false statement that the Southern strategy is a myth dated 10 April 2019
Attachment O	Article from the 'Daily Mail Australia' – Right-wing commentator Candace Owens is eviscerated for putting a LAUGHING emoji on a post about the New Zealand mosque massacre after being named as killer's 'biggest influence' in his manifesto dated 17 March 2019
Attachment P	Article from the 'Business Insider' – Candace Owens rejects any connection to 'radical Islamophobic white supremacy terror overseas' after being mentioned in New Zealand terrorist manifesto dated 16 March 2019
Attachment Q	Article from 'SFGATE' – Mosque shooter reportedly 'influenced' by Stamford's own Candace Owens dated 15 March 2019
Attachment R	Article from the 'Business Insider' – Candace Owens says Trump will 'crack the black vote' because he loves America and 'the left hates' it dated 7 January 2019
Attachment S	Article from 'MIC' – Critics call out Candace Owens' transphobic views and want Kanye West, Caitlyn Jenner to do the same dated 23 June 2018
Attachment S1	Article from 'U.S News' – Youtube tested, Trump approved: How Candace Owens suddenly became the loudest voice on the far right dated 23 June 2018
Attachment T	Article from 'The New York Times' – Trumpism Finds a Safe Space at Conservative Women's Conference dated 17 June 2018
Attachment U	Post from 'X.com' - The Zionist Federation of Australia dated 23 August 2024
Attachment U1	Social media posts by Ms FARMER on 'X.com'
Attachment V	Australian Security Intelligence Organisation, Submission to Parliamentary Joint Committee on Intelligence and Security Inquiry into

	Extremist Movements and Radicalisation in Australia dated 16 February 2021
Attachment V1	Article from 'National Intelligence Community' - National Terrorism Threat Level dated 5 August 2024
Attachment V2	Australian Federal Police, Submission to Parliamentary Joint Committee on Intelligence and Security Inquiry into Extremist Movements and Radicalisation in Australia dated 16 February 2021
Attachment W	Letter of Invitation - Rocksman Communications dated 9 September 2024
Attachment X	Event Marketing Information - Candace Owens Live in Australia
Attachment Y	Supporting Submission LRG Lawyers dated 12 September 2024
Attachment Z	Appearance Agreement Rocksman Communications dated 17 June 2024
Attachment AA	Statement from Lebanese Muslim Association dated 10 September 2024
Attachment AB	Signed Undertaking - Candace Owens (undated)
Attachment AC	Travel Expense Arrangements - Rocksman Communications
Attachment AD	Record of Responses - Application for Temporary Activity visa dated 12 September 2024
Attachment AE	Form 956 – Appointment of a registered migration agent, legal practitioner or exempt person dated 12 September 2024

Released under the Official Information Act 1982



**STATEMENT OF REASONS FOR REFUSAL TO GRANT VISA UNDER SECTION 501(3)(a) OF THE  
MIGRATION ACT 1958 – DECISION BY A MINISTER**

**Candace Owens FARMER**

**Date of birth: 29 April 1989**

1. This statement relates to my decision to refuse the Temporary Activity (Class GG) visa application made by Ms FARMER, under s501(3)(a) of the *Migration Act 1958* (the Act).
2. Ms FARMER does not hold, and has no outstanding application for a protection visa or any other visa prescribed by the *Migration Regulations 1994*. As a result of my decision, Ms FARMER therefore no longer holds any visa, and all applications for any other visa have been finalised.
3. In making my decision, I have had regard to the documents provided to me by the Department, which are listed in the "Index of relevant material for Ms FARMER".

**PRELIMINARY MATTERS**

**Power to refuse to grant a visa under s501(3)**

4. Section 501(3)(a) of the Act empowers me to refuse to grant a visa to a person if:

- I reasonably suspect that the person does not pass the character test (as set out in s501(6)); and
- I am satisfied that the refusal is in the national interest.

5. I am aware that I have a discretion not to refuse to grant the visa, even if I hold the relevant reasonable suspicion and am satisfied about the national interest.

6. I note that decisions under s501(3) are not subject to the rules of natural justice. Nonetheless, I am aware that it is open to me to afford Ms FARMER with an opportunity to be heard in respect of my possible exercise of power under s501(3). I have elected not to do so.

7. The character test is defined by s501(6) of the Act. The relevant ground of the character test in this case is s501(6)(d)(iv), which provides that a person does not pass the character test if:

*... (d) in the event that the person were allowed to enter or remain in Australia, there is a risk that the person would: ...*

*(iv) incite discord in the Australian community or in a segment of that community*

8. In considering the character test as it applies to Ms FARMER, I have turned my mind to Ms FARMER's profile as a political commentator, author and activist known for her controversial and conspiratorial views. Ms FARMER has been the subject of significant media reporting as a result of her comments in relation to the Black Lives Matter movement, the Israel-Hamas conflict, and anti-Semitic, islamophobic and other controversial comments about the LGBTQIA+ community. I will now proceed to examine some of those views and her comments in detail as per the following.

#### *Holocaust denial*

9. In an article published in the Jewish Chronical on 11 July 2024, Ms FARMER was criticised for minimising the Holocaust. Speaking on an episode of *The Candace Show* titled "*Literally Hitler. Why can't we talk about him?*", Ms FARMER questioned the taboo that surrounds discussions of Adolf Hitler and Nazi Germany and criticised Holocaust education for telling school children that Adolf Hitler was the greatest evil that's ever happened on earth, even though "*factually and statistically*" it is not **Attachment D Attachment D1 and Attachment E.**

10. Ms FARMER also reportedly dismissed the well-documented medical experiments conducted by the notorious Nazi doctor Josef Mengele as "*bizarre propaganda.*" Ms FARMER stated, "*Some of the stories, by the way, sound completely absurd... They just cut a human up and sewed them back together? Why would you do that?... Literally, even if you're the most evil person in the world, that's a tremendous waste of time and supplies*" **Attachment D.**

11. During the episode, Ms FARMER also accused the Allies of ethnically cleansing 12 million Germans during and after World War II, stating, "*What is it about Hitler? Why is he the most evil? Well, the first thing people would say is 'ethnic cleansing almost took place.'* And I offer back, '*You mean like we actually did to the Germans?*'" **Attachment D.**

12. According to media reporting, Ms FARMER's remarks appeared to reduce the Holocaust and the extermination of six million Jews and millions of other human beings, to ethnic cleansing **Attachment D.**

#### *Islamophobia*

13. Ms FARMER has made several posts on social media warning against the prospect of countries becoming a 'Muslim Majority' **Attachment P.**

14. On 7 July 2018, Ms FARMER posted on social media "*We have 50 million Muslims in Europe. There are signs that Allah will grant Islam victory in Europe— without swords, without guns, without conquest—will turn it into a Muslim continent within decades*" - Muammar Gaddafi, 1975. *A Trump balloon won't save the UK* **Attachment U1.**

15. On 7 July 2018, Ms FARMER posted on social media "*Please remind @SadiqKhan that according to the birth rate, Europe will fall and become a Muslim majority continent by 2050. There has never been a muslim majority country where sharia law was not implemented. When we're forced to save you guys (again) we'll forgive the balloon*" **Attachment U1.**

16. On 14 November 2018, Ms FARMER posted on social media "*If France wants to build an army to defend itself against anything, it ought to be the declining birth rate of its people. All signs indicate that it will be a Muslim majority country in just 40 years!*" **Attachment U1.**

17. Prior to the terror attacks on two mosques in Christchurch, New Zealand, on 15 March 2019, where 51 people were killed and 35 others were injured, the perpetrator published a 74 page anti-immigration 'manifesto' on social media where they stated "*The person who has influenced me above all is Candace Owens. Each time she spoke I was stunned by her insights and her own views helped me push further and further into the belief of violence over meekness. Though I will have to disavow some of her beliefs, the extreme actions she calls for me are too much, even for my tastes*" **Attachment P and Attachment Q.**

18. In response to Ms FARMER being mentioned in the 'manifesto,' she posted a series of tweets on social media including '*HAHA OMG you racist Leftists are taking your racism and crazy to a whole new level hahah. Black people don't have to be Democrats*" now means...mosque shootings in New Zealand? This clearly won't stick but damn if I won't grow #BLEXIT highlighting your sheer desperation.' **Attachment Q.**

19. Ms FARMER also posted on social media "*I've never created any content espousing my views on the 2nd Amendment or Islam. The Left pretending I inspired a mosque massacre in...New Zealand because I believe black America can do it without government hand outs is the reachiest reach of all reaches!! LOL!*" **Attachment O and Attachment P.**

20. On 4 August 2020, Ms FARMER posted on social media that "*Muslims started slavery. And no, Europeans did not make it explode*". **Attachment U1.**

21. These social media posts were met with wide spread criticism due to Ms FARMER's insensitive and inappropriate response **Attachment O and Attachment P.**

22. Ms FARMER's legal representative provided a statement written by the Lebanese Muslim Association (LMA) that expresses concern over the Australian Government's inconsistent application of freedom of speech for overseas visitors **Attachment AA.** I note that this statement has no direct reference to Ms FARMER or her proposed travel to Australia.

#### *Anti-racism, Black Lives Matter and anti-Semitism*

23. In 2020, on a video shared on twitter Ms FARMER stated that George Floyd "*was not an amazing person*" and alleged that Mr Floyd was high at the time of his death. **Attachment M.**

24. On 22 March 2024, media reported that 'The Daily Wire' had severed ties with Ms FARMER due to her anti-Semitic comments. Since the start of the Israel Hamas conflict on 7 October 2023, Ms FARMER has suggested the Jewish government is committing "*genocide*" in Gaza and claiming there is a "*small ring*" of Jewish people in Hollywood and Washington D.C. involved in something "*quite sinister*" **Attachment G.**

25. In August 2024, Ms FARMER was uninvited to a Donald Trump Presidential rally due to her continuous criticism of Jewish groups **Attachment C.**

26. On 10 September 2024, media reports state that Ms FARMER had posted an announcement saying that her YouTube channel had been suspended for a week and all content had been demonetised due to three videos she posted, including an interview with Kanye West and a "debate" with author and media host Rabbi Shmuley, which YouTube determined violated their hate speech policies **Attachment A.**

27. Ms FARMER's Facebook page shows that YouTube removed one video, an interview with Kanye West, specifically for his "*claims that Jewish people control the media*"

**Attachment A.**

28. Further media reporting on this matter details that Ms FARMER claims that YouTube temporarily suspended her channel because "*Zionists*" flagged the interview she did with Kanye West **Attachment A.**

29. In a post published on X on 23 August 2024, the president of the Zionist Federation of Australia (ZFA) stated that "*we believe that granting Candace Owens a visa poses significant risk of inciting discord within the Australian community and vilifying Jewish Australians, along with other minority ethnic groups*" **Attachment U.** In the same post the CEO of ZFA was quoted stating "*there is no place in Australia for Candace Owens and her vile divisive and dangerous conspiracy theories. For the sake of our nation's social cohesion and wellbeing of all Australians, we strongly urge Minister Burke to deny her entry into our country.*"

**Attachment U.**

30. In an article from 'The Australian', dated 22 August 2024, Jewish leaders called for the government to ban far-right provocateur Candace Owens from entering Australia for her upcoming speaking tour due to her vile, divisive and dangerous conspiracy theories

**Attachment B.**

31. In the submission attached to her visa application, Ms FARMER's legal representative, Mr Mark Ryan of LRG Lawyers states that they have been informed that the Australian Jewish Association (AJA) has made a statement to radio station 2GB, indicating that Candace Owens is really not an AJA priority, and provide a response following Ms Owens interview with Ben Fordham **Attachment Y:**

*'We have called out Candace Owens for spreading unhinged bizarre antisemitic conspiracy theories.*

*However we have NOT called for her to be banned from Australia. Jewish values support for free speech and debate. We also see it as a strategically flawed proposal.*

*Banning her may prove a counter-productive pyrrhic victory:*

- *Sometimes attempting to ban a speaker can have the opposite effect and fuel more interest. It may also encourage ugly conspiracies that Jews seek to control who can speak, exercising undue power. If Candace Owens is banned, it hands her an "I told you so" excuse to perpetuate that allegation.*
- *AJA is more concerned with the failure of the Labor government to deal with the real threats to our community such as antisemitism at universities and importing thousands from Gaza with minimal security. The ban would give the Government the false appearance of acting against antisemitism, in effect throwing us a few crumbs while ignoring the big issues.'*

32. The submission of Mr Ryan states that the allegations of anti-Semitism against Ms FARMER are rooted in a single out of context comment that has been widely misrepresented and that the allegation of Ms FARMER being an anti-Semite is wholly erroneous. The submission goes on to state that the fact that Ms FARMER previously worked for a Zionist media outlet based in the US, and her attending the opening of the US Embassy in Jerusalem in 2018, with Israel's Prime Minister Benjamin Netanyahu demonstrates that she is not an anti-Semite. Mr Ryan also states that Ms FARMER's team, who are travelling with her to Australia comprises individuals from various religious backgrounds which demonstrates Ms FARMER is inclusive amongst her own close circle **Attachment Y.**

*Women's and LGBTQIA+ rights*

33. Ms FARMER has expressed the #MeToo movement, an international movement against sexual abuse and harassment, as stupid and was premised on the idea that "*women are stupid, weak and inconsequential*" **Attachment U1.**

34. Ms FARMER has publicly expressed her opposition to abortion which she has called a tool for the "*extermination of black babies*" **Attachment S1.**

35. In June 2022, Ms FARMER described a Drag Queen Story Hour as "*child abuse*" arguing that parents who support a drag queen story hour "*are underqualified to have children*" and they "*should have their children taken away from them*" **Attachment I1.**

36. In January 2024, in a post on X, Ms FARMER accused transgender people of "*mass drugging children*" and claimed "*Gender dysphoria is a mental disorder, LGBTQIA+ movement brought with it a sexual plague to society.*" These comments were widely and unequivocally condemned by LGBTQIA+ groups **Attachment H.**

37. Ms FARMER was reportedly suspended in 2023 from YouTube for promoting hatred against protected individuals or groups, including the LGBTQIA+ community **Attachment I.**

38. The submissions provided by Mr Ryan state that Ms FARMER's comments regarding the transgender community and LGBTQIA+ issues have frequently been misrepresented. He explains her stance is grounded in her commitment to conservative Christian values and advocacy for traditional family structures. In Ms FARMER's appearance on The Joe Rogan Experience, she clarified that while she respects individual freedoms, her concerns about the transgender movement are rooted in her views on preserving biological reality and societal implications of eroding gender distinctions **Attachment Y.**

*COVID-19 and anti-vaccination*

39. In 2020, Ms FARMER claimed Bill Gates and the World Health Organization used "*African & Indian tribal children to experiment with non-FDA approved drug vaccines*" **Attachment L.**

40. In 2021, Ms FARMER stated the USA should "*invade Australia*" comparing the Australian government to the Taliban, calling it a 'tyrannical police state' due to its public health precautions against COVID-19. **Attachment J.**

## *Inciting Discord*

41. Having examined Ms FARMER's views and comments in the preceding, I now turn my mind to whether, if Ms FARMER were allowed to enter Australia, there is a risk that her presence would incite discord in the Australian community (or a segment of it), given her views and comments, which I find are extremist and inflammatory comments towards Muslim, Black, Jewish and LGBTQIA+ communities which generate controversy and hatred.

