

RŌPŪ TAKE MANENE, TAKE WHAKAMARU
AOTEAROA

Appellant: AY (Kiribati)

Before: Judge M Treadwell (Chair)

Representative for the Appellant: C Summers

Date of Decision: 24 March 2023

DEPORTATION (NON-RESIDENT) DECISION

[1] This is a humanitarian appeal by the appellant, a 65-year-old citizen of Kiribati, against her liability for deportation which arose when she became unlawfully in New Zealand, after the expiry of her visitor visa.

THE ISSUE

[2] The primary issue on appeal is whether the appellant's strong family nexus to New Zealand through her two daughters and grandchildren, the care and support she provides to them, particularly in respect of her parental role in caring for the grandchildren, and the limited support available to her in Kiribati if she returns there (particularly in light of newly-emerged evidence of the diagnosis of breast cancer) gives rise to exceptional humanitarian circumstances which would make it unjust or unduly harsh for her to be deported from New Zealand.

[3] For the reasons which follow, the appeal is allowed and the appellant is to be granted a resident visa.

BACKGROUND

[4] The appellant was born in 1957 in Fiji, though she is a citizen of Kiribati.

She does not have Fijian citizenship. She is widowed, her husband having died in Kiribati in 2003. Her parents and her six siblings are all deceased. Of her four adult children, her two sons, AA and BB, reside in Kiribati. Her two daughters, CC and DD (both New Zealand citizens), are married and reside permanently in New Zealand with their husbands and children. The appellant lives with one of her daughters here.

[5] The appellant first came to New Zealand as a visitor, in 1999, for a week. She has made three other short trips here in 2011, 2012, and 2014. Her visits were for the purpose of seeing her children and grandchildren who are lawfully and permanently settled here.

[6] The appellant most recently arrived in New Zealand in November 2019. She remained here on visitor visas, due to the closure of international borders during the COVID-19 pandemic.

[7] The appellant's last visitor visa expired on 11 July 2022, leading to her lodging the present appeal on 27 July 2022.

STATUTORY GROUNDS

[8] The grounds for determining a humanitarian appeal are set out in section 207 of the Immigration Act 2009 ("the Act"):

- "(1) The Tribunal must allow an appeal against liability for deportation on humanitarian grounds only where it is satisfied that—
 - (a) there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand; and
 - (b) it would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand."

[9] The Supreme Court has stated that three ingredients had to be established in the first limb of section 47(3) of the former Immigration Act 1987, the almost identical predecessor to section 207(1): (i) exceptional circumstances; (ii) of a humanitarian nature; (iii) that would make it unjust or unduly harsh for the person to be removed from New Zealand. The circumstances "must be well outside the normal run of circumstances" and while they do not need to be unique or very rare, they do have to be "truly an exception rather than the rule": *Ye v Minister of Immigration* [2009] NZSC 76, [2010] 1 NZLR 104 at [34].

[10] To determine whether it would be unjust or unduly harsh for an appellant to be deported from New Zealand, the Supreme Court in *Ye* stated that an appellant must show a level of harshness more than a “generic concern” and “beyond the level of harshness that must be regarded as acceptable in order to preserve the integrity of New Zealand’s immigration system” (at [35]).

THE APPELLANT’S CASE

[11] The appellant’s case is set out in the appeal form lodged with the Tribunal on 27 June 2022, and submissions lodged on 5 September 2022. Her case can be summarised as follows:

