

23 August 2021

The Hon. Alex Hawke  
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs  
PO Box 6022  
Parliament House  
Canberra ACT 2600

*By email to nsw.ministerial.intervention@homeaffairs.gov.au*

Dear Minister,

**Request for Ministerial Intervention under section 351 of the *Migration Act 1958* (Cth)**

1. We act for Yvonne Marianne Jolanda HOUT (**Yvonne**) and Teun Michiel Regina SURMINSKI (**Teun**) and make this request for Ministerial Intervention (**Request**) under the ministerial powers set out in section 351 of the *Migration Act 1958* (Cth) (**Act**). Annexed hereto and marked "**A**" is a Form 956 appointing us as their representatives.
2. Yvonne is a 40-year-old citizen of the Netherlands born on 3 May 1981. Yvonne's de facto partner, Teun is also a citizen of the Netherlands born 7 November 1981. Annexed hereto and marked "**B**" and "**C**" are copies of Yvonne's and Teun's passport bio-data pages.
3. Together, Yvonne and Teun's only child is Noah John MOROZ (**Noah**) born on 16 May 2006 in the Netherlands is an Australian citizen by descent. Annexed hereto and marked "**D**" and "**E**" is a copy of Noah's Australian passport and Australian Citizenship certificate.
4. Noah's biological father is Walter Ivan MOROZ (**Walter**), an Australian citizen born 7 August 1979 in Perth, Western Australia. Annexed hereto and marked "**F**" is a copy of Noah's birth certificate.
5. Yvonne and Teun currently each hold a Bridging visa B (subclass 020) visa (**BVB**).

**The Minister's Guidelines on Ministerial Powers**

6. This request for intervention sets out the circumstances relevant to Yvonne and Teun's case in the light of the Minister's Guidelines on Ministerial Powers (**Minister's Guidelines**) as set out in the Department of Home Affairs' (**Department**) Procedures Advice Manual (**Policy**).

7. Part 4 of the Minister's Guidelines outlines, 'Cases that have one or more unique or exceptional circumstances, such as those described below, may be referred to me for possible consideration...[including]... strong compassionate circumstances that if not recognised would result in serious, ongoing and irreversible harm and continuing hardship to an Australian citizen or an Australian family unit, where at least one member of the family is an Australian citizen or Australian permanent resident.'<sup>1</sup>
8. Additionally, part 5 of the Minister's Guidelines highlights other relevant issues which include:
  - a. 'Circumstances that may bring Australia's obligations under the Convention on the Rights of the Child into consideration, including the best interests of the child – which must be treated as a primary consideration, but can be balanced against other primary considerations'; and
  - b. 'Circumstances that may bring Australia's obligations under the International Covenant on Civil and Political Rights into consideration, particularly issues of family unity, which can be balanced against other rights and interests including the integrity of Australia's migration programme.'<sup>2</sup>

#### **Yvonne and Teun's immigration history**

9. Yvonne first travelled to Australia as part of a Student Exchange program with Curtin University in 2004. It was during this time that Yvonne met Walter, Noah's biological father. Annexed hereto and marked "**G**" and "**H**" is a Statutory Declaration by Yvonne and Teun respectively.
10. Noah's paternal grandparents, Dr Wally MOROZ (**Wally**) born 27 September 1948 and Rosie Anne MOROZ (**Rose**) born 26 November 1947 are also Australian citizens.
11. Yvonne returned to the Netherlands with Walter at the end of 2005 and Noah was born the following year. The relationship broke down in 2007 and Walter went back to Perth.
12. Yvonne and Noah visited Walter, Wally and Rose in the years after Noah was born. The family would also travel to the Netherlands to spend time with Yvonne and Noah.
13. Yvonne, Teun and Noah visited Australia together for eight months over 2012 and 2013, giving Noah the opportunity to reconnect with his Australian family. Upon returning to the Netherlands, they made plans to migrate to Australia on a permanent basis before Noah began High School.
14. Yvonne and Teun arrived in Australia on 23 May 2018 as holders of an eVisitor (subclass 651) visa. Noah entered Australia on his Australian passport.'
15. Yvonne and Teun have always complied with their visa conditions.