42. Mike Burgess, the Director General of Australian Security Intelligence Organisation (ASIO) at a press conference on 5 August 2024, where the National Threat level was changed from 'possible' to 'probable' stated that "*while the threats to our way of life remain elevated, we are seeing an increase in extremism. More Australians are being radicalised and radicalised more quickly. More Australians are embracing a more diverse range of extreme ideologies and more Australians are willing to use violence to advance their cause.*" **Attachment V1.**

43. Mr Burgess went on to state that the Israel-Hamas conflict has fuelled grievances, promoted protest, exacerbated division, undermined social cohesion and elevated intolerance. Mr Burgess warned that inflamed language could lead to inflamed community tensions.

44. Mr Burgess stated that while political differences, political debates and political protests are essential parts of a healthy economy they are seeing spikes in political polarisation and intolerance, uncivil debate and unpeaceful protest.

45. In a submission to the Parliamentary Joint Committee on Intelligence and Security on the Inquiry into extremist movements and radicalism in Australia in 2021, ASIO states that the threat posed by right-wing extremism has increased in the recent years and ASIO continues to see more people drawn to adopting extreme right-wing ideologies. In particular ASIO submission states that "*the 2019 Christchurch attack continues to be drawn on for inspiration by right-wing extremists, both in Australia and internationally*" **Attachment V.**

46. The Australian Federal Police (AFP) in its submission to the Parliamentary Joint Committee on Intelligence and Security on the Inquiry into extremist movements and radicalism in Australia, states that since January 2020 the threat posed by extreme right-wing individuals and groups has required increased attention from AFP and partners, including through investigations and disruptions by the Joint Counter Terrorism Teams **Attachment V2.**

47. The AFP submission also states that the globalisation of the extremist groups through online connectivity continues to pose a significant challenge for law enforcement, and acts as a driver for radicalisation and expansion of ideologies to a broader range of individuals **Attachment V2.**

48. In an article published in 'the Conversation', Mr Greg Barton, Chair in Global Islamic Politics, Alfred Deakin Institute for Citizenship and Globalisation at Deakin University noted it is easy to dismiss far-right extremists as being a bunch of attention-seeking fantasists, but the danger is far greater than it appears. The article quotes the former Race Commissioner, Mr Tim Soutphommasane:

'The history of hate and racism tells us that any kind of violence or hatred cannot be separated from banal or low levels of prejudice and discrimination ... [h]ate speech leads to political violence if you allow it to escalate' **Attachment K**.

49. Mr Barton states that limiting space for hateful extremism reduces the likelihood of violent extremism. In the United States, far-right extremism has accounted for the vast majority of terrorist attacks over the last decade. This points to what happens when the ecosystem of white supremacist hate is allowed to flourish unchecked. Even though most will not become violent extremists, the danger is that they will inspire lone actors to launch violent attacks. I note that ASIO also highlighted their concern about the threat posed by small groups or lone actors inspired to conduct an attack **Attachment K and Attachment V**.

50. I accept the above information from government authorities, law enforcement and academic researchers as being credible. These sources collectively describe the causal link between individuals who promote and encourage right wing extremism via online platforms and how this supports greater intent and capacity to undertake violent acts. I am satisfied these sources provide well evidenced and consistent assessments of the potential for persons who espouse ideologically motivated extremist views to pose a risk of inciting discord in the Australian community.

51. As stated above, Ms FARMER has made inflammatory comments about the Black Lives Matter movement, the Israel-Hamas conflict, expressed anti-Semitic, islamophobic and other controversial views. I consider the gravity of Ms FARMER's views and inflammatory comments are emphasised by her suspension from YouTube in 2023 for promoting hatred against protected individuals or groups. Ms FARMER had at least one video removed due to its provocative nature and more recently the media outlet 'The Daily Wire' severed ties with Ms FARMER due her anti-Semitic rhetoric. The seriousness of the individual views and comments, whilst in and of itself is a concern, are heightened when considered in totality including the magnitude and number of Ms FARMER's comments, their recency and the topical and high profile issues she has elected to concentrate upon.

52. Given the information and material before me, I find that Ms FARMER uses various online platforms to spread misinformation and promote her controversial views and ideologies which leads to fostering division and fear in communities. The evidence is clear. The use of platforms for inflammatory rhetoric can lead to increased hate crimes, radicalisation of individuals and heightened tensions in communities.

53. Ms FARMER's social media influence has over 18 million followers across all platforms worldwide, including Australia **Attachment B**. I accept her she has far reaching abilities and the ability to influence and incite discord through her online platforms. Notwithstanding this, I have considered whether, in the event Ms FARMER is allowed to enter Australia, there is a risk that Ms FARMER would incite discord in the Australian community (or a segment of it).

54. Ms FARMER has stated that the purpose of her visit is to speak at high profile events across Australia, including Sydney, Melbourne, Brisbane, Perth and Adelaide and that her discussions will centre on themes such as freedom of speech, government policy, social dynamics and topics covered in her public appearances and podcasts. The marketing material provided by Ms FARMER about her speaking engagements states that she is '*known for her controversial and unwavering stance*' and that Ms FARMER will share her '*bold and unfiltered perspectives*' **Attachment X and Attachment Y**.

55. While I accept that Ms FARMER has not used her influence and various social media platforms to promote direct and overt violence, I have also taken into consideration that Ms FARMER's controversial views have previously been significant enough to influence the perpetrator of the terror attack on two mosques in Christchurch, New Zealand, where 51 people were killed and 35 others were injured. I note that the perpetrator specifically mentioned Ms FARMER as the person who influenced them the most to carry out the attack.

56. I note that Ms FARMER's representative has provided a signed undertaking that Ms FARMER will abide by her visa conditions and not engage in any disruptive or violent behaviour towards the Australian community. In considering this matter, I am not limited to Ms FARMER's personal behaviour whilst in Australia, but also extends to the effect her presence may have on others in the community. However, I also note that the marketing material provided about Ms FARMER's speaking tour states that Ms FARMER is known for her fearless criticism of movements like Black Lives Matter, and scepticism about the impact of white supremacy on society and her opposition to covid-19 lockdowns and vaccines. It also states that following her departure from 'the Daily wire' to her own platform has only amplified her voice allowing her to '*delve deeper and push boundaries further than ever before*' **Attachment X**.

57. In the current environment where the Australian community is experiencing heightened community tensions, as per the advice of Australia's security apparatus, I find that there is a risk that Ms FARMER's controversial views will amplify grievances among communities and lead to increased hostility and violent or radical action. I have carefully considered that Ms FARMER has an online presence but that her physical presence in Australia at this time, when there are community tensions, would have the potential to galvanise discord than it otherwise may, in particular because her events would attract onshore media attention, including main stream media and her shows would garner interest. I consider that the normalisation of controversial rhetoric that dehumanises and targets specific communities has the propensity to galvanise individuals and incite discord in the community.

58. Taking into consideration the information before me, I find that should Ms FARMER be allowed to enter Australia, there is a risk she will incite discord in the Australian community.

59. I am reasonably satisfied that Ms FARMER does not pass the character test by virtue of s501(6)(d)(iv) of the Act, in that I am reasonably satisfied that should Ms FARMER be allowed to enter Australia, there is a risk she would incite discord in the Australian community or a segment of the Australian community.

#### **NATIONAL INTEREST**

60. I have considered the question of whether the refusal of Ms FARMER's visa application is in the national interest. I recognise that the national interest consideration is separate and distinct from the question of whether or not I reasonably suspect that Ms FARMER does not pass the character test.

61. 'National interest' is not defined for the purposes of s501(3). Generally, courts have been reluctant to attempt to define the meaning of national interest in statutory contexts, but the national interest has been determined to be a different concept to the public interest.



62. In *Plaintiff S156/2013 v Minister for Immigration and Border Protection* [2014] HCA 22 at [40], the High Court said that “*What is in the national interest is largely a political question*”. To the same effect, a number of Federal Court decisions hold that the question of what is or is not in the national interest is an evaluative one that is entrusted by the legislature to the Minister to determine, according to his or her satisfaction (provided that satisfaction is obtained reasonably).

63. I consider that matters relevant to the national interest in this case include, amongst other things, the protection of the community and the expectations of the Australian community.

#### **Protection of the community**

64. In determining whether it is in the national interest to refuse Ms FARMER’s visa application, I have given the highest priority to the safety of the Australian community.

65. I have considered the need to protect the Australian community from harm. In doing so, I considered the seriousness of Ms FARMER’s conduct (this being her views and comments) having regard to the circumstances and nature of the conduct, the likelihood of engaging in ongoing conduct, and the risk she poses to the Australian community if such a likelihood eventuated, in particular the risk of Ms FARMER inciting discord in the Australian community.

66. The Australian Government is committed to protecting the Australian community from harm as a result of criminal activity or other *serious conduct* by non-citizens. Entering or remaining in Australia is a privilege that Australia confers on non-citizens in the expectation that they are, and have been, law abiding, will respect important institutions, such as Australia’s law enforcement framework, and will not cause or threaten harm to individuals or the Australian community. In this case, with Ms FARMER that harm is about a risk of inciting discord.

67. I consider that *serious conduct* includes behaviour or conduct of concern that does not necessarily constitute any criminal offence, however presents a risk of adverse consequences to an individual or community, and may include: a public act that could incite hatred towards a group of people who have a particular characteristic, such as race, religion or gender; or intimidatory behaviour or behaviour that represents a danger to the Australian community.

68. I am mindful that the operation of section 501(6)(d)(iv) of the Act must be balanced against Australia’s well established tradition of and support for free expression. I acknowledge that a non-citizen should not be denied entry merely because they hold and are likely to express unpopular opinions. However, where these opinions may attract strong expressions of disagreement and condemnation from the Australian community, the current views of the community will be a consideration in terms of assessing the extent to which particular activities or opinions are likely to cause discord or unrest. In this matter, I have been mindful of the preceding and have carefully considered all of the information before me.

#### **Nature and seriousness of Ms FARMER’s conduct**

69. In considering the seriousness of Ms FARMER’s conduct, that being her views and comments on a number of topics, I have taken into account the information summarised

under the Character Test pertaining to her ongoing interest in the Black Lives Matter movement, the Israel Hamas conflict, anti-Semitic and other general controversial commentary.

70. In terms of the notion of the national interest, I have taken into account the Australian Government's views and strategies employed to combat ideologically motivated violent extremism. I have had regard to the Australian Government's recognition that ideologically motivated violent extremism is an issue of national concern, which adversely affects the Australian community, government, and way of life.

71. ASIO reported that while the extreme right-wing has been in their sights for decades, such groups are now more organised, sophisticated and security conscious than before. The threat from extreme right-wing groups and individuals has increased and ASIO continues to see more people drawn to and adopting right-wing ideologies Attachments V.

72. AFP advised there is a growing threat from ideological groups, including extreme right-wing groups. Law enforcement is seeing an increase in the number of individuals and small groups in Australia espousing extreme right wing views Attachment V2.

73. AFP referred to the emerging trend of online extremists exploiting the increased public fear, isolation, unemployment and financial hardship associated with the pandemic. During this period, extreme right wing individuals and small groups sought to take advantage of these factors and recruited new members online by promoting their ideology and spreading disinformation. Online content has the potential to reach people anywhere in the world, including Australian and/or New Zealand communities, as was demonstrated in the Christchurch massacre of 15 March 2019 Attachment V2.

74. The increased prevalence and ease of access online makes it easier to radicalise young people and encourage their alignment with international extremist groups. Alongside pursuing those responsible where they are identified, it is equally important to prevent those people in the Australian community who are vulnerable to radicalisation from being exposed to such material in the first place Attachment V2.

75. I accept the above ASIO, AFP reports pertaining to ideologically motivated violent extremism. I am satisfied that promoting right wing extremist views and ideology on online platforms encourages, cultivates and radicalises people in the Australian community towards ideologically motivated violent extremism. I am further satisfied that this conduct threatens the broader Australian community, beyond ideologically motivated violent extremists, such that the social fabric and security of the Australian community could be undermined and important institutions de-stabilised.

76. I find that Ms FARMER has demonstrated an ongoing interest in the Black Lives Matter movement, the Israel-Hamas conflict, anti-Semitic and other generally controversial views, which incite discord and have the potential to lead to extremism. This is demonstrated by relevant media articles, her YouTube channel, posts and comments on her social media platforms. Consequently, I find that Ms FARMER's conduct, that being her views and comments are controversial and her presence in Australia has the potential to incite discord and in the course of such to cause physical and/or psychological harm to segments of the Australian community, or our society in general.

## Risk to the Australian community

77. This consideration has been discussed above in the section titled protection of the community. I refer to my findings from this section, namely that I found Ms FARMER has demonstrated an ongoing interest in the Black Lives Matter movement, the Israel Hamas conflict, anti-Semitic and other general controversial views.

78. I have considered Ms FARMER's social profile and her possible influence on the Australian community. As previously mentioned, Ms FARMER has a large following on YouTube and various social media platforms. I consider that the influential nature of Ms FARMER's public profile may have the effect of causing great harm to the general community through the normalisation of racism, islamophobia, gender discrimination and/or other forms of social exclusion.

79. In particular, I note Ms FARMER's prolific use of social media and tendency to criticise powerful and well-organised groups. Similarly, I have concerns that Ms FARMER uses her social profile, influence and reach in a manner that may normalise poor conduct in the public sphere and lead to conduct which is not consistent with a free and democratic multicultural society, such as Australia which seeks to promote a cohesive and social fabric for all residents. I consider that the multiple reports of racist and otherwise distasteful comments on social media, even where in jest, are dangerous and adversely reflect on Ms FARMER's character. I find Ms FARMER's views have the capacity to unpick Australia's tolerant fabric and values, and pose a risk of inciting discord.