- (a) The appellant’s siblings are now all deceased, mostly when she was young. She has distant relatives in Fiji but does not have contact with any of them.
- (b) During her working life, the appellant worked on contract for the ABC college, in Kiribati. She retired in November 2019, stressed and tired after years of supporting herself and her children.
- (c) The appellant’s husband died in August 2003. She never re-married, but did enter a relationship with a new partner. It was not a healthy relationship, however. Her partner was unemployed and was often unfaithful. Her daughters convinced her to visit them in New Zealand after she retired, as a break from the stress of her relationship and her work. Her partner has since returned to his previous wife and the appellant no longer has any contact with him.
- (d) The appellant has never received support from her sons in Kiribati. One son, AA, worked for himself on low pay and would regularly ask his mother for money. His two children were adopted by their aunt in New Zealand after he and his ex-wife divorced. He has since lost his employment in Kiribati and has no means to support himself, let alone the appellant. If the appellant was in Kiribati, even on a government pension of \$50 per month, she would be at significant risk of financial elder abuse from her son.
- (e) The appellant’s other son, BB, is unemployed, living on his own. He is an alcoholic and has never supported his mother. He has had an

unstable relationship with a girlfriend with whom he has one child, EE. This child has since been adopted by his aunt in New Zealand.

- (f) All the appellant's grandchildren are New Zealand citizens and live in New Zealand.
- (g) The appellant is the primary caregiver during the day for two of her grandchildren, FF and GG, while their parents work and study. The cost of formal childcare for those children would be more than the parents could afford. Without the appellant's assistance they would not be able to continue to both work and study. The appellant is very much part of the daily life of her grandchildren, such that their parents find it difficult to tell the children that she may be required to leave New Zealand.
- (h) Having been away from Kiribati for three years, and at her age, the appellant will no longer be able to find work to support herself. She will no longer have available to her the housing entitlement which came with her past employment. She has no financial resources to support herself in Kiribati, having used her spare income to assist her son when she was working. In contrast, her daughters support her in New Zealand.

The appellant's nexus to New Zealand

[12] The appellant's daughter, CC, is employed by a community trust as a support facilitator on \$21.84 per hour. While her earnings are modest, the impact she has on the community through her work is immeasurable for the residents and clients of the trust. CC's husband also earns a modest salary, working in a pharmaceutical factory. They have three children aged from three to 13 years old. The couple does not have spare funds to support the appellant in a separate household in Kiribati.

[13] The appellant's other daughter, DD, is undertaking a nursing programme. Once qualified, she will give much to the community, even though her earnings potential will be modest. Her husband earns \$25.00 per hour as a painter. With seven dependent children, from two to 14 years old, there are no spare funds in the household and they are very reliant on the assistance of the appellant for

childcare. If the appellant was not here to assist them with childcare, DD would have to give up her studies.

[14] There is a cultural expectation on CC and DD, as daughters, to care for their mother in her advancing years. They are well qualified to do so. In contrast, there are no rest homes in Kiribati and the social and cultural expectation is that the family — particularly daughters — will care for aged parents. The reality is that the appellant is dependent on her New Zealand-citizen daughters for companionship and care. She has lived with them and her grandchildren for almost three years, which has only served to strengthen their connection.

[15] It is not possible for either of the appellant's daughters to return to Kiribati with her, to care for her there. They have career paths and children who are well-settled New Zealand citizens.

Evidence of the Appellant's Daughter, CC and her Husband HH

[16] CC, provides a letter dated 5 August 2022. In summary, she states:

[17] The appellant (CC's mother) is a genuine and caring person. She is very humble and sensible and hard working, having worked most of her life until the age of 63 when her daughters asked her to come to New Zealand.

[18] The appellant has been through a great deal and struggled when she was in Kiribati. She was mentally stressed at times and was under a lot of pressure, though she tried to be strong all the time. CC's father died in 2003 and her mother felt lonely and depressed for some time. CC left Kiribati in 2005 to come to New Zealand with her husband. At the time, CC felt that her mother was the one pushing them to emigrate because she knew there was a better future here. Later, her mother got into another relationship. She was happy for a time, but she had to work tirelessly because her new partner was unemployed. He also often cheated on CC's mother. She was verbally abused much of the time by him. Every time that CC spoke to her mother on the telephone she wished her mother's relationship with the man would end but her mother had been lonely for a long time and needed a companion. CC told her that the relationship was very unhealthy for her, but her mother always tried to be strong. CC wants her mother to stay here with her because she does not want her to go back to the life she used to live. Further, now that her mother is unemployed and getting old, no-one will be able to look after her and support her the way CC does in New Zealand.