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<sup>1</sup> 15/08/2021 - POLICY - MIGRATION ACT Ministerial powers instructions Minister's guidelines on ministerial powers (s351, s417 and s501J) at Part 4

<sup>2</sup> 15/08/2021 - POLICY - MIGRATION ACT Ministerial powers instructions Minister's guidelines on ministerial powers (s351, s417 and s501J) at Part 5

16. On 6 June 2018 Yvonne applied for a Regional Employer Nomination (Permanent) (Class RN) (**RSMS**) visa on the basis of being nominated by her employer, Oscar Investments (WA) Pty Ltd T/A The Holt Family Trust. Teun was included in the application as a secondary applicant.
17. On 13 May 2019, the Department of Home Affairs refused the nomination application and subsequently, Yvonne received a visa refusal decision on 19 June 2019 as the Delegate was not satisfied that 187.233 of Schedule 2 of the *Migration Regulations 1994* (Cth) (**Regulations**) had been met.
18. Applications for review of both the nomination and visa refusal decisions were subsequently lodged with the Administrative Appeals Tribunal (**Tribunal**), however, prior to any AAT hearings being held, Yvonne's employment was terminated on 25 June 2020.
19. Yvonne lodged a claim for an Unfair Dismissal Remedy with the Fair Work Commission (**FWC**) and sought to have her employment reinstated but before this process was finalised Yvonne's employer withdrew the application for review of the nomination refusal.
20. On 20 July 2021, the Tribunal affirmed the decision not to grant Yvonne and Teun RSMS visas. Annexed hereto and marked "I" is a copy of the Tribunal's decision.
21. In the decision record, Member Findson notes that:

The Tribunal acknowledges the difficult situation faced by the applicants, as the refusal of the visas means that it appears the applicants will be subject to a bar imposed by s.48 of the Act, which prevents them from making another application in Australia for an employer sponsored temporary or permanent visa. The Tribunal also acknowledges that the situation of the applicants is further complicated by the Covid-19 pandemic which has restricted international travel, and thus, their ability to apply for another visa from outside Australia...

**Strong compassionate circumstances that if not recognised would result in serious, ongoing and irreversible harm and continuing hardship to an Australian citizen**

22. Yvonne and Teun's RSMS visa applications were refused through no fault of their own. Yvonne had worked dedicatedly for her employer who had agreed to sponsor her for permanent residence in Australia.
23. When Yvonne's employer suddenly withdrew the application for review of the nomination refusal, Yvonne and Teun were left with no visa pathway to remain inside Australia with Noah. Their hopes and plans for a long future together in Australia were shattered.
24. Yvonne and Teun are the primary carers for Noah and should they not be granted visas to remain in Australia, they may be forced to depart without Noah, which is simply not an option for the family.
25. Severing Noah from his parents by requiring them to depart Australia will be hugely detrimental to not only his wellbeing but also Yvonne and Teun's too who have worked exceptionally hard to secure a life and a future for themselves and Noah.

26. By being made to depart Australia, Yvonne and Teun would be forced to give up their livelihoods, their financial security, their home as well as their community and social connections in this country. They have already made these difficult sacrifices by relocating from the Netherlands and should not be forced to 'start again' at this time in their lives.
27. Placing Noah into alternative care arrangements, regardless of the quality of that care, could never compensate for his parent's care and would have long term, negative effects on his social and emotional development.
28. Yvonne's and Teun's presence in Australia and Noah's life at this stage is vital to Noah's healthy upbringing and it is well-established that the best interests of a child are served by having their parents in their life.<sup>3</sup>
29. The Australian Courts have also continually recognised the pivotal role of children having a connection with their parents during their formative years.<sup>4</sup> In *Cubillo v Commonwealth* [2000] FCA 1084 at [64], O'Loughlin J noted that that '[t]he law has always recognised the strength of the bond between mother and child'.
30. As an Australian citizen child, Noah also has a right not to be forced to depart Australia to remain in the care of his parents, especially at this crucial period during his adolescent development. Should Noah be forced to depart Australia to return to the Netherlands with Yvonne and Teun, he would be uprooted from his home, his schooling and his Australian citizen father, grandparents and family.
31. Noah has already made the difficult move of relocating to Australia and it has taken him time and effort to settle into his new home. Annexed hereto and marked "J" is a Statutory Declaration by Noah. Noah has attested to the fact it took him a while to feel like he 'fit in' and he now cannot imagine going back to the Netherlands and is afraid that he would not be able to finish high school if he had to return there.
32. Noah is now aged 15 years and is more than halfway through Year 10. During this period in his life, Noah is undergoing significant emotional, intellectual and physical changes. Whilst it may be said that adolescence is a difficult period in the lives of all children, it is made even more difficult if they are removed from the safety of their community and the connections of close friends.<sup>5</sup>
33. In the context of visa applications and visa cancellations, the Tribunal has continually found that an Australian citizen child who will be affected by a decision is a very powerful factor in concluding that the circumstances of the case are compelling and compassionate. For example, in the AAT matter of Mahmoodshahi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2020] AATA 159, Senior Member Dr Evans-Bonner found at [95] that '[i]n the Tribunal's opinion, it is unreasonable to expect Australian citizens to make a decision to move to another country in order to be with their ... [father].

