be correct.

The Tribunal made reference to the Canadian Immigration Act as an example of a special legislative provision which requires Canadian officials to presume that any person seeking entry to Canada is seeking to enter for permanent residence. It concluded that Australian decision-makers are not entitled to presume that an applicant for a visitor visa is seeking to enter Australia permanently or is lacking *bona fides*, in the absence of evidence which might fairly point towards that view.

In this case it appeared that the decision-maker had used locally developed guidelines to assist in determining the *bona fides* of the application. The Tribunal questioned whether all of the guidelines were appropriate.

It also discussed the concerns faced by immigration officials, when considering applications made by nationals of a country which has a statistically higher rate of over-staying visas while in Australia. It concluded that the risk of over-staying determined statistically for nationals of specific countries could form part of the background for decision-makers but could not preclude entry in particular cases when there was no demonstrable evidence of bad faith.

On the basis of the Mr Saulog's evidence the Tribunal set aside the decision and granted his visa. [P.G.]

Immigration Review Tribunal - Adoption visa

The Immigration Review Tribunal's decision in *Re Arce-Phillips Rojas* (12 October 1990) concerned an application by an Australian citizen resident in Chile, Ms Juliet Phillips, to bring her adopted baby daughter back to Australia.

Where an Australian citizen who has been residing overseas for more than 12 months adopts a child overseas and wishes to bring the child back to Australia, before issuing a visa the Minister must be satisfied that, among other things, the adoptive parent has lawfully acquired 'full and permanent parental rights' by the adoption.

Ms Phillips' application was rejected on the basis that she had not acquired such rights. It appeared that in Chilean law there was a form of adoption called 'full adoption' and Ms Phillips had not been granted such an adoption. Instead she had been granted a decree of simple adoption by the Chilean courts. A 'full adoption' was available under Chilean law only to married persons, and Ms Phillips was unmarried.

The Tribunal noted that 'full adoption' in an overseas country might mean more, or less, than full adoption in Australia. It said that the words 'fulland permanent parental rights' in the Migration Regulations should be given their meaning in Australian law. This meant that the Tribunal had to conclude that the Chilean adoption decree would be recognised under Australian law.

The Tribunal noted that the effect of a simple adoption under Chilean law was to place the child substantially in the position of a natural child of the adopter to the exclusion of the rights of custody and control which the natural parents formerly possessed. The Tribunal concluded that the Chilean adoption would be recognised under the relevant Australian law, in this case that of Queensland and that Ms Phillips had therefore acquired 'full and permanent parental rights' as required by the Migration Regulations. All other requirements having been met, the Tribunal set aside the decision and substituted a decision that such an adoption visa should be granted. [P.G.]

Simple English and Student Assistance

The *Student Assistance Act 1973* is quite simple in conception and leaves the detailed scheme for AUSTUDY to be spelt out in the Regulations. However, as Mr Justice Stephen said in *Re Moodie; Ex Parte Emery* (1981) 34 ALR 481 at 489-90, 'the price paid for the Act's economy of language lies in the complexity of regulations which concern the grant of benefits, ... [which] have been amended on more than 40 occasions in their six years of existence ... No applicant is likely to gain from them any clear impression of his entitlement to a benefit and this case suggests that even those who have to administer the scheme have great difficulty understanding it.'

In response to this and similar criticisms, the Government engaged Associate Professor Robert Eagleson of the University of Sydney to assist in redrafting the legislation in plain English. New AUSTUDY Regulations in plain English came into effect on 1 January 1991, and may be expected to assist administrators and students alike in understanding the AUSTUDY scheme.

UK Council on Tribunals Report

The United Kingdom Council on Tribunals' Report 'Model Rules of Procedure for Tribunals' was published in March 1991. The Council is concerned with Tribunal performance, among other matters, and has produced this report as part of its continuing attempt to standardise just and fair rules of procedures for the large number and diversity of administrative tribunals operating in the United Kingdom. The report is designed to provide a comprehensive collection of model procedural rules for use by government departments and by tribunals engaged in drafting or amending tribunal rules. The report considers

- rules aimed primarily at applicants or appellants
- rules to ensure that tribunals provide guidance
- rules which provide tribunals with all necessary powers, and
- general considerations.

The report annexes a set of model tribunal rules assuming the following elements to be essential:

Tribunals should

- have sufficient power to establish the facts
- be able to adapt their procedure to each case
- be able to decide each case expeditiously and efficiently, and
- be able to correct mistakes.

Applicants who come to tribunals should

- be aware of their rights and how the proceedings will develop
- have a simple means of invoking the tribunal
- have a full opportunity to put their own cases and know their opponent's case
- have fears and ignorance concerning the procedures of the tribunal dispelled, and
- have a right to receive reasons for decisions.

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