80. Ms FARMER's controversial views have previously been significant enough to be of influence to the perpetrator of the terror attack on two mosques in Christchurch, New Zealand, where 51 people were killed and 35 others were injured. The perpetrator specifically mentioned Ms FARMER as the person who influenced them the most to carry out the attack **Attachment Q**.

81. I have considered Ms FARMER's response in relation to this incident in denying that she had ever created any content espousing her views on the second amendment or Islam, particularly in a manner that would have influenced the New Zealand mosque incident **Attachment O**.

82. I have also considered the submissions of Ms FARMER's representative, Mr Ryan, dated 12 September 2024. Mr Ryan submits that *'a significant aspect of [Ms FARMER's] public work involves calling out extremism on both the left and right of the political spectrum'* and *'she has been vocal in her criticism of radical ideologies that she believes undermine societal cohesion and democratic principles'*. Mr Ryan concedes that this has often led to inflammatory reactions from groups with substantial online presences. Further, Mr Ryan submits that *'despite the potential for backlash'*, Ms FARMER is committed to free speech and the importance of open debate, even when it involves challenging powerful and well-organised groups **Attachment Y**.

83. I have also taken into account the general views of community members and/or groups in relation to Ms FARMER's conduct and potential presence in Australia.

84. Ms FARMER's representative, Mr Ryan, references a purported statement from the Australian Jewish Association (AJA) to 2GB indicating that Ms FARMER is not a priority for the AJA. According to Mr Ryan's submissions, while the AJA are aware of Ms FARMER's

controversial opinions, they have not called for her to be banned from Australia, in the interest of support for free speech and debate **Attachment Y**.

85. Mr Ryan has rebutted allegations of anti-Semitism by Ms FARMER, stating that such allegations were rooted in a single comment that was taken out of context. While Mr Ryan acknowledges Ms FARMER's criticism of policies of the Israeli government, her commentary was rooted in political analysis, rather than ethnic or religious bias. Likewise, Mr Ryan submits that Ms FARMER's commentary regarding the trans and LGBTQIA+ communities have frequently been misrepresented, as her stance is grounded in her commitment to conservative Christian values, family structures and 'moral accountability' **Attachment Y**.

86. Ms FARMER's representative has submitted a statement by the Lebanese Muslim Association (LMA), dated 10 September 2024, which expresses concern for the Australian government's approach to free speech, particularly in relation to international speakers, political commentators and religious leaders. Mr Ryan submits that the statement emphasises the importance of ensuring free speech is balanced with the protection of societal values **Attachments Y and AA**.

87. As I have acknowledged above, I am mindful that the operation of s501 of the Act must be balanced against Australia's well established tradition of and support for free expression. While I acknowledge Ms FARMER is entitled to her own views, the manner in which she has historically presented them has incited conflict, as her representative readily concedes. Furthermore, while some organisations or groups may embrace the difference of opinion or intellectual arguments presented by Ms FARMER, other groups may be negatively affected, offended and/or marginalised by such commentary, and for others such may incite discord.

88. In contrast to the submissions of Ms FARMER and Mr Ryan, I note that in a post published on the social media platform, 'X', on 23 August 2024, the president of the Zionist Federation of Australia (ZFA) stated that '*we believe that granting [Ms FARMER] a visa poses significant risk of inciting discord within the Australian community and vilifying Jewish Australians, along with other minority ethnic groups*'. In the same post the CEO of ZFA was quoted stating '*there is no place in Australia for [Ms FARMER] and her vile divisive and dangerous conspiracy theories. For the sake of our nation's social cohesion and wellbeing of all Australians, we strongly urge Minister Burke to deny her entry into our country*' **Attachment U**.

89. I find the aforementioned conflicting views of community groups represent the divisiveness of Ms FARMER's views. I find that her physical presence in Australia would only heighten such divisiveness. Consequently, there is a risk Ms FARMER will incite discord in the Australian community by partaking in her show, espousing her controversial and inflammatory views and comments, and encouraging inflammatory responses through the medium of online platforms and public speaking.

90. Given Ms FARMER's controversial and inflammatory views and comments, her display and promotion of these views across a wide variety of mediums, her active involvement in promulgating ideologically motivated extremism through social media platforms, I find there is a risk Ms FARMER will engage in further conduct of a similar nature and this will only increase with her presence in Australia, especially given the numerous shows she is scheduled to speak at.

91. I find that if Ms FARMER was to engage in further conduct of a similar nature, it could cause serious harm to the social fabric of the Australian community by inciting discord, hatred and racism, and that this harm has the potential to eventuate into ideologically motivated violent acts by individuals against members of the Australian community.

92. In my view, granting a visa to a person who promotes social discord and downplays important social issues and/or historical events, risks sending the wrong message about Australia as a leading free nation. I consider that it would potentially undermine the Australian Government's ongoing commitment to community safety and prevention of extremism, particularly where it relates to an individual with the public profile of Ms FARMER, and her subsequent capacity to popularise or normalise undesirable behaviour.

93. I note that Ms FARMER has provided a signed undertaking to my Department, declaring, amongst other things, that she will comply with Australian laws and all visa conditions and limitations imposed in the event she is granted a Temporary Activity (Class GG) visa. She further declares that she will *'not become involved in any activities that are disruptive to, or involve violence threatening harm to, the Australian community or any group with the Australian community'* **Attachment AB**.

94. While I acknowledge Ms FARMER's commitment to compliance with Australian laws, expectations and visa conditions, I also note that there was no formal requirement for her to complete such an undertaking. In this regard, I find Ms FARMER's proactive provision of such a document indicates an awareness, to some degree, of the potential disharmony that her presence in Australia may cause. Furthermore, my consideration is not limited to Ms FARMER's personal behaviour while in Australia, but also extends to the effect her presence may have on others in the community.

95. Ms FARMER's presence in Australia may encourage extremist behaviour, risk vilifying a segment of the community, incite discord or civil unrest through promotion of disruptive and/or violent activities. If allowed to enter Australia it is likely that Ms FARMER would continue to express controversial views, particularly given the nature and purpose of her intended visit as the primary speaker at events promoting *'raw and unfiltered commentary on politics, culture, and everyday life'* and challenging popular narratives. I consider that Ms FARMER therefore presents an unacceptable risk to Australia's social cohesion and the personal safety of Australians **Attachments X**.

96. Having considered the available information, I find that, at minimum, there is a likelihood that Ms FARMER will continue to promote controversial views while present in Australia. Should Ms FARMER engage in this conduct in Australia, I have found that it may result in inciting discord in the community such that psychological and/or physical harm to members and/or groups within the Australian community may eventuate.

97. I have remained mindful that the safety of the Australian community is the highest priority of the Australian government. I have also considered Australia's well established tradition of free expression and that the character powers in the Migration Act are not intended to provide a charter for denying entry to persons merely because they hold and are likely to express unpopular opinions. However, Ms FARMER's views can and do undoubtedly attract strong expressions of disagreement and condemnation. As such I have assessed the extent to which her views could incite discord in the Australia community and find that her stance on many topics is of such potency that the protection of the Australian community is a paramount consideration and of such magnitude that it engages the national interest. I

have attributed this consideration significant weight towards a finding that it is in the national interest to refuse Ms FARMER's visa application.

#### Expectations of the Australian community

95. Refusal of a visa application may be appropriate simply because the inherent nature of the character concerns is such that the Australian community would expect that the person should not hold a visa. In particular, I consider that the Australian community expects that the Australian Government can and should refuse to grant a visa if the applicant raises serious character concerns through certain kinds of adverse conduct.

98. The Government's view is that the above expectations of the Australian community apply regardless of whether the non-citizen poses a measurable risk of causing harm to the Australian community. In this case, I consider that the Australian community would not expect Ms FARMER to hold a visa and the risk of Ms FARMER inciting discord in the Australian community or a segment of that community renders visa refusal appropriate.

99. The consideration is about the Government's views in relation to what the Australian community expects as a norm; it is not about what the community may expect in relation to the particular non-citizen, having regard to their specific circumstances. Nevertheless, I have considered Ms FARMER's specific circumstances to the extent relevant to my consideration of the matters discussed in other parts of this statement of reasons.

100. I have attributed this consideration significant weight towards a finding that it is in the national interest to refuse Ms FARMER's visa application.

#### Conclusion on national interest considerations

101. In deciding whether I am satisfied that it is in the national interest to refuse to grant Ms FARMER a Temporary Activity (Class GG) visa, I am required to make an evaluative judgement. I am entitled to make that judgement having regard to a range of matters that may inform the national interest.

102. In the specific case of Ms FARMER, I find the nature and seriousness of her views and comments, and the controversial nature of such are a threat to the fabric and security of the Australian community. I have given regard to the material before me that documents the inflammatory comments made by Ms FARMER in relation to the Black Lives Matter movement, the Israel-Hamas conflict, and anti-Semitic, islamophobic and other controversial comments about LGBTQIA+ community.

103. I have determined that there is a likelihood that Ms FARMER will continue to promote controversial views should she be permitted to enter Australia, and her physical presence in Australia would heighten discord in the Australian community. I have also found that such conduct presents a risk of harm to the Australian community. Non-citizens who engage in serious conduct should expect to be denied the privilege of coming to Australia. I have considered the expectations of the Australian community and find that the community would expect Ms FARMER's visa application to be refused.

104. Having regard to all of the above, I conclude that it is in the national interest to refuse to grant Ms FARMER a Temporary Activity (Class GG) visa.

## DISCRETION

105. Recognising that the power to refuse to grant a visa under s501(3) is discretionary, I considered whether I should not refuse Ms FARMER's visa application, even though I reasonably suspect that they do not satisfy the character test and even though I am also satisfied that it is in the national interest to refuse to grant the visa. I have taken into consideration the circumstances below.

106. In exercising my discretion, I have given due weight to the matters discussed in relation to the character test and national interest, but will rely on that discussion rather than repeat it here. While I give the protection of the Australian community greater weight than any other relevant matters when exercising my discretion, I have in addition taken into account the following considerations.

### Ties to Australia

107. Ms FARMER has not previously entered or resided in Australia.

#### Impact on immediate and other family in Australia

108. There is no information before me to suggest Ms FARMER has any immediate family in Australia or has other family ties to Australia.

#### Social ties

109. I am not aware that Ms FARMER has any significant social ties or connections to Australia. I have considered that Ms FARMER has commercial ties to Australia, in the context of seeking to conduct speaking engagements in Australia.

110. I accept that Ms FARMER has a fan base in Australia, many of whom would be very disappointed if Ms FARMER was unable to personally and physically attend the speaking engagements by reason of her visa having been refused.

#### (a) Conclusion

111. I have considered the strength, nature and duration of Ms FARMER's ties to Australia and have given it some weight against refusal of the visa application in this case.

### Best interests of minor children in Australia

112. In considering whether to refuse Ms FARMER's visa application, I was mindful of Article 3 of the United Nations Convention on the Rights of the Child, to which Australia is a signatory, and treated the best interests of any affected minor children in Australia as a significant consideration.

113. The information available to me does not contain any claim or other information indicating that the refusal of Ms FARMER's visa application could impact on the best interests of any minor child in Australia.

### Legal consequences of the decision

114. Ms FARMER is not in Australia and accordingly Australia's non-refoulement obligations, as implemented in the Act, cannot be engaged in respect of her.

115. I am also aware that a legal consequence of a decision to refuse to grant Ms FARMER a Temporary Activity (Class GG) visa is that she would hold no Australian visa, and therefore be unable to enter Australia.

### Impact on Australian business interests

116. According to the Letter of Invitation from Rocksman Communications dated 9 September 2024, Ms FARMER has been invited to Australia to be the main speaker at the *Candace Owens Live Events* across Australia in November 2024. The events will take place in Melbourne, Brisbane, Sydney, Perth, and Adelaide between 17 to 22 November 2024 **Attachment W**.

117. The submission of Mr Ryan of LRG Lawyers indicates that Ms FARMER will speak about topics '*aligned with her well-established public discourse*' primarily focussing on '*matters of free speech, conservative values, and social justice*.' Mr Ryan submits that Ms FARMER will attract a '*substantial audience*' to her speaking engagements **Attachment Y**.

118. I have considered the impact that a decision to refuse Ms FARMER's visa would have on Rocksman Promotions, the promoter for Ms FARMER's series of engagements. I have taken into account that a visa refusal will result in Rocksman Promotions suffering financial losses, such as the loss of ticket sales, sponsorships, and merchandise revenue, as well as the costs associated with arranging refunds for attendees who have already purchased tickets. I have also considered that cancellation of Ms FARMER's speaking tour may damage the reputation of Rocksman Promotions, making it more difficult to promote future events and to attract future sponsors and attendees, which may affect their capacity to acquire future revenue.

119. I have also considered the impact of visa refusal on other Australian businesses expected to benefit from Ms FARMER's speaking tour. I accept that food, beverage, and merchandise vendors associated with the tour will experience a loss of expected revenue and that hotels and restaurants, who often see an increase in reservations during major events, will also experience financial loss. I also accept that advertising agencies may lose contracts related to promoting the events and that media outlets may experience reduced content and therefore advertising revenue.

120. I have taken into account that Australian citizens and residents will be deprived of employment opportunities and suffer financial loss in the event that Ms FARMER's speaking tour is cancelled. I am aware that major events require the employment of temporary workers to assist with security, ticketing, and other event functions, as well as technicians and support staff responsible for managing the technical logistics of the events.

121. Overall, while the refusal to grant Ms FARMER a visa will not significantly compromise the delivery of a major project, or delivery of an important service in Australia, I acknowledge that the cancellation of a major event can have a broad economic impact,



affecting not just the event organiser but also a wide range of associated businesses and workers.

122. Accordingly, I have attributed this consideration some weight against a decision to refuse Ms FARMER's visa application.

## CONCLUSION

123. I have concluded that I reasonably suspect that Ms FARMER does not pass the character test by virtue of s501(6)(iv) and I am satisfied that refusal to grant her a visa is in the national interest. My power under s501(3)(a) of the Act to refuse Ms FARMER's visa application is therefore enlivened.

124. I have found that some factors weigh against a decision to refuse to grant the visa. These include Ms FARMER's pre-planned speaking tour of Australia, where tickets to her events have commenced sale, and Australian commercial and business interests may suffer financial and reputational losses.