[19] CC and her husband are both New Zealand citizens. They have three girls, JJ aged 13, KK aged 10 and LL aged 3, all born and raised in this country. The appellant resides with them and looks after LL while CC works. LL has been well taken care of by CC's mother, who also helps out by taking the other two girls to school, by walking with them in the morning. Having her mother with them is a blessing to CC's family — it has changed their lives in many wonderful ways. They are happily living in their own home, which they recently bought. The appellant helped in this by enabling CC and her husband to work hard, for extra-long hours, while she stayed home and focussed on the children. CC works full time as a support worker for XYZ community support where she looks after disabled girls. She works at their home and does shift hours and sleepovers as well which requires her to work from 3pm to 10am the next day. While she is away for work, she knows that her mother is staying home and taking care of the children. Her mother has a very calm attitude and is teaching her grandchildren how to be wise and have good manners and, most importantly, i-Kiribati culture. She has a very strong belief and respect for her culture and identity.

[20] CC's children have a strong connection with their grandmother especially now that she is the only living grandparent for them. Her husband lost connection with his own father when he was a young child and his mother still lives in Kiribati. She is old and has health issues and CC's children have never met her.

[21] CC confirms that her mother looks after CC's sister's children as well. The whole family will be devastated if she must leave them one day. Further, because of COVID-19 and other viruses around the world, it is worrying for the children to travel back to Kiribati. Hospital care there is very low quality.

[22] A further letter dated 4 August 2022, from CC's husband, HH, gives much the same information as CC does. HH also stresses the bond between his mother-in-law and the children (her grandchildren) which has developed over the last three years because of the strong parental role played by the appellant.

Evidence of the Appellant's Daughter, DD

[23] DD provides a letter, on behalf of her husband, MM, and herself. She confirms that they are both New Zealand citizens, and have four children, also New Zealand citizens.

[24] DD states that her mother came to New Zealand in November 2019 when DD was pregnant with her fourth child, to provide support. Her mother has taken care of her since then. In particular, her mother supported DD while she was recovering, to enable her husband to go back to work full time as a painter.

[25] DD is currently in her last semester of studying to become a registered nurse. She has been able to study because of the help from her mother, particularly with the care of her two-year-old daughter and looking after her other three children (all at primary school). DD has experienced mental stress during her studies but has found that her mother's help and support has made it possible for her to focus. She knows that she would not have come so far without her mother's help.

[26] DD's children have established a strong and good relationship, and bonding, with their grandmother and would be devastated if she had to leave them. They would not be able to visit their grandmother in Kiribati because the family could not afford this. Further, with the COVID-19 outbreak, the future for travel to Kiribati is not promising especially because the health system in Kiribati is not as effective as it is in New Zealand.

[27] DD's mother is happy to be with her grandchildren and is making the most of her time with them, teaching them about i-Kiribati culture, values and language. Every day, she tutors all her grandchildren about good manners and good education and how important it is for them to stay connected with their cultural background and have a good understanding of who they are. This gives them a sense of belonging and is something their parents do not have enough time to do, with life being so busy. There are 10 grandchildren altogether and all of them are New Zealand citizens. They would love their Nana to stay with them forever because she is the only living grandparent to some of the grandchildren.

[28] DD concludes her letter as follows:

"We would like to conclude this letter with the hope that you hear our concern and our children's concern and consider our support for our loving mother/mother-in-law and most of all a grandmother to 10 beautiful children. It is not just a letter of support, it is a voice of our children, a voice for their future."

