



**Australian Government**  
**Department of Immigration and Citizenship**

Sister Libby Rogerson IBVM  
Conference of Leaders of Religious Institutes in New South Wales  
PO Box 259  
ROSEBERRY NSW 2474

Dear Sister Rogerson

Thank you for your letter of 5 December 2008 regarding the refusal of a visa for Dr Bernard Moeller and his family and your request to review our Immigration law in regard to people with disabilities. The Minister has asked me respond on his behalf. I regret the delay in responding.

As you are aware, on the 26 November 2008, the Minister for Immigration and Citizenship, Senator Chris Evans, granted Dr Moeller and his family permanent residence. Compelling considerations were the valuable contribution Dr Moeller's family is making to the Horsham community, given the severe shortage of rural doctors, and the substantial community support.

I appreciate that you were disappointed at the initial decision by the Department of Immigration and Citizenship. The Moeller family were also understandably disappointed given their desire to reside in Australia. However, all permanent visa applicants are required to meet the relevant criteria for grant of a visa, and the Department is required to apply the rules equally to all cases. This includes meeting Australia's health requirement.

The health requirement is designed to minimise the public health and safety risk to the Australian community, to contain public expenditure on health care and services and to maintain the access of Australian residents to those services. Decision-makers are obliged by law to ensure the health requirement has been met in order for a visa to be granted.

No disease, condition or disability, with the sole exception of tuberculosis, is specifically identified in the Migration Regulations as necessarily leading to the refusal of a visa. Rather, the health requirement deals with the consequences to the community in terms of potential health care and community services should a visa to Australia be granted.

If an applicant fails the health requirement, for a small number of visas currently available in the humanitarian and some family streams, there is discretion to waive the health requirement provided the costs or prejudice to access is not considered to be 'undue'. This means, an applicant's compelling and compassionate circumstances can be taken into consideration.

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I can assure you that the initial decision by the Department to refuse Dr Moeller's visa application was not because of discrimination against individuals with Down syndrome – it is a matter of likely costs to the Australia community. A disability is not, in itself, a ground for failing the health requirement for migration.

People with disabilities can and do migrate to Australia and Australia benefits from their valuable contribution. Where a disability gives rise to substantial costs potentially borne by the Australian community, then this potential cost to the Australian community must be considered.

As there is a lack of discretion in circumstances such as Dr Moeller's, the Minister has urged State and Territory leaders to support an agreement for a possible waiver of the health requirement for permanent skilled visa applicants in Australia. This will allow decision makers the flexibility to consider individual circumstances.

The Minister also announced that in consultation with the Parliamentary Secretary, The Hon Bill Shorten MP, Disabilities and Children's Services, he has asked the Joint Standing Committee on Migration to look at the issue of people with a disability in the context of the migration health requirement.

Thank you for bringing this matter to our attention.

Yours sincerely



Kruno Kukoc  
First Assistant Secretary  
Principal Advisor Migration Strategies  
Migration and Visa Policy Division

19 December 2008