125. I have given very significant weight to the risk that Ms FARMER poses to the Australian community by her presence in Australia, taking into consideration her past conduct, where she has used online platforms to promote her controversial and inflammatory views and comments. I find that if Ms FARMER was to engage in further conduct of a similar nature while in Australia, it could cause serious harm to the social cohesion and fabric of the Australian community by inciting discord and may also lead to a destabilisation of the Australia's important institutions and give rise to the potential for ideologically motivated violent acts by others against members of the Australian community. Of grave concern to me and deserving of special attention, I have also taken into consideration that Ms FARMER's controversial views have previously been significant enough to influence the perpetrator of the terror attack on two mosques in Christchurch, New Zealand, where 51 people were killed and 35 others were injured.

126. I find that the Australian community could be exposed to significant harm should Ms FARMER engage in similar conduct in Australia. The Australian community should not tolerate any risk of harm.

127. In addition to the need to protect the Australian community from risks of harm, I have also considered what the community would expect in relation to non-citizens. I am of the view that the Australian community generally would not expect non-citizens who use their influence to promote extremist, controversial and inflammatory comments that can lead to vilifying segments of the Australian community and inciting discord to hold a visa, especially where the non-citizen continues to pose a significant risk to the Australian community.

128. I find that the considerations against refusal of the visa application in this case are very significantly outweighed by the serious national interest considerations.

**DECISION**

129. Given my conclusion above, I have decided to exercise my discretion under s501(3)(a) of the Act to refuse to grant Ms FARMER a Temporary Activity (Class GG) visa.

THE HON TONY BURKE MP  
Minister for Home Affairs, Minister for Immigration and Multicultural Affairs

9(2)(a)

Date: 25/10 2024

Time: 4:38pm

Place: CPO Sydney

Total time taken in considering submission and attachments: 2 hours 25 minutes

Released under the Official Information Act 1982

5 November 2024

Immigration New Zealand  
Via Immigration Online

Dear Sir/Madam

**Mrs Candace Farmer – Application number:** 9(2)(a)

1 We write in response to the Immigration New Zealand (**INZ**) letter of 1 November 2024.

**INZ's concerns**

*Concern in respect of advising of decline*

2 We understand that INZ is concerned that Mrs Candace Farmer (**Mrs Farmer**) did not advise that her application for an Australian visa "*has been declined*".

3 This concern arises out of Section 58(3) of the Immigration Act 2009 (**Act**). This obligates Ms Farmer to inform INZ of any material change in circumstances, which may affect INZ's decision on her application.

4 Section 58(6) of the Act provides that it is sufficient grounds to decline a visa application if INZ is satisfied that an applicant withheld relevant information what was potentially prejudicial to the grant of a visa.

*Concern that Mrs Farmer has been "excluded" from Australia*

5 INZ is also concerned that Mrs Farmer has been declined a visa to Australia, pursuant to section 501(6)(d)(iv) of the Australian Migration Act 1958 (**Australian Act**), and as a consequence, section 503 of the same Act provides that she "is not entitled to enter Australia or be in Australia at any time during the period determined under the [relevant] regulations". INZ understands that this means that Mrs Farmer is now prevented from entering Australia for three years. However, as provided below, this is not the case.

6 INZ is concerned that the above may mean that Mrs farmer is a person "*who has, at any time, been removed, excluded, or deported from another country*". If this is the case, then Mrs Farmer is ineligible for the grant of a visa, unless granted a special direction by the Immigration Minister or an appropriately delegated Immigration Officer.

**Mrs Farmer advised INZ of her change in circumstances**

*Timeline – information promptly provided to INZ*

7 On or around 23 August 2024, in response to advertising about Mrs Farmer's proposed events in Australia, the Australian Minister for Home Affairs and the Minister for Immigration, the Hon Tony Burke MP (**Australian Immigration Minister**) told media representatives that he hoped that Mrs Farmer "*had a good refunds policy*". Further, the Australian Immigration Minister also advised the media of the fact that Mrs Farmer had not yet applied for her visa and that he had "*clear legal powers to knock back a visa*".

- 8 On 19 September 2024, Mrs Farmer submitted her Australian visa application. This is ten days after she submitted her current application for a New Zealand Entertainers and Associated Workers' visa.
- 9 On 25 October 2024, we understand that Mrs Farmer received a letter from the Australian immigration authorities that intimated that the Australian Immigration Minister had decided to refuse to grant Mrs Farmer a Temporary Activity (Class GG) visa.
- 10 On Sunday 27 October, the Australian Immigration Minister made further comments to the media, about Mrs Farmer, which resulted in several news articles. INZ has referred us to one of those articles, published in the Guardian on Sunday, 27 October.
- 11 On Monday, 28 October, Mrs Farmer's lawyers were able to begin to consider her position. This position is far from straightforward, as provided below.

- 11.1 Mrs Farmer asked her lawyers to advise what the letter from the Australian immigration authorities meant. It was unclear to her as whether her visa had initially been refused or had been finally declined, or whether there was an appeal or challenge process before any final decision.

This is a complicated question to answer. To start, any decision made by the Australian Immigration Minister's decision is not subject to natural justice requirements. However, there are still grounds upon which the Australian Immigration Minister's decision may be successfully challenged by way of judicial review and deemed invalid.

Further, Mrs Farmer has the option to seek a revocation of the Australian Immigration Minister's decision to refuse to grant the visa. Her lawyers formally sought this on Friday, 1 November. A decision not to revoke the decision will also be reviewable by Australia's Administrative Appeals Tribunal (AAT). Further, Mrs Farmer's lawyers may consider judicial review/

- 11.2 As provided above, Mrs Farmer's lawyers also needed to consider whether the Australian Immigration Minister's decision was lawful. On the face of it, the decision may be outside of the Australian Immigration Minister's powers, due to him not considering all relevant information, illustrated by his repeated and biased comments in the media. Therefore, it may be challenged by way of judicial review.

This is a complicated issue, because although the Australian Immigration Minister's decision is not subject to natural justice requirements (section 501(3)) of the Australian Act, he must "reasonably suspect" that Mrs Farmer does not meet the character requirements. It is unclear how the Australian Immigration Minister could have "reasonably suspected" that Mrs Farmer did not meet the character requirements, given that his decision appears to be based on erroneous facts.

- 12 On Tuesday, 29 October, Mrs Farmer had not yet received advice from Gillis Delaney to answer her questions as to whether the visa had in fact finally been declined, or whether she had received an initial refusal, and what appeals or challenges she had available. Certainly, her lawyers had not yet had sufficient time to consider the letter from the Australian immigration authorities, advise her on seeking revocation of the decision, to advise on whether it was in fact a (lawful) decision, and provide advice in respect of potentially proceeding with a judicial review. However, Mrs Farmer was aware that INZ was considering her work visa application. Therefore, on that date, she advised INZ of what she did know, which was that her

*"Australian visa application has encountered some issues, which are being challenged. However, in the meantime, Ms Farmer, her husband, and her entourage are putting in place alternative flight arrangements so they can depart New Zealand, without having to travel back to the USA via Australia."*

- 13 Therefore, within two working days of the Australian Immigration Minister sending her a letter and speaking to the media, Mrs Farmer advised INZ that she had encountered issues with her Australian visa application, and that she was challenging these issues. She was, as explained above, seeking advice from her Australian lawyers as to what exactly the letter from the Australian immigration authorities meant, and how she could challenge the Australian Immigration Minister's concerns. Mrs Farmer duly informed INZ of as much as she knew on 29 October. She did not know anything further until 1 November, which is the date she received INZ's letter.
- 14 On 29 October, Mrs Farmer also advised INZ that she was making alternative flight arrangements so that she would not need to travel through Australia, if she was unsuccessful in overcoming her challenges with her Australian visa application before she needed to travel to New Zealand. She believed that INZ would want to know this, as it had to be satisfied that Mrs Farmer was able to depart New Zealand.
- 15 On Friday 1 November, Mrs Farmer's Australian lawyers were finally able to provide initial advice. They sent a response to the National Character Consideration Centre, of the Australian immigration authorities, in response to its letter of 25 October, seeking a revocation of the Minister's purported decision. A copy of that letter is **uploaded** into Mrs Farmer's application. This provides a detailed explanation of how the Australian Immigration Minister's decision was based on incorrect information and should be revoked.
- 16 On the same day, Friday 1 November, INZ sent a letter advising Mrs Farmer that she had not advised them that her visa had been declined. This is the same day that Mrs Farmer's Australian lawyers were able to provide some initial advice and write to the Australian immigration authorities. INZ's letter was sent despite the fact that Mrs Farmer had indeed advised INZ, on 29 October, that she had encountered issues and that she was working on challenging these.
- 17 It appears that despite Mrs Farmer promptly advising INZ of the fact that she was encountering challenges with her Australian visa, INZ has not then allowed Mrs Farmer adequate or reasonable time to then provide more information, as and when she came to know that information. She came to know more information about the nature and effect of the Australian Immigration Minister's decision on Friday 1 November, after seeking advice from her lawyers, which is the same day that INZ wrote to her.
- 18 For the avoidance of doubt, this letter provides a summary of the knowledge that Mrs Farmer has of her Australian visa application, as of 5 November 2024.

*Mrs Farmer did not know that her visa had been finally declined*

- 19 We appreciate that INZ may remain concerned that, although Mrs Farmer promptly advised it that she had encountered issues with her Australian visa application and was making potentially alternative travel arrangements, she did not specifically advise INZ that her Australian visa had been declined. In fact, the correct statement is that the Minister has refused to grant her a visa.
- 20 As provided above, until Friday 1 November, Mrs Farmer did not have advice as to whether her visa was in fact initially refused, or finally or legally declined. She had to wait for advice from her lawyers,.
- 21 It is reasonable for Mrs Farmer to query whether the decision was lawful or final given that it is highly unusual for a government Minister to make a series of comments in the media about an individual visa applicant, especially prior to the submission of any application. It is also highly unusual to publicly report a "decision" to the media, and for a decision maker to also not check the facts upon which any decision is based.
- 22 Mrs Farmer would not, of course, have been familiar the technicalities of Australian immigration law, but she will have appreciated that the issues with her visa application were highly unusual, and therefore that perhaps the letter that she had received was not as straight

forward as it may appear. Therefore, she promptly sought help from her Australian lawyers. Also, she promptly advised INZ that she had encountered difficulties with her visa and was seeking to challenge them.

23 Indeed, despite this, as of the date of writing this letter, it is still not clear as to whether Mrs Farmer's visa application has been validly declined, or if she has received the final decision on her visa application. Any decision made by the Minister may well be revoked, or a decision not to revoke may be overturned by the AAT, or the Australian Immigration Minister's purported decision may be found to be invalid or unlawful at judicial review. As of Friday 1 November, Mrs Farmer simply knows that the Australian Immigration Minister refused to grant her a visa.

24 Therefore, Mrs Farmer did advise INZ of the material change in her circumstances and what she was doing about this change. She could not advise that her visa had been declined, as she did not know whether it was in fact an initial refusal or a final decline, or if it was a final decision, that it was a lawful one. Indeed, as provided above, if it is in fact a visa decline, it may well be invalid or shortly revoked. Mrs Farmer needed time to get legal advice as to her position, before she could advise INZ of that position.

*INZ should not use section 58(6) of the Act to decline Mrs Farmer's visa*

25 Despite the fact that Mrs Farmer did inform INZ of as much as she knew about her visa position, if INZ believes that Mrs Farmer did fail to advise of a material change in her circumstances, then INZ should not use section 58(6) of the Act to decline Mrs Farmer's application.

26 As provided in INZ's Internal Administration Circular No 23/01, an Immigration Officer must consider whether it is reasonable to decline Mrs Farmer's visa application due to withheld information. We submit that it would be unreasonable to decline Mrs Farmer's visa application in these circumstances.

27 Mrs Farmer did promptly alert INZ to the fact that she had encountered issues with her Australian visa application. Further, as of the date of this letter, just over a week has passed since the Australian Immigration Minister communicated to Mrs Farmer and the media, during which time she has been seeking advice. It was only on 1 November, that Mrs Farmer received formal written advice from her lawyers.

28 The Administration Circular also provides that an Immigration Officer should keep in mind the role of section 58(6) of the Act in protecting the integrity of the immigration system, which relies on applicants providing full and truthful information. This section is to prevent Immigration Officers from spending undue time considering applications that contain false or misleading information, as well as acting as a deterrent to the submission of applications that include incomplete or false information from people who are seeking a visa for which they are ineligible. In respect of these considerations, we note that:

28.1 Mrs Farmer did not submit an application that contained false or misleading information. Her work visa application was fulsome. She also advised INZ of the fact that she had encountered difficulties with her Australian visa, within two working days of becoming aware of those difficulties, and as much as she could before she had received any legal advice. She was only able to provide INZ with further information after she received advice from her Australian lawyers, which is on the same day that INZ wrote to her.

28.2 Further, Mrs Farmer did not provide incomplete or false information to obtain a visa for which she was ineligible. As provided above, Mrs Farmer provided as much information as she knew, and as soon as she knew it.

28.3 Further, Mrs Farmer is not ineligible for a visa. As described below, she is not an excluded person under section 15(1)(f) of the Act.

28.4 Finally, we submit that it would undermine the integrity of the New Zealand immigration system if section 58(6) of the Act was used to decline a work visa application when the applicant was not allowed sufficient time to seek advice on her legal position, prior to having to inform INZ of that same position.