Documents and Materials

[29] The appeal is supported by the following material:

- (a) a table of family details;
- (b) copies of the passports of the appellant and her New Zealand-based family members;
- (c) copies of birth certificates for the appellant's New Zealand-based family members
- (d) the death certificate for the appellant's late husband;
- (e) pay advice slips for CC, DD and HH;
- (f) evidence of enrolment in nursing studies by DD;
- (g) letters of support from the Deputy Chair of Kiribati New Zealand Aotearoa, the secretary of the Kiribati Federation Aotearoa, Louisa Humphry MNZM, the Principal of Saint Peter Chanel Catholic School and Tikutaake Teiwaki (a social worker with Oranga Tamariki), all of whom confirm that they personally know the appellant and her daughters' families, that the appellant is great support to her daughters and a loving grandmother to her grandchildren;
- (h) a letter of support, dated 9 August 2022, from NN, the appellant's brother-in-law (the brother of her late husband), who confirms that he knew the appellant (a kind and generous person) in Kiribati, until he came to New Zealand himself, and still sees her here when the appellant and her daughters and their families visit him in the provincial town in which he lives;
- (i) a selection of photographs of the appellant with her grandchildren and within the wider Kiribati community in New Zealand.

[30] In terms of submissions, Ms Summers makes the following points:

Case law

- (a) As noted in *Wilfred v Chief Executive of the Department of Labour* [2007] NZAR 237 (HC), a single humanitarian circumstance may be "exceptional" while, in others, there may be a combination of circumstances which, separately, do not fit into that category but,

when viewed cumulatively, amount to exceptional circumstances of a humanitarian nature.

- (b) *AQ (Kiribati)* [2019] NZIPT 504614 involved similar facts to those here. There, a 67-year-old, widowed citizen of Kiribati had spent time in New Zealand with his New Zealand-citizen daughter and her family. He had lived in their household some 16 months prior to lodging his appeal. None of his family members in Kiribati were in a position to provide him with accommodation or practical or financial support as they had limited means and their own families to support. The Tribunal considered that, as the appellant's daughter and granddaughter worked as healthcare assistants, they were "well-placed to continue to provide appropriate support and oversight of the appellant". Further, as a retired and elderly person, the appellant's emotional well-being was heavily dependent on his ability to continue to access companionship and socialisation, which he derived from his family.
- (c) In *Murdoch* [2015] NZIPT 502269, a 70-year-old citizen of Kiribati was found to have exceptional humanitarian circumstances due to the difficulty of return to Kiribati, her family nexus to New Zealand and the best interests of her New Zealand-resident daughter and New Zealand-citizen granddaughter. Those facts mirror those of the appellant here.
- (d) The appellant has established her home in New Zealand with her daughters and grandchildren — she has nothing to return to in Kiribati. A big part of establishing her home here has been the fact that, from March 2020 to August 2022, it was impossible to return to Kiribati due to border closures as a result of COVID-19.

COVID-19 and health

- (e) Even if it were not for the personal reasons outlined above, the COVID-19 situation in Kiribati alone would be reason not to deport the appellant at this time.
- (f) Kiribati has only recently begun to recover from an outbreak of COVID-19. Its existence in a person's country of citizenship does not usually constitute exceptional humanitarian circumstances in and of

itself, but the unique circumstances of Kiribati mean that an outbreak there does in fact meet the statutory test.

- (g) Life expectancy in Kiribati is 66 years. The appellant approaches this age. Much of the adult population has personal risk factors for health issues including diabetes, obesity, elevated blood pressure and cholesterol levels, tuberculosis and leprosy. 71 per cent of adult males and 43 per cent of adult females smoke. Child mortality rates are higher than in any other Pacific island country. The number of women who die in childbirth has increased in recent years. Due to poor sanitation and water, diarrhoea is an issue. There are also high rates of sexually transmissible infections. Even prior to the pandemic, Kiribati was particularly vulnerable in terms of public health. According to the World Health Organisation, there are significant gaps in health services delivery in Kiribati, including "deteriorating health facilities with limited bed capacity and frequent shortages of medical equipment and drug supplies, limited resources for health coupled with increasing demands and a need for improvement in the standard and quality of care". Gender inequality, poverty, poor sanitation, overcrowding and water contamination exacerbate the problems in Kiribati's health care sector.
- (h) Any further COVID-19 outbreak will exacerbate existing problems with health services delivery, and will hit hard in a country grappling with climate change. In 2010, only 16 per cent of the labour force was employed due to the prevalence of subsistence agriculture and fisheries, meaning that natural resource degradation is a serious threat to livelihoods and to subsistence.
- (i) The appellant, at her age, is at risk should she return to Kiribati. Even if it were possible for the appellant to return now, she has nowhere to stay and no one to take care of her. She would be returning to a country still dealing with COVID-19 — a country that was already dealing with its own serious public health issues, and broader economic issues.
- (j) During the worst periods of COVID-19 in India, the Tribunal found exceptional circumstances of a humanitarian nature given the magnitude of the crisis in the country to which appellants would be