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<sup>3</sup> Nazarian, Gaiane, 'Separation Due to Deportation: Psychological, Emotional and Economic Effect on Children on Departed Parents' (2014) and The Cut, 'The psychological effects of being separated from your child' (2018) <https://www.thecut.com/2018/06/the-psychological-effects-of-being-separated-from-your-child.html>

<sup>4</sup> *MZYPZ v MIAC* [2012] FCA 478,10; *Babicci v MIMIA* (2005) 141 FCR 285, 24.

<sup>5</sup> Royal College of Psychiatrists, Surviving Adolescence <https://patient.info/childrens-health/surviving-adolescence>

34. As an Australian citizen, Noah is prohibited from departing Australia under the current COVID-19 travel restrictions without an exemption granted by the Australian Border Force Commissioner.<sup>6</sup> There are no clear indications as to when international travel will be normalised, and the Australian border restrictions eased, however it is unlikely these restrictions will be eased during 2021.
35. Noah's biological father, Walter along with his grandparents Wally and Rose would also be significantly negatively affected if Noah had to return to the Netherlands to remain in the care of his parents.
36. Annexed hereto and marked "K" is a Letter of Support from Walter, who writes, "My life has improved significantly now that Noah is in Western Australia. I cannot imagine what my life would be like if he had to leave."
37. Annexed hereto and marked "L" is a Letter of Support from Wally, who writes, "It would be a great loss to us if [Noah] were forced to go back to the Netherlands."
38. Annexed hereto and marked "M" is a Letter of Support from Rose, who writes, "As a grandparent I have maintained my bond with [Noah] and we would all miss him dearly should he have to leave Australia."
39. Serious, ongoing and irreversible harm and continuing hardship to Noah, an Australian citizen child would result if the Minister does not recognise the strongly compassionate circumstances in this matter.
40. It is imperative that Yvonne and Teun be granted permanent residence in Australia so that they can continue to care for their son Noah and so that Noah can remain inside Australia, a decision which is ultimately in Noah's best interests and must take precedence above all other considerations.

### **Convention on the Rights of the Child**

41. Australia is a signatory to the *Convention on the Rights of the Child (CROC)* and as such, has also agreed to uphold the rights set out in within it. Article 3(1) requires that: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'
42. The CROC also states in its Preamble that the parties to the Convention have agreed that:

the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.... Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding...
43. Any decision which impacts Noah must be made in accordance with all other human rights protections specific to children - including a child's right to 'know and be cared for by his [or her] parents'; be

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<sup>6</sup> See: <<https://covid19.homeaffairs.gov.au/leaving-australia#toc-2>>

protected from being 'separated from his [or her] parents against his will'; and being protected from discrimination, including on the basis of the visa status or criminal justice status, of his or her parents.

44. The Australian community would expect that the principles of the CROC are upheld and that Noah is provided with a safe and loving family environment that will enable him to grow and develop throughout their childhood and teenage years and into adulthood.
45. Any separation of Noah from his parents' care, would see Australia acting contrary to its obligations under the CROC and in direct opposition to what is in the best interests of these and Australian child.

#### **Yvonne and Teun have no other visa pathways available**

46. Yvonne and Teun have no onshore or offshore visa pathways available for them to remain in Australia with Noah. As they have been refused a visa inside Australia, they are barred by s 48 of the Act from making most further visa applications onshore.
47. Despite Yvonne being the parent of an Australian citizen child, she and Teun would both need to depart Australia to lodge a valid a Contributory Parent Visas (Subclass 143 or 173) from outside Australia. The Department's website states that as of June 2021 'new Contributory Parent visa applications lodged that meet the criteria to be queued are likely to take at least 64 months to be released for final processing'.
48. Furthermore, Yvonne and Teun would need to secure an eligible sponsor (which they do not currently have) - as Noah is under the age of 18 - and travel offshore to apply for a Contributory Parent visa. This would also mean that the family could not return to Australia together for more than five years. As outlined above, Noah is an Australian citizen child who cannot be asked to depart Australia during this crucial time in his life to remain in the care of his parents.
49. Should they be made to return to the Netherlands, Yvonne and Teun will be forced to give up gainful employment and a secure financial future in Australia for themselves and for Noah. Returning to the Netherlands would also disrupt Noah's tertiary education pathways and negatively affect his future career options.
50. Returning to the Netherlands now to face an uncertain future is simply not an option for the family. The situation is worsened by the current global COVID-19 pandemic. COVID-19 emerged suddenly and has spread exponentially. Since the WHO declared the pandemic declared the novel coronavirus outbreak a public health emergency of international concern and as of 20 August 2021, there have been 209,876,613 confirmed cases of COVID-19, including 4,400,284 deaths around the world.<sup>7</sup>
51. In the Netherlands, there has been 17,933 deaths as compared to Australia, where there has only been 971.<sup>8</sup> In Western Australia in particular, there has been only 9 reported COVID-19 deaths. For the health and safety of Yvonne, Teun and Noah, the family should not be made to depart Australia during the COVID-19 pandemic. Western Australia is the safest place in the world at this time.