#### **Mrs Farmer has not been “excluded” from Australia**

- 29 Chief Executive of the Ministry of Business, Innovation and Employment v EM [2019] NZHC 1966 (**MBIE v EM**), and the INZ Visa Pak Issue 416, which itself includes reference to MBIE v EM, provide guidance on whether an individual meets with the definition of “excluded” under section 15(1)(f) of the Act.
- 30 Cook J provided in MBIE v EM that *“the concept contemplated by section 15(1)(f) ... is at the prohibition end of the spectrum, when re-entry is not allowed”*. He further provides that there will be cases where it is obvious that a person has been excluded without the need for elaborate analysis, but in other cases the answer will not be so obvious, and deeper analysis is needed. In Mrs Farmer’s case, it is not obvious that she has been excluded, and analysis is needed before an assessment can be made.
- 31 To begin, Mrs Farmer’s lawyers, Gillis Delaney, have provided confirmation that there is no formal exclusion period or limitation on any future visa application by Mrs Farmer. This confirmation is contained with the **uploaded** letter from Gillis Delaney, dated 5 November.
- 32 The fact that the Australian Immigration Minister has purportedly made a decision, which may in fact be invalid, to decline or refuse Mrs Farmer a visa does not, in itself mean that she is prohibited from entering Australia. As provided by Cooke J, the inquiry that section 15(1)(f) contemplates requires an analysis on the meaning and effect of the laws of Australia, and the implications of decisions made under them. As advised by Mrs Farmer’s lawyers, the effect of the Australian Immigration Minister’s decision is not to exclude Mrs Farmer from Australia.
- 33 We acknowledge that Cook J provides in his judgement that section 503 of the Australian Act, which makes provision for people who have been refused entry for a failure of the character test, as being excluded. However, he also comments that this *“appears to be squarely the type of persons that section 15(1)(f) is contemplating – those who have committed serious transgressions or a kind that would lead to someone being deported, and/or not otherwise allowed to enter Australia”*. Therefore, Cooke J has not provided that someone who has been declined entry to Australia by virtue of section 503 will always meet the definition of excluded person, under section 15(1)(f) of the Act – even though they may initially appear to.
- 34 Mrs Farmer has not committed any serious transgressions that would lead her to be deported from Australia. As provided in the Gillis Delaney letter of 1 November, Mrs Farmer has visited and spoken in the United Kingdom, Hungary, France, Israel, South Africa, the Netherlands and Romania within the last six years and has not been deported or generated any public discord on any of those visits. Therefore, it is not immediately obvious that she has committed serious transgressions that would result in deportation from Australia. Also, as provided earlier, a proper analysis of Mrs Farmer’s situation, at least at this stage, would necessitate consideration as to whether the Minister’s decision is likely to be invalid or revoked.
- 35 Further to the above, INZ understands that, if she has been declined a visa under section 501 of the Australian Act then she is *“not entitled to enter or be in Australia for a period of three years”*. However, this is not the case, as advised by Mrs Farmer’s Australian lawyers in its letter of 5 November. Further, even if INZ is in a better position to analyse Australian law than Mrs Farmer’s Australian lawyers, the restriction is only for a period of three years. This, in itself does not mean that Mrs Farmer is not “excluded” from Australia, but in line with Cooke J’s decision in MBIE V EM, it is certainly relevant to an overall assessment of whether Mrs Farmer has been excluded.
- 36 Most importantly, and as provided above, the Australian Immigration Minister’s refusal to grant Mrs Farmer a visa **does not** identify any formal exclusion period or limitation on any future application by Mrs Farmer. Mrs Farmer is not prevented from making a separate application

for a visa to enter Australia. This is confirmed by her Australian lawyers, in their uploaded letter, of 5 November 2024. Referencing comments of Cooke J, if Mrs Farmer had subsequently tried and failed to obtain entry into Australia, she may then be deemed to be excluded. However, Mrs Farmer has not yet had the opportunity to apply for any other visas. Further, she has not had the opportunity to see whether the Australian Minister's decision to refuse to grant her a visa will be revoked or is invalid. Therefore, as of the date of this letter, there is a real prospect that Mrs Farmer can and will enter Australia within the next three years, either by way of a revocation, or through the invalidity of the Australian Minister's purported decision, or by way of a different visa.

37 Therefore, Mrs Farmer does not meet the definition of "excluded" as set out within section 15(1)(f) of the Act, as described in *MBIE v EM* and INZ's Visa Pak Issue 416. This may, of course change, as it can with any visa applicant. However, at the present time, as there is a real prospect that Mrs Farmer will be able to travel to Australia within the next three years, she does not meet the definition of "excluded".

38 If, despite the above arguments, INZ still retains concerns as about Mrs Farmer's eligibility for the grant of a temporary visa, we ask that it delays making any decision until the outcome of her recent letter to the Australian immigration authorities.

#### **Uploaded documents**

39 We have uploaded the documents listed below to assist INZ in its further consideration of Mrs Farmer's application.

39.1 A copy of Gillis Delaney's letter to the National Character Consideration Centre of the Australian immigration authorities, dated 1 November 2024.

39.2 A copy of a further letter/correspondence from Gillis Delaney setting out Mrs Farmer's legal position

#### **Conclusion**

40 Mrs Farmer has not withheld material information from INZ. Within two working days of learning of the Australian Immigration Minister's statements, Mrs Farmer advised INZ that she had encountered difficulties with her Australian visa application, and well before she had received any legal advice on the matter. It is only on 1 November that Mrs Farmer had any formal advice in respect of her position.

41 In any event, it would be inappropriate to decline Mrs Farmer's visa pursuant to section 58(6) of the Act, as to do so would mean that she had been denied the opportunity to obtain legal advice, and therefore knowledge of her position, before INZ made a decision based on her purported knowledge. This in itself would be undermining of New Zealand's immigration system.



42 Mrs Farmer does not fall within the definition of an “excluded” person under section 15(1)(f) of the Act. The INZ Visa Pak Issue 416 and MBIE and EM provide clear guidance that in cases such as this, further analysis is needed before reaching this conclusion. Mrs Farmer is not formally excluded from Australia for any period and there is no limitation on any future visa application.

Yours sincerely

9(2)(a)



**Nicola Tiffen**  
Partner

d +9(2)(a)  
m +9(2)(a)  
nicola.tiffen@duncancotterill.com

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Our Ref: 9(2)(a)  
Your Ref: 9(2)(a)

Level 10  
179 Elizabeth Street  
SYDNEY NSW 2000  
AUSTRALIA

5 November 2024

Telephone: (02) 9394 1144  
Facsimile: (02) 9394 1100  
www.gdlaw.com.au

Duncan Cotterill  
PO Box 5 Christchurch  
Ōtautahi 8140 New Zealand

Dear Colleagues

**Candace Owens FARMER**

We act for Ms Candace Owners Farmer and advise as follows about the status of our client's Australian visa application:

1. Ms Farmer applied for a Temporary Activity (Class GG) visa that was refused pursuant to section 501(3)(a) of the *Migration Act 1958* (Cth), on the ground that "*the Minister reasonably suspects that the person does not pass the character test*".
2. On 1 November 2024, Ms Farmer made representations to the Minister for Home Affairs and Minister for Immigration and Multicultural Affairs as to why she passes the character test in accordance with the procedure set out in the notice of visa refusal to request that the Minister revoke his decision.
3. In the event that the Minister does not revoke his decision on the basis of Ms Farmer's representations, then Ms Farmer will consider further steps, such as applying for judicial review of the Minister's decision.
4. The notice of visa refusal received by Ms Farmer does not identify any formal exclusion period or limitation on any future visa application by Ms Farmer and, so far as we are aware, Ms Farmer is not prevented by reason of the refusal from making a separate application for a visa to enter Australia.

Yours faithfully  
**GILLIS DELANEY LAWYERS**  
9(2)(a)

**Anthony Jefferies**  
Partner  
Email: [ajj@gdlaw.com.au](mailto:ajj@gdlaw.com.au)  
Direct Line: 9(2)(a)



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MIDDLE ENTERTAINERS SPECIFIC PURPOSE VISA ASSESSMENT (WS2/WS3)

Application Number: 9(2)(a)
Triage initiated.
Triaged risk level: 6(c)

IDENTITY INFORMATION	
Satisfied ID confirmed?	6(c)

HEALTH ASSESSMENT (INSTRUCTION A4)	
Significant health issues declared?	No
Total time in New Zealand (from arrival to proposed visa end date):	LESS THAN 6 MONTHS
Applicant meets health requirements?	Meds & CXR not required as total stay less than 6 months.
Satisfied applicant meets health instructions?	Yes - no issues with health or medicals. No warnings or other information to suggest any health issues. I am satisfied applicant is of good health. A4 health requirements met.

CHARACTER (INSTRUCTION A5)	
6(c)	
Significant character issues declared?	No character issues have been declared.
Total time in New Zealand (sum of time spent and proposed visa time):	LESS THAN 6 MONTHS
PC from NZ:	Not required - total time spent in NZ is less than 5 years (A5.5).
PC(s) from country of citizenship:	Not required. Total stay less than 2 years.
PC(s) from third country or country of dual citizenship:	N/A
Satisfied character requirements met?	No. No character issues have been declared, however I am not satisfied that the applicant is of good character. Section 15(1)(f) of the Immigration Act 2009 applies.

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Online sources indicate that the PA was declined a visa to Australia under Section 501 of the Migration Act 1958 (MA58), and that this may have resulted in the PA being an excluded person under Section 503 of the MA58. Based on this information, the PA appears to be captured under Section 15(1)(f) of the Immigration Act 2009. As the PA did not inform INZ of this significant change in circumstances, PA may also be captured under Section 58(3) Immigration Act 2009.

PPI sent to PA on 01/11/2024 raising concern that they may be captured under Section 58(3) and Section 15(1)(f) of the Immigration Act 2009.

Response to PPI received on 5/11/2024 and reviewed in full. Response includes two letters both from lawyers: one from PA's NZ Lawyer and one from PA's Aus lawyer.

Subsequent RFIs sent on 06/11/2024 and 07/11/2024. RFI responses received 06/11/2024 and 07/11/2024 and reviewed in full.

In making this decision I have considered the arguments made by PA's lawyers (in New Zealand and Australia), internal legal advice and advice from the Risk Assessment Team.

The applicant's Australian visa application was declined by the Australian Minister of Immigration under s501(6)(d)(iv) of the MA58. People declined under s501 of the MA58 are referenced in s503 as 'excluded persons'.

I have also considered the High Court decision of *EM* which is referenced by the PA's lawyers and provides guidance of the application of section 15(1)(f) of the Immigration Act. In particular, I have noted Cooke J's comments that people who have character issues that fall within section 503 of the MA58 are 'squarely the type of persons that s15(1)(f) is contemplating'.

After reviewing all information available following the PPI, including copies of the decision made by Australian Minister of Immigration under section 501 of the Migration Act 1958, it has been assessed that the PA is subject to section 15(1)(f) of the Immigration Act. No visa may be granted to PA unless a special direction is granted per section 17(1)(a) of the Immigration Act. A special direction has not been considered on this occasion.

I have also noted the PA's request that should we consider her to be an excluded person having reviewed her submissions, that we hold off on making a decision on the application. I am not prepared to leave the application undecided whilst the PA pursues steps in Australia to overturn their disqualifying visa decision of the Australian Minister of Immigration. She is able to make a further application for a visa should her circumstances change.

#### **SPECIFIC PURPOSE WS3.1/ WS2.1.1(i)**

Satisfied that the applicant will be in New Zealand to complete a specific purpose or event described at WS2.1.1 (i)? Yes. PA is an entertainment industry sector working intending on working on a private or public performance in NZ/to work on a film or video production in NZ.

Reason for and dates of travel:

Client is a part of Candace Owens Live! and will be performing at The Trusts Arena between 13/11/2024 – 15/11/2024.

UPDATED ASSESSMENT NOTE:

Online sources indicate that the Candace Owens Live! Event may have been postponed.

RFI sent on 06/11/2024 requesting comment on online reporting.

RFI response received 06/11/2024 advising that new date for the event is 28 February 2025.

Satisfied client is suitably qualified to undertake this specific purpose as required by WS2.1(a)(iv)? Yes  
Evidence provided:

- Online presence (website provided) YouTube Channel, social media platforms

Has the employer completed an ESF and provided relevant evidence as required by WS3.1(a)? Yes, duly completed INZ 1187 provided. Required evidence provided also. WS3.1(a) met.

Has the employer provided evidence required at WS3.1(b), including a guarantee of accommodation and repatriation for each applicant? Yes, employer has provided required information set out at WS3.1(b).

Has a referral to the relevant New Zealand Performers' Union or Professional Association been undertaken? Not required. The engagement is for 14 days or less. (WS3.5(a) met).

Accreditation number (if applicable): N/A

#### BONA FIDE (E5)

Satisfied applicant(s) is bona fide: Yes. I am satisfied that the applicant genuinely intend to temporarily stay in NZ for a lawful purpose, and not likely to remain in NZ unlawfully, breach the conditions of any visa granted, or will be unable to leave or be deported from NZ.

#### AMS ALERTS/WARNINGS

AMS Alerts/Warnings present: Yes

Employer – N/A

Client – Border alert pertaining to the client requiring a visa as there is publicly available information that client is coming here to be part of a production and so should not be allowed entry with an NZTA unless travelling with an INZ approved promoter. No concerns as the PA has applied for the correct visa to facilitate travel.

Information warning – internal advice sought and received.

Advisor – N/A

#### RISK (PROCESS)

Risk identified: Yes. Risk and verification details as below.

6(c)

Satisfied risk acceptable? Yes

Please see above section.

#### OUTSTANDING ACTION REQUIRED:

N/A

#### EXCEPTION TO INSTRUCTIONS

Exception to instruction considered? Yes

Exception to instructions granted? No – PA is subject to section 15(1)(f) of the Immigration Act and therefore no visa may be granted to PA unless a special direction is granted per section 17(1)(a) of the Immigration Act.

#### DECISION

**Note:** re-initiate triage prior to finalising decision in AMS

Decline

PA is subject to section 15(1)(f) of the Immigration Act and therefore no visa may be granted to PA unless a special direction is granted per section 17(1)(a) of the Immigration Act. A special direction has not been considered on this occasion and this visa has been refused.

Decision made by Teck Aitray, Director Visa.

19/11/2024.





**Application number:** 9(2)(a)

**Client number:** 9(2)(a)

19 November 2024

Nicola Tiffen  
Duncan Cotterill  
Duncan Cotterill Plaza ,148 Victoria Street  
Christchurch Central  
Christchurch 8013  
New Zealand  
NZBN: 9429033144375

Dear Candace Farmer

**Application for a work visa for:**

**Applicant:**

Candace Farmer

**Date of birth:**

29 April 1989

Thank you for your response dated 05 November 2024 providing additional information and comments about the concerns we have regarding your character.

**Our decision on your request**

We are declining your application as you are an 'excluded person' under section 15(1)(f) of the Immigration Act 2009 (the Act) as you have been excluded from Australia.

**Our assessment of your case**

We have completed a final assessment of your visa application, taking into account the information and comments you have provided.

We acknowledge receipt of your response to our concerns on 05 November 2024. Thank you for providing the additional information relating to the decline of your Australian Temporary Activity Visa. From that information we note that your visa was refused pursuant to section 501(3)(a) of the Migration Act 1958 (MA 58), on the grounds that, 'the Minister reasonably suspects that the person does not pass the character test' and 'the Minister is satisfied that the refusal is in the national interest.'

The particular character test which the Minister found you did not meet is section 501(6)(d)(iv) of the MA58:

***Refusal or cancellation of visa on character grounds***

***Character test***

(6) For the purposes of this section, a person does not pass the *character test* if:

... (d) in the event that the person were allowed to enter or remain in Australia, there is a risk that the person would: ...

(iv) incite discord in the Australian community or in a segment of that community.