returned: *JQ (India)* [2020] NZIPT 504535-536, *Singh* [2021] NZIPT 505217.

Travel difficulties

- (k) The significant difficulty in visiting family if deported due to travel restrictions has been the subject of discussion in previous Tribunal decisions: *Singh* [2020] NZIPT 504952, *AB (Ireland)* [2020] NZIPT 504931, *JM (India)* [2020] NZIPT 504899.

Climate change

- (l) It has been recognised that the impacts of climate change may adversely affect the enjoyment of human rights *AF (Kiribati)* [2013] NZIPT 800413 at [63] and in the UN Human Rights Committee decision in *Teitiota v New Zealand* CCPR/C/127/D/2728/2016 (7 January 2020).

Income

- (m) Though Kiribati does have an old age pension (The Elderly Fund), which will entitle the appellant to \$50 per month, she remains a vulnerable person due to her isolation, her advanced years, and her gender. It has been reported that, in Kiribati, gender inequality remains high and women experience traditionally low status.

[31] On 21 March 2023, counsel provided the Tribunal with a clear Kiribati police certificate (dated 14 March 2023) for the appellant. At the same time, counsel submitted a medical report dated 6 March 2023 reporting that on examination the appellant has a lump in her breast that is “most likely breast cancer”, present since 2021. The view is that it is a malignant neoplasm. The radiologist’s report states:

“Conclusion:

The palpable lesion in the right breast has the mammographic appearances of a breast malignancy as clinically indicated. The next step would be an ultrasound scan to assess the lesion, to assess for axillary nodes and perform a biopsy to confirm the diagnosis and type the lesion. I note there are issues with residency and cost. Please refer as appropriate following discussion with the patient.”

[32] Finally, counsel has provided to the Tribunal, on 24 March 2023, a letter dated 23 March 2023 from the Kiribati Ministry of Health & Medical Services, stating:

“RE: Status of Cancer treatment in the Republic of Kiribati

This letter serves to confirm that Tungaru Central Hospital, the sole national referral hospital situated on South Tarawa in the Republic of Kiribati can only provide surgical interventions without providing additional treatment. No cancer medication nor radiotherapy facility available in our setting and our capacity to support adequate treatment of cancer patient is lacking.

Thank you

Dr Alfred Tonganibeia
Deputy Director Hospital Services
Ministry of Health and Medical Services
Republic of Kiribati”

ASSESSMENT

[33] The Tribunal has considered the submissions and documents provided by the appellant. It has also considered the appellant’s Immigration New Zealand file in relation to her temporary visa applications.

Whether there are Exceptional Circumstances of a Humanitarian Nature*Family nexus to New Zealand*

[34] The appellant is a 63-year-old widowed citizen of Kiribati. Over the last 14 years, she has travelled to New Zealand on four previous occasions to spend time with her New Zealand-citizen daughters and their families, which comprise all the appellant’s grandchildren. All are citizens of New Zealand. The appellant’s visits have varied in duration from several months to one year. The appellant last arrived in New Zealand in late 2019, and she remains living in the household of her daughter CC and son-in-law, and their three children.