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<sup>7</sup> WHO Coronavirus (COVID-19) Dashboard <https://covid19.who.int/>

<sup>8</sup> WHO Coronavirus (COVID-19) Dashboard <https://covid19.who.int/region/euro/country/nl> and <https://covid19.who.int/region/wpro/country/au>

## The interests of Australia

52. The family reside in Broadwater, a suburb of Busselton and part of the Southwest region of Western Australia. Annexed hereto and marked "N" is a copy of their lease agreement.
53. Yvonne is currently working for a local business, Intrepid Finance, an independent mortgage broker specialising in business, home, investment loans and refinancing. Annexed hereto and marked "O" is a letter from Phil Snedden, Director, who writes in support of the family, "If Yvonne and her family are not able to stay in this country, it will have a significant impact on myself and my family. I fear the pressure I will be placed under to handle the volume of clients that we now service. I do not hold out much hope of finding a quick replacement for someone of Yvonne's calibre."
54. Yvonne also volunteers for the Bunbury Dolphin Discovery Centre (DDC) a non-profit, community-based organisation dedicated to conservation, education, research and tourism for the welfare of the wild Bottlenose Dolphin. Annexed hereto and marked "P" is a letter from David Kerr OAM, the Chief Executive Officer of the DDC, who writes in support of the family, "Since becoming a volunteer we have found Yvonne to be an honest, hardworking, friendly and respectful person with a terrific attitude to life... Yvonne has become an important and popular member of our volunteer team, and we hope her Visa status enables her to continue being a part of the DDC into the future."
55. Teun was employed as an Operations Manager for Wills Domain, a winery based in Margaret River. Annexed hereto and marked "Q" is a letter from Darren Haunold, Managing Director, who writes in support of the family, "We continue to find it very difficult hiring staff in the Southwest of WA... the situation for employers is not going away... and... hospitality staff [are] in significant short supply."
56. In October 2020, Teun and Yvonne started Skygrove Media<sup>9</sup> – a digital media consulting company specialising in Real Estate Photography, Videography and Aerial services. The business is growing, in turn creating job opportunities within the local labour market.
57. Noah is attending school at Cape Naturaliste College, where has made friends and is doing well in his studies. Annexed hereto and marked "R" is a copy of his most recent school reports. Noah works part time at McDonald's in Vasse and is a member of his local junior soccer team Vasse Hawks, where Teun is also in his second year of coaching: See Figure 1 below:



Figure 1: Vasse Hawks Team Photo (Noah middle-front and Teun on far left)

<sup>9</sup> See: <https://www.skygrovemedia.com.au/>

58. Yvonne and Teun are skilled workers who bring immense benefit to their community and the broader Southwest region. Annexed hereto and marked "S" and "T" are copies of their respective resumes.

59. The Morrison government has made it abundantly clear that regional migration is a priority, stating:

We're using our migration programme to back our regions to grow to take the population pressure off our major capital cities and by supporting strong regions we're creating an even stronger economy for Australia. These changes will boost the appeal for so many cities and regional centres that are looking to grow their population to support local services like schools and health care, while attracting new workers and students, meaning more jobs and more investment.<sup>10</sup>

60. Yvonne and Teun have created a strong presence and made significant contributions to their local community. Their request for Ministerial Intervention is wholeheartedly supported by their friends, neighbours, landlord and employers as demonstrated by the multitude of support letters as annexed to this submission.

### **Conclusion**

61. This Request demonstrates that Yvonne and Teun's situation gives rise to strongly compassionate circumstances that if not recognised would result in serious, ongoing and irreversible harm and continuing hardship to their Australian citizen child, Noah.

62. In line with Australia's international obligations under the CROC, in particular the obligations relating to the welfare of children, unification with parents and children, and the best interest of the child, it is clear that Noah should be allowed to remain in Australia in the care of Yvonne and Teun.

63. Should Yvonne and Teun be made to depart Australia, the Southwest region of Western Australia and the broader Australian community will be denied the benefit of their contributions.

64. We seek your intervention in the public interest and urge you to consider, under section 351 of the Act, granting visas to Yvonne and Teun who have contributed so much to the Southwest region of Western Australia.

65. If you require any further information to assist with this request, please contact me at 08 9485 0650 or nicole@estrinsaul.com.au

Yours faithfully,



Nicole Farrar  
Lawyer | Estrin Saul Migration Specialists

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<sup>10</sup> <https://www.pm.gov.au/media/morrison-government-increases-regional-migration-target>