The refusal of your Australian Temporary Activity (Class GG) visa was pursuant to section 501(3)(a) which is specifically referenced in section 503 of the MA 58. This section says:

**Exclusion of certain persons from Australia**

(1) A person in relation to whom a decision has been made:

(a) under section [200](#) because of circumstances specified in section [201](#); or

(b) under section [501](#), [501A](#), [501B](#) or [501BA](#); or

(c) to refuse under section [65](#) to grant a protection visa relying on [subsection 5H\(2\)](#) or [36\(1C\)](#);

is not entitled to enter Australia or to be in Australia at any time during the period determined under the regulations.

We have considered the case law cited by you and believe it confirms that you are an 'excluded person' for the purpose of the Act. In particular, in the EM decision, Cooke J notes, at para [39]:

[39] Under Australian law there is a clear category of person that is expressly treated as an excluded person under Australian law. Under s 503 of the Migration Act 1958, certain persons are excluded from Australia. They include people who have been deported for having committed criminal offences, or have been refused entry for a failure of the character test provided for by the legislation. This appears to be squarely the type of persons that s 15(1)(f) is contemplating — those who have committed serious transgressions of a kind that would lead to someone being deported, and/or not otherwise allowed to re-enter Australia.

As noted by Cooke J, people to whom section 503 of the MA58 applies are the type of people that section 15(1)(f) of the Act is contemplating:

(1) No visa or entry permission may be granted, and no visa waiver may apply, to any person—

*(f) who has, at any time, been removed, excluded, or deported from another country.*

As you fall under section 15(1)(f) of the Act, your application for a New Zealand visa has been declined.

We note your request that should we consider you to be an excluded person having reviewed your submissions, that we hold off making a decision on your application. We are not prepared to leave your application undecided whilst you pursue steps to overturn the decision of the Australian Minister of Immigration. You are able to make a further visa application should your circumstances change.

**Contact us**

If you have any questions, you can:

- call me on 9(2)(a)
- email me at [jock.gilray@mbie.govt.nz](mailto:jock.gilray@mbie.govt.nz)
- call our Immigration Contact Centre on 0508 55 88 55 or 09 914 4100, or for those outside of New Zealand +64 9 914 4100, or
- find answers to frequently asked questions or lodge an email enquiry online at [www.immigration.govt.nz/help](http://www.immigration.govt.nz/help)

You will need to tell us your application and client numbers (see the top of this letter). Please be ready to quote them when you phone.

Yours sincerely

Jock Gilray  
Director Visa  
Immigration New Zealand

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## RISK & VERIFICATION NETWORK

# Assessment – Candace OWENS

Name	Candace OWENS FARMER			CN	9(2)(a)
DOB	29 April 1989	Citizenship	United States	RA	9(2)(g)(ii)
AN	9(2)(a)	Visa type	SPWV – Entertainers	QAP	9(2)(g)(ii)
6(c)	9(2)(a), 6(c)	Biometrics	6(c), 9(2)(a)		

Date: 14 November 2024

### Background

1. Candace OWENS FARMER (OWENS) is a 35-year-old US citizen applying for a SPWV – Entertainers to travel to New Zealand as part of her Australia and New Zealand Speaking Tour. OWENS originally intended to travel to New Zealand in November 2024, however this travel has since been postponed to February 2025. Media reporting<sup>1</sup> and documents subsequently provided by OWENS have confirmed that her Australian Temporary Activity (Class GG) visa was refused pursuant to section 501(3)(a) of the Migration Act 1958 (MA 58), on the grounds that, 'the Minister reasonably suspects that the person does not pass the character test' and 'the Minister is satisfied that the refusal is in the national interest.' (See Appendix A).

2. The particular character test which OWENS did not meet is defined by section 501(6) of the MA 58. Specifically, section 501(6)(d)(iv), which provides that a person does not pass the character test if;

*... (d) in the event that the person were allowed to enter or remain in Australia, there is a risk that the person would: ...*

*(iv) incite discord in the Australian community or in a segment of that community.*

3. OWENS' representatives have advised Immigration New Zealand (INZ) that they are challenging the Australian Immigration Minister's decision and have provided a letter to the National Character Consideration Centre seeking that the Minister revokes his decision to decline her visa. If this is unsuccessful, they have indicated that they intend to judicially review the Minister's decision. There is no indication how quickly matters in Australia will be resolved.

<sup>1</sup> RNZ, 30 October 2024, *Government urged to deny controversial US commentator Candace Owens entry into NZ*, <https://www.rnz.co.nz/news/political/532271/government-urged-to-deny-controversial-us-commentator-candace-owens-entry-into-nz>. Retrieved 13 November 2024.

## Assessment

### Scope of Legislation - Section 15(1)(f) of the Immigration Act 2009

4. Section 15(1)(f) of the Immigration Act 2009 (the Act) provides that:

- (1) No visa or entry permission may be granted, and no visa waiver may apply, to any person –
- (f) Who has, at any time, been removed, excluded, or deported from another country.

### OWENS is assessed to be excluded per Section 15(1)(f) of the Act

5. Section 15(1)(f) was given significant consideration in *Chief Executive of the Ministry of Business, Innovation and Employment v EM* [2019] NZHC 1966, a case considering the scope and effect of s 15(1)(f) in relation to whether a person was excluded from Australia. Cooke J set out the test for whether a person is excluded; he found that “[t]o be excluded from another country contemplates a prohibition on re-entry into that country. If a person has committed some transgression that adversely affects their rights to re-enter a foreign country but does not remove those rights, they will not have been excluded”;<sup>2</sup> in general, the test set out by Cooke J held that “a person is only an excluded person if the significant transgressions are committed”, that exclusion has “an absolute connotation” and must “prohibit, rather than simply restrict entry”.<sup>3</sup> In relation to the case in *EM*, Cooke J held that “the fact that the restriction was only for a temporary period of time does not, by itself, mean that EM was not excluded. It will be relevant to the overall assessment. But if there was a total prohibition on him re-entering Australia for that period of time, it seems to me that he would have been excluded from Australia.”<sup>4</sup>

6. In the *EM* decision, Cooke J notes, at para [39]:

[39] Under Australian law there is a clear category of person that is expressly treated as an excluded person under Australian law. Under s 503 of the Migration Act 1958, certain persons are excluded from Australia. They include people who have been deported for having committed criminal offences, or have been refused entry for a failure of the character test provided for by the legislation. This appears to be squarely the type of persons that s 15(1)(f) is contemplating — those who have committed serious transgressions of a kind that would lead to someone being deported, and/or not otherwise allowed to re-enter Australia.

7. The test set out by Cooke J thus requires a serious transgression, which has resulted in a total prohibition on entry to a country, whether for a limited or indefinite period of time. The refusal to grant OWENS an Australian Temporary Activity (Class GG) visa, pursuant to section 501(3)(a) of the MA 58 categorises OWENS refusal as directly relevant to section 503(1)(b) of the MA 58. This section provides that, ‘A person in relation to whom a decision has been made ... under section 501 ... is not entitled to enter Australia or to be in Australia at any time during the period

<sup>2</sup> *EM*, at [36].

<sup>3</sup> *EM*, at [27-29].

<sup>4</sup> *EM*, at [42].

*determined under the regulations*'. The language used in section 501 is sufficient to confirm that OWENS is subject to a total prohibition on entry into Australia for up to three years from the time of decision.<sup>5</sup> Applying EM, "this appears to be squarely the type of persons that s 15(1)(f) is contemplating".

8. Further, the specific grounds of OWENS refusal, namely, the risk that once in Australia she would incite discord in the Australian community or in a segment of that community, is assessed to meet the threshold of a 'significant or serious transgression'.
9. Consequently, as OWENS has been excluded from Australia for a period of up to three years, she is a person to whom section 15(1)(f) applies and therefore no visa may be granted to OWENS unless a special direction is granted per section 17(1)(a) of the Act.
10. Should OWENS' be successful in her appeal against the refusal of her Australian Temporary Activity (Class GG) visa, she would no longer be considered an 'excluded person' and would therefore be eligible to reapply for a SPWV – Entertainers.

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<sup>5</sup> Australian Government Department of Home Affairs, 23 September 2024, *Status Resolution Service, Re-entry ban*, <https://immi.homeaffairs.gov.au/what-we-do/status-resolution-service/re-entry-ban>. Retrieved 13 November 2024.



## APPENDIX A – Associated Documents

				
Response to INZ letter of 1 November	Letters from Gillis Delaney	Decision record Index f relevant material	RE_ Application Candace (refusal)	s501(3) Notice of

## APPENDIX B – Handling Instructions

### Document Control

Version	Date	Name and Role	Description
1.0	13 November 2024	9(2)(g)(ii)	Author
1.1	13 November 2024	9(2)(g)(ii)	Review
1.2	14 November 2024	Fraser Richards, Special Counsel	Review
1.3	14 November 2024	Jock Gilray, Director – Visa	Approval

### Security procedures

This document must be handled, stored and transferred in accordance with the security procedures applicable to its security classification as detailed on the relevant [MBIE Te Taura page](#).

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**From:** [Nicole Campbell](#)  
**To:** [Hannah Clow](#); [Jonathan Ayling](#)  
**Cc:** [Chris Penk \(MIN\)](#)  
**Subject:** FW: Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION  
**Attachments:** [241129 CANDACE OWENS FARMER REQUEST FOR SPECIAL DIRECTION.pdf](#)  
[\[2019\] NZHC 1966.pdf](#)  
[Letter to Minister of Immigration 1 November 2024 \(S2612869xD43CF\).PDF](#)  
[FW Candace Owens Appeal letter to Australian Immigration Minister.msg](#)

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*In correspondence please quote:*

Min No: 9(2)(a)

Client No: 9(2)(a)

5 December 2024

Jonathan Ayling and Hannah Clow  
Free Speech Union  
[hannah@fsu.nz](mailto:hannah@fsu.nz)  
[jonathan@fsu.nz](mailto:jonathan@fsu.nz)

Dear Jonathan and Hannah,

On behalf of Hon Chris Penk, Associate Minister of Immigration, I acknowledge receipt of your email dated 29 November 2024, regarding a request for ministerial intervention for Candace Farmer, and your subsequent email of 5 December 2024 providing your authority to act on her behalf.

Your request has been accepted and the Minister will respond to you as soon as possible. Please be assured that we are processing this request on an urgent basis.

On a case by case basis, this Office may make, or request Immigration New Zealand to make, inquiries of third parties in order for a decision to be made. Inquiries may be made in respect of any individual included in a request for ministerial intervention, or any individual considered to be acting as a sponsor or supporting partner for that request, including New Zealand residents or citizens. If there is any objection to this, further written submissions need to be provided to this Office within five working days of the date of this letter, explaining the concerns.

Kind Regards,

-



**Nicole Campbell**

Private Secretary – Associate Immigration | Office of Hon Chris Penk  
Minister for Building and Construction  
Minister for Land Information  
Minister for Veterans  
Associate Minister of Defence  
Associate Minister of Immigration

Email: [Nicole.Campbell@parliament.govt.nz](mailto:Nicole.Campbell@parliament.govt.nz)

Website: [www.Beehive.govt.nz](http://www.Beehive.govt.nz)

Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

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**From:** Hannah Clow <[hannah@fsu.nz](mailto:hannah@fsu.nz)>

**Sent:** Friday, 29 November 2024 4:54 PM

**To:** Chris Penk <[REDACTED]>

**Cc:** Jonathan Ayling <[REDACTED]>

**Subject:** Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION

Good afternoon,

Please see **attached** correspondence from Jonathan Ayling, Chief Executive of the Free Speech Union requesting special direction to grant Ms Farmer an Entertainers Work Visa.

We await your response.

Kind regards,

**Hannah Clow**

Senior In-house Counsel | Free Speech Union

Mob [REDACTED] Email: [\[REDACTED\]](mailto:[REDACTED])

Free Speech Union (New Zealand) Incorporated | PO Box 10512, The Terrace, Wellington 6143 [www.fsu.nz](http://www.fsu.nz)

The Free Speech Union is a registered trade union under the Employment Relations Act 2000. If you would like to stand with us to protect and promote free speech, [click here to receive our updates](#)

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Duplicate of pages 35 - 44

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**From:** [Jonathan Ayling](#)  
**To:** [Nicole Campbell \(Parliament\)](#); [Chris Penk \(MIN\)](#); [Hannah Clow](#)  
**Subject:** FW: Candace Owens: Appeal letter to Australian Immigration Minister  
**Date:** Thursday, 5 December 2024 2:31:08 pm  
**Attachments:** [241202 CANDACE OWENS FARMER AUTHORITY TO ACTI581.pdf](#)

---

Hi Nicole,

As requested, please see attached an authority to act form signed by Ms. Farmer.

Would you please provide an indication as to when we should expect a decision from the Minister?

Regards,

**Jonathan Ayling**

Chief Executive | Free Speech Union

Mob **s9(2)(a)** | Email [xxxxxxx@xxx.xx](#)

Free Speech Union (New Zealand) Incorporated | PO Box 10423, The Terrace, Wellington 6143 | [www.fsu.nz](http://www.fsu.nz)

The Free Speech Union is a registered trade union under the Employment Relations Act 2000. If you would like to stand with us to protect and promote free speech [click here to receive our updates](#).

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## AUTHORITY TO ACT

To: Hon Chris Penk  
Associate Minister of Immigration  
[C.Penk@ministers.govt.nz](mailto:C.Penk@ministers.govt.nz)

I, **CANDACE OWENS FARMER**, give authority to the Free Speech Union (New Zealand) Incorporated to act on my behalf as required in relation to appealing the decision of Immigration New Zealand to decline my application for an Entertainers Work Visa based on section 15(1)(f) of the Immigration Act 2009.

A handwritten signature in cursive script, reading "Candace Owens Farmer".

**CANDACE OWENS FARMER**

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**From:** [Jonathan Ayling](#)  
**To:** [Nicole Campbell \(Parliament\)](#); [Hannah Clow](#)  
**Cc:** [Chris Penk](#)  
**Subject:** Re: Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION  
**Date:** Monday, 2 December 2024 2:25:18 pm

---

Thanks Nicole.

Just so you're aware, we've gone to Ms Farmer's Australian representatives, who have passed the Authority to Act form on to the US.

We hope to come back to you as soon as possible.