[35] It is evident that the appellant and her New Zealand family members are a closely bonded family unit. The appellant is an integral part of the care arrangements for CC’s three children, such that the youngest child has never known a life which did not include the appellant as a parental figure.

[36] It is also accepted that the appellant’s presence enables her daughter and son-in-law to earn sufficient income for the recent purchase of their own house and the daughter to undertake tertiary studies. The Tribunal accepts that it is unlikely that either would be achieved without the parental role being played by the appellant in the lives of the children.

[37] While there is no extrinsic evidence of the vulnerabilities and poverty of the appellant's sons in Kiribati, the Tribunal bears in mind that such socio-economic fragility would be difficult to find corroborative evidence of. The appellant has given a clear and persuasive account of the poverty and unemployment of both sons and the alcoholism of her second son. There is a further factor in the reality that the children of both the appellant's sons have had to be adopted out to aunts in New Zealand. On balance, the Tribunal accepts that the appellant did not receive financial or emotional support from her sons in Kiribati and, if deported, would return to the same.

[38] In summary, it is accepted that the appellant is well-settled in the household of her daughter and plays a close and important role in the lives of all her grandchildren here. The Tribunal must have regard to the best interests of children as a primary consideration. In that regard, it is clearly in the grandchildren's best interests that an active, parental figure to whom they are closely bonded should remain in that role during their development and upbringing.

[39] The love and companionship the appellant derives from living with her New Zealand-based daughter, and having her other daughter in close proximity, is a significant factor. At the appellant's age, as a retired and elderly (by Kiribati standards) woman, her emotional well-being will be heavily dependent on her accessing such ongoing companionship and socialisation. Without ready access to this familial companionship, it can be expected that the appellant's mental and physical health would deteriorate.

Circumstances in Kiribati

[40] Conversely, the appellant has no supportive family on whom she could rely in Kiribati. She has no property there and, while there is a modest pension, it is unlikely that the appellant could manage rent and food on \$12.50 a week, let alone other costs. It is inevitable that she would come to depend on remittances from her daughters for her survival — leading to significant financial hardship for both daughters and, likely, the loss of opportunity for DD to finish her studies.

Conclusion on exceptional humanitarian circumstances

[41] As the appellant ages, her need for emotional and practical support from her daughters and their families can be expected to increase. The Tribunal finds

that her emotional and physical well-being is best ensured by her remaining in this well-settled family environment in New Zealand. It is also a significant factor that her presence here will maintain an important 'parental' bond with her grandchildren, an outcome clearly in their best interests. Her presence will also continue to enable her daughter and son-in-law to continue to provide financially for the family, enhancing developmental outcomes for the grandchildren.

[42] Deportation would deprive the appellant of the love and support she currently receives from her immediate and extended family network in New Zealand. It would also deprive the New Zealand-based family of her love and support in return.

[43] Finally, the recent identification of suspected breast cancer will be of great concern to the appellant. The Tribunal notes the lack of comprehensive medical services in Kiribati (discussed hereafter) and accepts that the current risk to the appellant's health and well-being (including her need to be supported by family) contributes to her humanitarian circumstances.

[44] The Tribunal finds that the appellant's age, her strong familial nexus to New Zealand, her dependence on her New Zealand-citizen daughters and grandchildren (and their dependence on her), coupled with the inability of her sons in Kiribati to support her there and her current need for urgent medical treatment (and close family support during it), amount to exceptional humanitarian circumstances.

Whether it would be Unjust or Unduly Harsh for the Appellant to be Deported

[45] The appellant is liable for deportation because she is currently unlawfully in New Zealand. This arose as she remained here after the expiry of her most recent visitor visa in July 2022. With the exception of her current unlawful status, the appellant has always complied with the requirements of her temporary visas and remained in New Zealand lawfully.

