



# Report of the Education and Workforce Committee

## Petition of Juliana Carvalho: Let Ignacia stay in New Zealand

October 2022

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Marja Lubeck  
Chairperson

## Petition of Juliana Carvalho

### Recommendation

The Education and Workforce Committee has considered the petition of Juliana Carvalho—Let Ignacia stay in New Zealand—and recommends to the Government:

- by majority, that the review of immigration instructions relating to health requirements for residency should consider creating exemptions for dependent children
- that it take a strengths-based approach to disability with regards to immigration policy.

### Request to exempt Ignacia Vasquez from the policy about acceptable standard of health

The petition of Juliana Carvalho—Let Ignacia stay in New Zealand—was presented to the House on 10 May 2022. It requests:

That the House of Representatives urge the Associate Minister of Immigration to exempt Ignacia Vasquez from the Acceptable Standards of Health policy and grant Ignacia her visa so that she can live with her parents in New Zealand, and note that 3,413 people have signed an online petition to this effect.

### Context—previous petition on a related matter

In December 2021, we reported on the petition of Juliana Carvalho—End discrimination on disability grounds in the immigration system.<sup>1</sup> This petition requested, among other things, the removal of the Government’s acceptable standard of health policy.

For a visa application to be successful, the applicant must be deemed by Immigration New Zealand to have an acceptable standard of health. An applicant meets this standard if they are: unlikely to endanger public health, able to undertake the work or study that underlies their visa, and unlikely to impose significant cost or demand on social services.

Our report on the petition recommended that the Government review the acceptable standard of health policy. We urged the Government to only screen for the most serious health conditions when making immigration decisions, and to take a strengths-based approach toward disability.

The Government’s response to our report was released in March 2022.<sup>2</sup> The Government said it will not be reviewing the acceptable standard of health requirement, as it believes it is necessary to prevent significant cost to public services. However, it said that it would review the definition of “significant” cost on social services, which had not changed for a decade.

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<sup>1</sup> Our report on this petition can be accessed [on the Parliament website](#).

<sup>2</sup> The Government’s response to our petition report can be accessed [on the Parliament website](#).

## **Comments from the petitioner and Ignacia's mother**

We received written and oral evidence jointly from Juliana Carvalho and Ignacia's mother, Carolina Vasquez. Carolina and her husband Cristian Hernandez are Chilean and have lived in Christchurch for seven years. They have two children: Fernando (19 years old) and Ignacia (18 years old). Ignacia has a cognitive disability. Carolina said that she left Chile in 2015 seeking a better life, especially for her children. She said she came to New Zealand for its safety and quality of life. However, she said that her family has experienced discrimination in the immigration system.

When Ignacia was first in New Zealand in 2015 she applied for a student visa. This application was rejected because the cost of Ignacia's education was likely to be high. Ignacia was given 40 days to leave the country, or face deportation. Ignacia returned to Chile to live with guardians. Carolina remained in New Zealand hoping to gain residence, which would have allowed her to bring Ignacia back. While Ignacia was in Chile, she suffered physical and psychological domestic violence.

Following ministerial intervention, Ignacia was able to return to New Zealand in 2019 on a student visa. The family applied for residence in November 2021, wanting to settle down permanently. Carolina said that the family is in limbo, dependent on whether Ignacia is granted residence.

The petitioner submits that the acceptable standard of health policy is discriminatory and breaches the New Zealand Bill of Rights Act 1990 and the United Nations Convention on the Rights of Persons with Disabilities. Ms Carvalho notes that the Canadian Parliamentary Standing Committee on Citizenship and Immigration reviewed Canada's medical inadmissibility criteria, and recommended their abolition.<sup>3</sup> The petitioner said that the medical inadmissibility criteria are similar to the acceptable standard of health policy, which she would like to see abolished.

## **Comments from the Ministry of Business, Innovation and Employment**

We received a written submission from the Ministry of Business, Innovation and Employment (MBIE). MBIE hosts Immigration New Zealand, the agency that considers visa applications. MBIE believes current immigration health settings are appropriate.

One aspect of the acceptable standard of health policy is whether an applicant is likely to impose significant costs and demands on health and education services. MBIE's written submission noted the distinction between the cost of, and demand for, public services. In some cases, the main concern is not the cost of a service, but whether that service is already in high demand. The ministry highlighted renal services and residential care services as examples of those currently under pressure.

### **The health cost threshold has been increased**

On 13 September 2022, Immigration New Zealand announced that the threshold for determining whether a condition will create significant cost to the health system increased to

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<sup>3</sup> The Standing Committee on Citizenship and Immigration's report can be accessed [on its website](#).

\$81,000.<sup>4</sup> The threshold was previously \$41,000. This change came into effect on 4 September 2022. Immigration New Zealand said that this change reflects increases to health service costs.

The announcement also noted that Immigration New Zealand and the Ministry of Health are currently reviewing aspects of immigration instructions relating to health requirements for residency, including the list of medical conditions that fall within the threshold. Immigration New Zealand said that this work is intended to ensure immigration health settings are “proportionate to the risks they are designed to mitigate”.