Regards,

**Jonathan Ayling**

Chief Executive | Free Speech Union

Mob **s9(2)(a)** | Email [xxxxxxxx@xxx.xx](#)

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---

**From:** Nicole Campbell <xxxxxx.xxxxxxxx@xxxxxxxxxx.xxxx.xx>

**Date:** Monday, 2 December 2024 at 2:22 PM

**To:** Hannah Clow <xxxxxx@xxx.xx>, Jonathan Ayling <xxxxxxxx@xxx.xx>

**Cc:** Chris Penk <xxxxx.xxxx@xxxxxxxxxx.xxxx.xx>

**Subject:** RE: Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION

Hi Hannah,

Thanks for your email, we appreciate your prompt response.

For timeliness purposes we have got this request moving along in the background being prepared for Minister Penk's consideration. If you could please provide the authority to act as soon as possible that would be greatly appreciated.

Kind Regards,



**Nicole Campbell**

Private Secretary – Associate Immigration | Office of Hon Chris Penk  
Minister for Building and Construction  
Minister for Land Information  
Minister for Veterans  
Associate Minister of Defence  
Associate Minister of Immigration

Email: [Nicole.Campbell@parliament.govt.nz](mailto:Nicole.Campbell@parliament.govt.nz)

Website: [www.Beehive.govt.nz](http://www.Beehive.govt.nz)

Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

**From:** Hannah Clow <@>  
**Sent:** Monday, 2 December 2024 1:18 PM  
**To:** Nicole Campbell <@>; Jonathan Ayling <@>  
**Cc:** Chris Penk <@>  
**Subject:** RE: Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION

Hi Nicole,

Thanks for your email. We've just sent an authority for Ms Farmer to sign and expect this returned to us soon. In the meantime, I **attach** our email correspondence with her team in which they approve us acting on this.

Kind regards,

**Hannah Clow**  
Senior In-house Counsel | Free Speech Union  
Mob S9(2)(a) Email: [xxxxxx@xxx.xx](mailto:xxxxxx@xxx.xx)

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---

**From:** Nicole Campbell <@>  
**Sent:** Monday, 2 December 2024 11:10 am  
**To:** Hannah Clow <@>; Jonathan Ayling <@>  
**Cc:** Chris Penk <@>  
**Subject:** FW: Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION

Kia ora Hannah and Jonathan,

On behalf of Hon Chris Penk, Associate Minister of Immigration, thank you for your email concerning Ms Farmer.

We acknowledge that your letter attached states that you act for Candace Owens Farmer, however we have not received evidence of your authority to act. For us to progress this request can we please ask for a letter signed by Ms Farmer stating that you hold the authority to act on her behalf in regards to immigration matters.

We understand that this is a time sensitive issue, therefore once the authority to act is provided we will be progressing this request through with urgency.

Please do reach out if you have any questions or concerns.

Kind Regards,

**Nicole Campbell**  
Private Secretary – Associate Immigration | Office of Hon Chris Penk  
Minister for Building and Construction  
Minister for Land Information  
Minister for Veterans



Associate Minister of Defence  
Associate Minister of Immigration

Email: [Nicole.Campbell@parliament.govt.nz](mailto:Nicole.Campbell@parliament.govt.nz)  
Website: [www.Beehive.govt.nz](http://www.Beehive.govt.nz)  
Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

---

**From:** Hannah Clow <[hannah.clow@x@xx](mailto:hannah.clow@x@xx)>  
**Sent:** Friday, 29 November 2024 4:54 PM  
**To:** Chris Penk <[chris.penk@x@xx](mailto:chris.penk@x@xx)>  
**Cc:** Jonathan Ayling <[jayling@x@xx](mailto:jayling@x@xx)>  
**Subject:** Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION

Good afternoon,

Please see **attached** correspondence from Jonathan Ayling, Chief Executive of the Free Speech Union requesting special direction to grant Ms Farmer an Entertainers Work Visa.

We await your response.

Kind regards,

**Hannah Clow**  
Senior In-house Counsel | Free Speech Union  
Mob s9(2)(a) Email: [xxxxxx@xxx.xx](mailto:xxxxxx@xxx.xx)

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**From:** [Hannah Clow](#)  
**To:** [Nicole Campbell \(Parliament\)](#); [Jonathan Ayling](#)  
**Cc:** [Chris Penk](#)  
**Subject:** RE: Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION  
**Date:** Monday, 2 December 2024 1:18:23 pm  
**Attachments:** [Re Candace Owens Appeal letter to Australian Immigration Minister.msg](#)

---

Hi Nicole,

Thanks for your email. We've just sent an authority for Ms Farmer to sign and expect this returned to us soon. In the meantime, I **attach** our email correspondence with her team in which they approve us acting on this.

Kind regards,

**Hannah Clow**

Senior In-house Counsel | Free Speech Union  
Mob s9(2)(a) Email: [xxxxxx@xxx.xx](mailto:xxxxxx@xxx.xx)

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---

**From:** Nicole Campbell <[xx@xx](mailto:xx@xx)>  
**Sent:** Monday, 2 December 2024 11:10 am  
**To:** Hannah Clow <[xx@xx](mailto:xx@xx)>; Jonathan Ayling <[xx@xx](mailto:xx@xx)>  
**Cc:** Chris Penk <[xx@xx](mailto:xx@xx)>  
**Subject:** FW: Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION

Kia ora Hannah and Jonathan,

On behalf of Hon Chris Penk, Associate Minister of Immigration, thank you for your email concerning Ms Farmer.

We acknowledge that your letter attached states that you act for Candace Owens Farmer, however we have not received evidence of your authority to act. For us to progress this request can we please ask for a letter signed by Ms Farmer stating that you hold the authority to act on her behalf in regards to immigration matters.

We understand that this is a time sensitive issue, therefore once the authority to act is provided we will be progressing this request through with urgency.

Please do reach out if you have any questions or concerns.

Kind Regards,

**Nicole Campbell**

Private Secretary – Associate Immigration | Office of Hon Chris Penk  
Minister for Building and Construction  
Minister for Land Information  
Minister for Veterans  
Associate Minister of Defence  
Associate Minister of Immigration



Email: [Nicole.Campbell@parliament.govt.nz](mailto:Nicole.Campbell@parliament.govt.nz)  
Website: [www.Beehive.govt.nz](http://www.Beehive.govt.nz)  
Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

---

**From:** Hannah Clow <[x@xx](mailto:x@xx)>  
**Sent:** Friday, 29 November 2024 4:54 PM  
**To:** Chris Penk <[x@xx](mailto:x@xx)>  
**Cc:** Jonathan Ayling <[x@xx](mailto:x@xx)>  
**Subject:** Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION

Good afternoon,

Please see **attached** correspondence from Jonathan Ayling, Chief Executive of the Free Speech Union requesting special direction to grant Ms Farmer an Entertainers Work Visa.

We await your response.

Kind regards,

**Hannah Clow**  
Senior In-house Counsel | Free Speech Union  
Mob s9(2)(a) Email: [xxxxxx@xxx.xx](mailto:xxxxxx@xxx.xx)

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---

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**From:** [Jonathan Ayling](#)  
**To:** [Joel Jammal](#); [Hannah Clow](#)  
**Subject:** Re: Candace Owens: Appeal letter to Australian Immigration Minister  
**Date:** Friday, 29 November 2024 2:07:40 pm

---

Great- thanks for this, Joel.

Hannah, our Senior In-House Counsel will provide this to you in a few minutes.

**Jonathan Ayling**

Chief Executive | Free Speech Union  
Mob s9(2)(a) | Email [xxxxxxxx@xxx.xx](#)

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---

**From:** Joel Jammal <xxxx@xxxxxxxxxxxxxxx.xxx>

**Date:** Friday, 29 November 2024 at 1:58 PM

**To:** Jonathan Ayling <xxxxxxxx@xxx.xx>

**Subject:** Re: Candace Owens: Appeal letter to Australian Immigration Minister

Hi Jonathan,

The tour director has given me the green light for this appeal to go ahead. We just need to see your draft first.

Warm regards,

Joel Jammal

Sent from [Outlook for iOS](#)

---

**From:** Jonathan Ayling <@xx>

**Sent:** Friday, November 29, 2024 11:15 am

**To:** Joel Jammal <@xx>

**Subject:** Re: Candace Owens: Appeal letter to Australian Immigration Minister

Thanks a lot for this, Joel. Our legal team will have draft filings for an appeal to the Associate Immigration Minister shortly. We'll only need your permission to lodge it. Would be great to be able to do this afternoon, but understand if there's a bit of a delay. Do you expect your team will be happy with us filing this?

**Jonathan Ayling**

Chief Executive | Free Speech Union  
Mob s9(2)(a) | Email xxxxxxxx@xxx.xx

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---

**From:** Joel Jammal <xxxx@xxxxxxxxxxxxxxx.xxx>

**Date:** Thursday, 28 November 2024 at 5:09 PM

**To:** Jonathan Ayling <xxxxxxxx@xxx.xx>

**Subject:** Candace Owens: Appeal letter to Australian Immigration Minister

Hi Jonathan,

Please see our appeal letter we sent to Tony Bourke before going legal.

The accusations were shaky to say the least!

You're welcome to share with ministers/former ministers concerned in helping with this matter.

Warm regards,

Joel Jammal

xxxx@xxxxxxxxxxxxxxx.xxx

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**From:** [Nicole Campbell](#)  
**To:** [xxxxxx@xxx.xx](#); [xxxxxxx@xxx.xx](#)  
**Cc:** [Chris Penk](#)  
**Subject:** FW: Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION  
**Attachments:** [241129 CANDACE OWENS FARMER REQUEST FOR SPECIAL DIRECTION.pdf](#)  
[\[2019\] NZHC 1966.pdf](#)  
[Letter to Minister of Immigration 1 November 2024 \(S2612869xD43CF\).PDF](#)

---

Kia ora Hannah and Jonathan,

On behalf of Hon Chris Penk, Associate Minister of Immigration, thank you for your email concerning Ms Farmer.

We acknowledge that your letter attached states that you act for Candace Owens Farmer, however we have not received evidence of your authority to act. For us to progress this request can we please ask for a letter signed by Ms Farmer stating that you hold the authority to act on her behalf in regards to immigration matters.

We understand that this is a time sensitive issue, therefore once the authority to act is provided we will be progressing this request through with urgency.

Please do reach out if you have any questions or concerns.

Kind Regards,



**Nicole Campbell**

**Private Secretary – Associate Immigration** | Office of Hon Chris Penk  
Minister for Building and Construction  
Minister for Land Information  
Minister for Veterans  
Associate Minister of Defence  
Associate Minister of Immigration

Email: [Nicole.Campbell@parliament.govt.nz](mailto:Nicole.Campbell@parliament.govt.nz)

Website: [www.Beehive.govt.nz](http://www.Beehive.govt.nz)

Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

---

**From:** Hannah Clow <[@xx](#)>  
**Sent:** Friday, 29 November 2024 4:54 PM  
**To:** Chris Penk <[@xxx](#)>  
**Cc:** Jonathan Ayling <[@xx](#)>  
**Subject:** Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION

Good afternoon,

Please see **attached** correspondence from Jonathan Ayling, Chief Executive of the Free Speech Union requesting special direction to grant Ms Farmer an Entertainers Work Visa.

We await your response.

Kind regards,

**Hannah Clow**  
Senior In-house Counsel | Free Speech Union



Mob **s9(2)(a)** Email: [xxxxxx@xxx.xx](mailto:xxxxxx@xxx.xx)

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Duplicate of pages 33 and 34

Released under the Official Information Act 1982

Duplicate of pages 35 - 44

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Out of scope

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**From:** Hannah Clow <@xx>

**Sent:** Monday, 2 December 2024 1:18 PM

**To:** Nicole Campbell <@xxx>; Jonathan Ayling  
<@xx>

**Cc:** Chris Penk <@xxx>

**Subject:** RE: Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION

Hi Nicole,

Thanks for your email. We've just sent an authority for Ms Farmer to sign and expect this returned to us soon. In the meantime, I **attach** our email correspondence with her team in which they approve us acting on this.

Kind regards,

**Hannah Clow**

Senior In-house Counsel | Free Speech Union

Mob S9(2)(a) Email: [xxxxxx@xxx.xx](mailto:xxxxxx@xxx.xx)

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---

**From:** Nicole Campbell <[xc@xxx](mailto:xc@xxx)>  
**Sent:** Monday, 2 December 2024 11:10 am  
**To:** Hannah Clow <[@xx](mailto:@xx)>; Jonathan Ayling <[@xx](mailto:@xx)>  
**Cc:** Chris Penk <[xc@xxx](mailto:xc@xxx)>  
**Subject:** FW: Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION

Kia ora Hannah and Jonathan,

On behalf of Hon Chris Penk, Associate Minister of Immigration, thank you for your email concerning Ms Farmer.

We acknowledge that your letter attached states that you act for Candace Owens Farmer, however we have not received evidence of your authority to act. For us to progress this request can we please ask for a letter signed by Ms Farmer stating that you hold the authority to act on her behalf in regards to immigration matters.

We understand that this is a time sensitive issue, therefore once the authority to act is provided we will be progressing this request through with urgency.

Please do reach out if you have any questions or concerns.

Kind Regards,



**Nicole Campbell**

Private Secretary – Associate Immigration | Office of Hon Chris Penk  
Minister for Building and Construction  
Minister for Land Information  
Minister for Veterans  
Associate Minister of Defence  
Associate Minister of Immigration

Email: [Nicole.Campbell@parliament.govt.nz](mailto:Nicole.Campbell@parliament.govt.nz)

Website: [www.Beehive.govt.nz](http://www.Beehive.govt.nz)

Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

---

**From:** Hannah Clow <[@xx](mailto:@xx)>  
**Sent:** Friday, 29 November 2024 4:54 PM  
**To:** Chris Penk <[xc@xxx](mailto:xc@xxx)>  
**Cc:** Jonathan Ayling <[@xx](mailto:@xx)>  
**Subject:** Free Speech Union - CANDACE OWENS FARMER | REQUEST FOR SPECIAL DIRECTION

Good afternoon,

Please see **attached** correspondence from Jonathan Ayling, Chief Executive of the Free Speech Union requesting special direction to grant Ms Farmer an Entertainers Work Visa.

We await your response.

Kind regards,

**Hannah Clow**

Senior In-house Counsel | Free Speech Union

Mob s9(2)(a) Email: [xxxxxx@xxx.xx](mailto:xxxxxx@xxx.xx)

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Duplicate of pages 47 and 48

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**From:** [Nicole Campbell](#)  
**To:** [Hannah Clow](#); [Jonathan Ayling](#)  
**Subject:** Immigration Ministerial intervention request - Candace Owens Farmer  
**Date:** Thursday, 12 December 2024 2:00:33 pm  
**Attachments:** [1793\\_001.pdf](#)

---

Kia ora Jonathan & Hannah,

Please see the attached letter for the outcome of the ministerial intervention request concerning Candace Owens Farmer.