[46] It is acknowledged that the integrity of the immigration system risks being undermined by persons who overstay their visas. The degree to which that undermining exists will depend on the circumstances of the individual case. Here, a number of factors point to any harm to the integrity of the system being at the low end of the scale. First, it was not the appellant's intention, in late 2019, to stay so long in New Zealand. That has been substantially the product of the COVID-19

border closures. Second, the time the appellant has overstayed has been of short duration. There has been no attempt by the appellant to evade Immigration New Zealand or to stay here without testing her statutory right to appeal to this Tribunal.

[47] Having regard to the appellant's exceptional humanitarian circumstances, as found above, weighed against the adverse considerations discussed here, the Tribunal is satisfied that it would be unjust or unduly harsh for her to be deported from New Zealand.

Public Interest

[48] The appellant has no criminal convictions in Kiribati or New Zealand. She has provided a clear Kiribati police certificate (14 March 2023), and the Tribunal has obtained an updated clear New Zealand police certificate for her.

[49] The appellant's very recent diagnosis with malignant breast cancer is an adverse public interest consideration because of the potentially significant cost to the public health system of treatment. On the limited information before the Tribunal, it expects that she may require urgent surgery and radiotherapy and/or chemotherapy. It is accepted that those costs are likely to amount to a burden on the health system.

[50] Balanced against that concern, in the context of the appellant's diagnosis, are the following positive public interest considerations:

- (a) The appellant clearly needs treatment for cancer as a matter of urgency. It is malignant. Delay is potentially extremely serious for her. There is a public interest in not permitting undue suffering which might otherwise be avoided.
- (b) Treatment appears (on the information locatable by the Tribunal in the short available time) to be extremely limited in Kiribati. The World Health Organisation reported, in its 2020 summary of health services in Kiribati (at <https://cdn.who.int/>) that mammography, CT scanning, MRI scanning and external beam radiotherapy were not available. It is expected that chemotherapy would be similarly unavailable. Those conclusions are consistent with the letter of 23 March 2023, from Dr Tonganibeia, of the Kiribati Ministry of Health and Public Services. If the appellant is to be treated, at what

is stated to be an advanced stage of cancer, it appears that treatment here is the only option.

- (c) The appellant faces a challenging journey towards a return to good health. She will require family unity and support, particularly from her daughters. She will be able to seek support and empathy from them in ways that her estranged sons in Kiribati are unlikely to be able to provide. New Zealand's duty to respect its international obligation to protect and promote family unity is near its highest where deportation would deprive a person of family support and succour during a time of serious, life-threatening illness. That obligation takes on a particular hue in the context of a gender-specific illness affecting women in an intensely personal way, for which the support of daughters or other women family members is important.

[51] Weighing the important concern about the burden on the New Zealand health system against the positive public interest considerations identified above, the Tribunal finds that, in all the circumstances, it would not be contrary to the public interest for the appellant to remain in New Zealand on a permanent basis.

DETERMINATION

[52] For the reasons given, the Tribunal finds that the appellant has exceptional circumstances of a humanitarian nature which would make it unjust or unduly harsh for her to be deported from New Zealand. It also finds that it would not, in all the circumstances, be contrary to the public interest for her to remain in New Zealand on a permanent basis.

[53] Pursuant to section 210(1)(a) of the Act, the Tribunal orders that the appellant be granted a resident visa.

[54] The appellant will need to approach Immigration New Zealand for it to give effect to the order made above. The Tribunal cannot direct Immigration New Zealand as to the carrying out of its statutory functions, which are properly a matter for it, but the Tribunal does observe that the appellant's ability to access urgently needed medical treatment is currently impeded by her need to demonstrate to the relevant District Health Board that she is a New Zealand

resident. To the extent that it can, the Tribunal invites Immigration New Zealand to address this matter with priority and real urgency.

[55] The appeal is allowed on those terms.

Order as to Depersonalised Research Copy

[56] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's name and any particulars likely to lead to the identification of the appellant or her family. This arises from the need to have discussed personal medical information relating to the appellant.

“Judge M Treadwell”
Judge M Treadwell
Chair

Certified to be the Research
Copy released for publication.

Judge M Treadwell
Chair