### **Medical waivers**

Immigration New Zealand can grant medical waivers to applicants who do not meet the acceptable standard of health. The decision to grant a waiver considers individual circumstances, including:

- the degree to which an applicant would impose significant costs or demand on services
- whether the applicant has immediate family in New Zealand
- the intended length of stay in New Zealand
- whether the applicant’s potential contribution to New Zealand will be significant.

MBIE submitted that people with disabilities can be granted medical waivers even if costs or demands on public services are considered significant.

Applicants who are declined a medical waiver can appeal to the Immigration and Protection Tribunal. The Tribunal may affirm Immigration New Zealand’s earlier decision as correct under the operational manual. However, the Tribunal can still recommend to the Minister of Immigration that an applicant’s circumstances deserve special consideration.

### **United Nations Convention on the Rights of Persons with Disabilities**

New Zealand ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) on 25 September 2008. The UNCRPD explicitly enshrines the rights of people with disabilities in the international human rights framework. The petitioner submits that the acceptable standard of health policy breaches the UNCRPD.

The United Nations Committee on the Rights of Persons with Disabilities released a report in September 2022 that reviewed New Zealand’s adherence to the UNCRPD.<sup>5</sup> The report recommended that the Government should:

- Review and amend its immigration and asylum legislation and administrative rules, in close consultation with and with the active involvement of organizations of persons with disabilities and migrants and refugees, to ensure that persons with disabilities do not face discrimination in any of the formalities and procedures

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<sup>4</sup> Immigration New Zealand’s announcement can be accessed [on its website](#).

<sup>5</sup> This report is available on [the UN Treaty Body Database](#).

relating to immigration and asylum, in particular as a result of the application of the acceptable standard of health requirements.

- Reverse the ineligibility under the acceptable standard of health medical waiver policy of persons with disabilities whose impairment requires full-time care.

However, MBIE's submission on this petition noted a recent decision of the Immigration and Protection Tribunal, which found that:

The United Nations Convention on the Rights of Persons with Disabilities does not impose a mandatory requirement on New Zealand to grant residence to any person who has long-term physical, mental, intellectual or sensory impairment which may hinder their full and effective participation in society on an equal basis with others.<sup>6</sup>

## **Our response to the petition**

We thank Ms Carvalho and Ms Vasquez for their petition and advocacy. We intend to forward a copy of this report to the Minister of Immigration. We will ask him to look at Ignacia's case and to take it into account when reviewing immigration instructions relating to health requirements.

We want to see improvements to immigration health settings, noting the recommendations of the United Nations Committee on the Rights of Persons with Disabilities. We welcome the increase of the health cost threshold from \$41,000 to \$81,000 following our report on Ms Carvalho's earlier petition. We also welcome the review of immigration instructions relating to health requirements for residency. We urge the Government to work closely with people with disabilities in conducting this review, and to take a strengths-based approach to disability.

We note that, as part of its medical inadmissibility criteria, Canada exempts dependent children from the requirement not to cause excessive demand on health or social services. Some of us believe New Zealand's immigration health settings should have similar exemptions for dependent children. We would like the review of immigration instructions relating to health requirements for residency to consider this.

## **Recommendations**

- We recommend to the Government, by majority, that the review of immigration instructions relating to health requirements for residency should consider creating exemptions for dependent children
- We recommend that the Government take a strengths-based approach to disability with regards to immigration policy.

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<sup>6</sup> Immigration and Protection Tribunal AK (No Category) [2021] NZIPT 206087.

## **Green Party differing view**

The Green Party does not believe that the current immigration health settings are appropriate. We agree with the comment by the Independent Monitoring Mechanism in its 2020 report that current immigration settings do not adequately reflect the aspirations and rights of people with disabilities under the UNCRPD.

We note that the Office for Disability Issues has told us that New Zealand's disability support system is moving from a deficit-based approach to a strengths-based approach. We welcome this new approach, which recognises the important societal contributions of people with disabilities. New Zealand's immigration settings should be taking a strengths-based approach. We recommend to the Government that it align immigration policy with a strengths-based approach to disability.

We believe that people should be able to complain to the Human Rights Commission about the content and application of Immigration New Zealand's operational manual. This is an important avenue for people to affirm their human rights. We recommend to the Government that it review the Immigration Act 2009 and consider removing Section 392 of the Act.

## Appendix

### Committee procedure

The petition was presented to the House on 10 May 2022 and referred to the Petitions Committee. The Petitions Committee received written evidence from the petitioner and the Ministry of Business, Innovation and Employment.

The petition was transferred to us on 11 August 2022. We met between 24 August and 19 October 2022 to consider it. We heard oral evidence from the petitioner and Carolina Vasquez.

### Committee members

Marja Lubeck (Chairperson)  
Chris Baillie  
Camilla Belich  
Jan Logie  
Jo Luxton  
Ibrahim Omer  
Angela Roberts  
Penny Simmonds  
Erica Stanford

Ricardo Menéndez March participated in our consideration.

### Evidence received

The documents that were received as evidence in relation to this petition are available [on the Parliament website](#).

### Recording of our hearing

A recording of our hearing is available on the Parliament Vimeo webpage:

- [Hearing of evidence with the petitioner 31 August 2022](#) (from roughly 22 minutes to 35 minutes).