Kind Regards,



**Nicole Campbell**

**Private Secretary – Associate Immigration** | Office of Hon Chris Penk  
Minister for Building and Construction  
Minister for Land Information  
Minister for Veterans  
Associate Minister of Defence  
Associate Minister of Immigration

Email: [Nicole.Campbell@parliament.govt.nz](mailto:Nicole.Campbell@parliament.govt.nz)

Website: [www.Beehive.govt.nz](http://www.Beehive.govt.nz)

Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

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# Hon Chris Penk

Minister for Building and Construction  
Minister for Land Information  
Minister for Veterans  
Associate Minister of Defence  
Associate Minister of Immigration



12 DEC 2024

Jonathan Ayling and Hannah Clow  
Free Speech Union New Zealand  
[hannah@fsu.nz](mailto:hannah@fsu.nz)  
[jonathan@fsu.nz](mailto:jonathan@fsu.nz)

AN: 9(2)(a)  
MIN:

Dear Jonathan and Hannah,

Thank you for your email of 2 December 2024, concerning Candace Owens Farmer.

I have carefully considered your representations. I have decided to grant Ms Farmer a special direction under section 17 of the Immigration Act 2009 for her three-year exclusion from Australia following the refusal of her Australian visa on 25 October 2024. I have also decided to grant Ms Farmer a work visa, subject to her meeting the requirements of immigration instructions at *WS Specific Purpose or Event Instructions*. This includes health and character requirements, including security checks if required by Immigration New Zealand (INZ). The currency and conditions of the work visa will be determined by INZ in accordance with immigration instructions.

Ms Farmer should apply for this visa from INZ within two months of the date of this letter. A copy of this letter must be included with the application. She must provide all the forms, documents and evidence required for an application under *WS Specific Purpose of Event instructions*. The fee and applicable levies for a work visa application will be payable.

INZ may undertake what investigations it deems necessary to ensure requirements set out above are met. If INZ has any concern that these requirements are not met, Ms Farmer will be given an opportunity to comment. If INZ remains unsatisfied, the application may be declined.

I have made this decision based on the information provided to me. INZ should be advised of any further information or material change in circumstances that may be relevant to this decision, and that information may be referred to me so I can consider its effect on my decision.

Finally, please note that my exercise of discretion in this matter does not indicate that I consider INZ incorrect to have made its original decision.

Yours sincerely,

Hon Chris Penk  
Associate Minister of Immigration

**From:** 9(2)(g)(ii)  
**To:** [Nicole Campbell \(Parliament\)](#)  
**Subject:** MIN 24/1883 - FARMER Candace Owens 9(2)(a) - letters [IN-CONFIDENCE: RELEASE-EXTERNAL]  
**Date:** Wednesday, 11 December 2024 4:00:06 pm  
**Attachments:** [Z - MIN 1883 - Letters.docx](#)

---

Dear Nicole,

Attached are the draft approval and decline letter in relation to Candace Owen's ministerial request.

If the Associate Minister wishes to request further information, please let me know and we will prepare a letter.

Kind regards,

9(2)(g)(ii)

Released under the Official Information Act 1982

Jonathan Ayling and Hannah Clow  
Free Speech Union New Zealand  
[hannah@fsu.nz](mailto:hannah@fsu.nz)  
[jonathan@fsu.nz](mailto:jonathan@fsu.nz)

9(2)(a)

Dear Jonathan and Hannah,

Thank you for your email of 2 December 2024, concerning Candace Owens Farmer.

I have carefully considered your representations. I have decided to grant Ms Farmer a special direction under section 17 of the Immigration Act 2009 for her three-year exclusion from Australia following the refusal of her Australian visa on 25 October 2024. I have also decided to grant Ms Farmer a work visa, subject to her meeting the requirements of immigration instructions at *WS Specific Purpose or Event Instructions*. This includes health and character requirements, including security checks if required by Immigration New Zealand (INZ). The currency and conditions of the work visa will be determined by INZ in accordance with immigration instructions.

Ms Farmer should apply for this visa from INZ within two months of the date of this letter. A copy of this letter must be included with the application. She must provide all the forms, documents and evidence required for an application under *WS Specific Purpose of Event instructions*. The fee and applicable levies for a work visa application will be payable.

INZ may undertake what investigations it deems necessary to ensure requirements set out above are met. If INZ has any concern that these requirements are not met, Ms Farmer will be given an opportunity to comment. If INZ remains unsatisfied, the application may be declined.

I have made this decision based on the information provided to me. INZ should be advised of any further information or material change in circumstances that may be relevant to this decision, and that information may be referred to me so I can consider its effect on my decision.

Yours sincerely,

Hon Chris Penk  
Associate Minister of Immigration

Jonathan Ayling and Hannah Clow  
Free Speech Union New Zealand  
[hannah@fsu.nz](mailto:hannah@fsu.nz)  
[jonathan@fsu.nz](mailto:jonathan@fsu.nz)

9(2)(a)

Dear Jonathan and Hannah,

Thank you for your email of 2 December 2024, concerning Candace Owens Farmer.

I have carefully considered your representations. I advise I am not prepared to intervene in this case.

Yours sincerely,

Hon Chris Penk  
**Associate Minister of Immigration**

*As section 11 of the Immigration Act 2009 applies, I am not obliged to give reasons for my decision.*

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Out of scope

**From:** Nicole Campbell <x@xx>

**Sent:** Thursday, December 12, 2024 11:18 AM

**To:** Marc Piercey <x@xx>

**cc:** 9(2)(g)(ii)

; s9(2)(g)(ii), Hon Chris Penk Advisor

; s9(2)(g)(ii), Hon Chris Penk immediate past press secretary; s9(2)(g)(ii)

Hon Chris Penk SPS

**Subject:** Candace Owens - AMOI decision

Hi team,

Please see the attached decision letter regarding the ministerial intervention request for Candace Owens.

INZ resolutions drafted this letter and Minister Penk's office has included the last line.

We are aiming to send this out around 2pm.

Kind Regards,



**Nicole Campbell**

**Private Secretary – Associate Immigration** | Office of Hon Chris Penk  
Minister for Building and Construction  
Minister for Land Information  
Minister for Veterans  
Associate Minister of Defence  
Associate Minister of Immigration

Email: [Nicole.Campbell@parliament.govt.nz](mailto:Nicole.Campbell@parliament.govt.nz)

Website: [www.Beehive.govt.nz](http://www.Beehive.govt.nz)

Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

**From:** s9(2)(g)(ii), Hon Chris Penk immediate past press secretary  
**To:** Nicole Campbell (Parliament); s9(2)(g)(ii), Hon Chris Penk Advisor  
**Cc:** s9(2)(a), Hon Chris Penk SPS  
**Subject:** RE: Candace Owens - media lines - Due 10am 12/11/2024  
**Date:** Thursday, 12 December 2024 11:19:45 am

---

I think these look good. If you want to get the point around free speech in, I would suggest...

The Minister has granted Ms Owens a visa following a request for Ministerial Intervention.

Immigration New Zealand originally declined her visa application on the basis of section 15(1)(f) of the Immigration Act following Ms Owens being denied entry to Australia.

Subsequently, Ms Owens requested intervention from the Associate Minister of Immigration to exercise his discretion and grant her a visa.

The Minister made his decision after considering representations made to him, including the importance of free speech.

---

**From:** Nicole Campbell <x@xx>  
**Sent:** Thursday, 12 December 2024 9:09 AM  
**To:** s9(2)(g)(ii), Hon Chris Penk immediate past press secretary; s9(2)(g)(ii) Hon Chris Penk Advisor  
**Cc:** s9(2)(g)(ii), Hon Chris Penk SPS  
**Subject:** FW: Candace Owens - media lines - Due 10am 12/11/2024

---

**From:** Marc Piercey <x@xx>  
**Sent:** Thursday, 12 December 2024 9:08 AM  
**To:** Nicole Campbell <x@xx>; 9(2)(g)(ii)  
**Cc:** 9(2)(g)(ii)  
**Subject:** RE: Candace Owens - media lines - Due 10am 12/11/2024

Kia Ora Nicole,

Slightly amended lines below..can you confirm these will only be used reactively.

Please keep us updated on timings.

The Minister has granted Ms Owens a visa following a request for Ministerial Intervention.

Immigration New Zealand had originally declined her visa application on the basis of section 15(1)(f) of the Immigration Act following Ms Owens being denied entry to Australia.

Subsequently, Ms Owens has requested intervention from the Associate Minister of Immigration to exercise his discretion and grant her a visa.

The Minister made his decision after considering representations made to him.

Ngā mihi  
Marc

**Marc Piercey**

**Manager, Immigration Communications**

Ministry of Business, Innovation & Employment | Hīkina Whakatutuki

Email: [x@xx](mailto:x@xx) | Telephone: 9(2)(a)

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**From:** Nicole Campbell <[x@xx](mailto:x@xx)>

**Sent:** Wednesday, December 11, 2024 4:53 PM

**To:** 9(2)(g)(ii)

**Subject:** Candace Owens - media lines - Due 10am 12/11/2024

Hi team,

In anticipation of Minister Penk considering the Candace Owens case, the office has prepared some lines if the outcome were to be favourable.

Can you please check over these lines and get back to me by **10am tomorrow (Thursday 12<sup>th</sup>)**

From a Spokesperson for Minister Penk

“The Minister has granted Ms Owens a visa following a request for Ministerial Intervention.

“Immigration New Zealand had originally declined her visa application on the basis of section 15(1)(f) of the Immigration Act following Ms Owens being denied entry to Australia.

“Subsequently, Ms Owens has applied for intervention by the Associate Minister of Immigration requesting that he exercise discretion and grant her a visa.

“In considering this request the Minister took into account the importance of freedom of expression.

“All applications are considered on their merits and in accordance with New Zealand legislation.

Kind Regards,

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**Nicole Campbell**

**Private Secretary – Associate Immigration** | Office of Hon Chris Penk  
Minister for Building and Construction  
Minister for Land Information  
Minister for Veterans  
Associate Minister of Defence  
Associate Minister of Immigration

Email: [Nicole.Campbell@parliament.govt.nz](mailto:Nicole.Campbell@parliament.govt.nz)

Website: [www.Beehive.govt.nz](http://www.Beehive.govt.nz)

Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

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**From:** s9(2)(g)(ii), Hon Chris Penk SPS  
**To:** [Nicole Campbell \(Parliament\)](#)  
**Subject:** FW: Candace Owens barred from entry into New Zealand.  
**Date:** Thursday, 28 November 2024 9:01:13 am

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Hi Nicole – as discussed



Dear Chris,

Sorry, I know it's late... I was just putting my kids down to sleep, and was called by a journalist to comment on the Candace Owens story.

I thought- 'What's happened now with Candace Owens?'

**If, like me, late this afternoon you missed it, Immigration New Zealand has barred Candace Owens from entering New Zealand. It seems (incredibly) the best response New Zealand now has to opinions that some find distasteful or wrong is to exclude them from the conversation entirely.**

Like many Kiwis, you may not even know who Candace Owens is.

A conservative commentator from the United States (formerly on the *Daily Wire* with Ben Shapiro), she has been accused of 'far-right' and extremist views. For this reason, since she announced her tour of Australia and New Zealand, would-be-censors have been campaigning, like they did with Posie Parker, to have immigration officials block her entry.

They succeeded in having Australian officials do this last month. Now, the same thing has happened here.

**A sophisticated country is able to deal with opinions that some find controversial, distasteful, or even dangerous. The most mature way to deal with these views is to challenge and rebut them, not to exclude them from the conversation.**

Immigration New Zealand is arguing that section 15 of the Immigration Act requires them to exclude individuals who have been barred from entering New Zealand and who have been barred from entering other countries. "Nothing to see here, our hands are tied" is basically all they can muster.

**Firstly**, we think they are wrong. Our legal team has started burning the (almost) midnight oil, but we're actively looking at challenging this decision, on the basis Immigration is acting unlawfully. (I'll spare you the legal details, but it comes down to the technical definitions of 'excluded').

**Secondly**, even if she was 'excluded', why on earth should we have law that automatically means we then barr others entry. Should we shut out Salman Rushdie because the Iranians don't like him?

Every year hundreds, if not thousands of less well-known people who have been denied entry to Australia have been allowed to visit NZ.

This action by Immigration NZ is a smokescreen.

Public calls by Young Labour over the past few months to exclude Owens from NZ shores is the more likely reason for the action. Anyone who's been following this story knows this.

But who at Immigration NZ would be willing to risk admitting that their refusal is based on Owens' controversial opinions, right?

It's easier for officials to fudge their reading of the legislation than to admit they're vetting a person for expressing personal beliefs which, though highly controversial, are still permitted under section 14 of the NZ Bill of Rights Act.

But we know censorship has a nasty way of boomeranging back on censors.

Mark my words: Candace Owens will come to New Zealand eventually to hold public

events. And when she does, many more people will attend than otherwise would have, as a result of these attempts to shut her out.

**Here's what we've done (in the past 2 hours):**

1. We've written to the Ministers of Immigration (Erica Stanford is the Minister of Immigration, but Chris Penk, as the Associate Minister, is actually responsible for these decisions).

We're calling on the Government to exercise discretion and allow Owens entry.

2. Our legal team is working to challenge this decision. In our minds, this isn't about Candace Owens herself. It's about the principle, that the Government blocking individuals from speaking in New Zealand because we dislike their opinions is a dangerous road.

3. We've contacted media: while some Kiwis will think it's a 'victory' that Owens has been excluded, I'm confident that New Zealanders around the country are big enough to deal with others' perspectives, whether they agree or not.

We need to ensure the public is aware of this decision and the Government is held accountable.

4. That's where you come in! We need your help to put pressure on the Government, [and to ensure we are able to fund this legal work.](#)

Chris Penk ([Chris.Penk@parliament.govt.nz](mailto:Chris.Penk@parliament.govt.nz)), is the Associate Minister of Immigration who has the authority to use his discretion to allow Candace Owens is. Seeing as there is no legitimate argument to exclude her (other than 'the Australians did' - what, are we an Australian State now? -), he should grant her entry. An email from you, saying exactly that, will help get his attention.



Chris, this is the Free Speech Union rapid response unit leading the way.

The day we stop caring about the right for people to make their case, no matter whether we're entirely convinced or think it entirely daft, is the day our freedoms die.

And New Zealand cannot prosper unless it is free.

Jonathan Ayling

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