

# Department of Immigration and Citizenship

## MINUTE

FOLIO NO.

Office:  
File No:

### MINISTER FOR IMMIGRATION AND CITIZENSHIP

Re: Dr HANEEF, Mohamed

### POSSIBLE VISA CANCELLATION UNDER PARAGRAPH 501(3)(b) OF THE *MIGRATION ACT 1958*

#### PURPOSE

The purpose of the attached Issues Paper is to provide information on Dr HANEEF's case and seek your decisions on:

- whether Dr HANEEF does not pass the *character test* at subsection 501(6) of the *Migration Act 1958* (the Act);
- whether it is in the national interest to cancel Dr HANEEF's Subclass 457 Business (Long Stay)(Class UC) visa under paragraph 501(3)(b) of the Act; and
- if Dr HANEEF does not pass the character test and it is in the national interest, whether to cancel Dr HANEEF's Subclass 457 Business (Long Stay)(Class UC) visa under paragraph 501(3)(b) of the Act.

Peter White  
Assistant Secretary  
Character Assessment and War Crimes Screening

16 July 2007

**ISSUES FOR CONSIDERATION OF POSSIBLE VISA CANCELLATION UNDER  
PARAGRAPH 501(3)(b) OF THE *MIGRATION ACT 1958***

**PART A: PERSONAL DETAILS**

**Personal Particulars of Visa Holder**

Family Name: HANEEF  
Given Name(s): Mohamed  
Alias(es): 'Ather'  
Date of Birth: 29 September 1979  
Country of Birth: India  
Citizenship: India  
Sex: Male  
Marital Status: Married

**Summary of Visa Holder's Immigration History**

Date of First Entry to Australia: 11 September 2006  
Visa Subclass Held on First Entry: Subclass 457 Business (Long Stay)(Class UC) visa  
Age at First Entry: 26 years old  
Current Visa(s) Held: Subclass 457 Business (Long Stay)(Class UC) visa  
Visa Expiry Date: 30 August 2010  
Stay Period of Visa: 4 years

*A copy of Dr HANEEF's movement record is at Annex 1.*

### Details of Visa Holder's Immigration History

1. Dr HANEEF arrived in Australia on 11 September 2006 on a subclass 457 – Business (Long Stay)(Class UC) visa. He has not departed since.

### Previous Consideration under section 501 or section 200

2. Dr HANEEF has not been previously considered under section 501 or section 200 of the Act.

### Current Location

3. Dr HANEEF is currently on remand at Brisbane City watch house.

## **PART B: CONSIDERATION OF VISA CANCELLATION**

### Character Test

4. Paragraph 501(3)(b) of the Act provides that you may cancel a visa granted to a person if you reasonably suspect that the person does not pass the *character test*, and you are satisfied that cancelling Dr HANEEF's visa is in the national interest (paragraph 501(3)(d)). By subsection 501(4), the power under paragraph 501(3)(b) may only be exercised by the Minister personally, and, by subsection 501(5), the rules of natural justice do not apply to such a decision.

5. The *character test* is defined in subsection 501(6) as follows:

*(6) For the purposes of this section, a person does not pass the "character test" if:*

- a) the person has a substantial criminal record (as defined by subsection (7)); or*
- b) the person has or has had an association with someone else, or with a group or organisation, whom the Minister reasonably suspects has been or is involved in criminal conduct; or*
- c) having regard to either or both of the following:*
  - (i) the person's past and present criminal conduct;*
  - (ii) the person's past and present general conduct;**the person is not of good character; or*
- d) in the event the person were allowed to enter or to remain in Australia, there is a significant risk that the person would:*
  - (i) engage in criminal conduct in Australia; or*
  - (ii) harass, molest, intimidate or stalk another person in Australia;*  
*or*
  - (iii) vilify a segment of the Australian community; or*
  - (iv) incite discord in the Australian community or to a segment of that community, or*

- (v) *represent a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way.*

*Otherwise, the person passes the character test.*

### **Grounds**

- 6. The relevant ground in subsection 501(6) in this case is subparagraph 501(6)(b):

- (6) *For the purposes of this section, a person does not pass the character test if:*

*\*\*\**

- (b) *the person has or has had an association with someone else, or with a group or organisation, whom the Minister reasonably suspects has been or is involved in criminal conduct; ...*

### **Findings in relation to the Character Test**

- 7. Ministerial Direction 21 on *Visa Refusal and Cancellation under Section 501* (the Direction) provides guidance to decision-makers in making decisions to refuse to grant or to cancel a visa under section 501 of the Act. It is clear from a number of decisions of the Federal Court that, when you decide a case personally, you are not bound by a section 499 Direction. However, in making a decision on this case it is open to you to be guided by the factors set out in the Direction. In balancing the relevant factors in this case, you are free to give whatever weight you regard as appropriate to those factors.

- 8. Paragraph 1.5 the Direction states:

*The meaning of "association" for the purposes of the Character Test encompasses a very wide range of relationships including having an "alliance" or a "link" or "connection" with a person, a group or an organised body that is involved in criminal activities. "Association" does not require actual membership of a group or an organised body that is involved in criminal activities. In establishing criminal association, the decision-maker may have regard to the following:*

- (a) *the degree and frequency of association the non-citizen had or has with the individual, group or organisation;*
- (b) *the duration of the association; and*
- (c) *the nature of the association.*

- 9. On 2 July 2007 Dr HANEEF was arrested by the Australian Federal Police (AFP) and Queensland Police members attached to the Joint Counter Terrorism Team (Brisbane) at Brisbane International Airport for allegedly Providing Support to a Terrorist Organisation, contrary to section 102.7 *Criminal Code Act 1995* (Annex 2).

10. On 14 July 2007, Dr HANEEF was formally charged with intentionally providing resources to a terrorist organisation, consisting of persons including Sabeel AHMED and Kafeel AHMED, being reckless as to whether the organisation was a terrorist organisation, contrary to section 102.7 *Criminal Code Act 1995*.
11. The AFP and Queensland Police arrested Dr HANEEF after the AFP received information from Metropolitan Police Service (MPS) Counter Terrorism Command (CTC), that Dr HANEEF is a person of interest to their investigation through his association with two of the United Kingdom suspects believed to be involved in the London incident and Glasgow bombings (Annexes 4 and 5). Further information that is protected under section 503A of the Act, is at Annex 3.
11. Dr HANEEF has advised the AFP that he is the second cousin (on his mother's side) of two of the UK suspects, Dr Sabeel AHMED and Dr Kafeel AHMED.
12. According to information provided by Dr HANEEF to the AFP, Dr HANEEF first arrived in the United Kingdom in March 2004, and was employed as a locum at the Halton Hospital, Runcorn, Cheshire, until 2005. This is the same hospital with which Dr Sabeel AHMED was employed. (Annexes 6 and 7)
13. Dr HANEEF advised the AFP that he resided with Dr Sabeel AHMED at a boarding house located at 13 Bentley Road, Liverpool, UK.
14. Dr HANEEF advised the AFP that in June/July 2004 and November 2004, he visited Dr Kafeel AHMED at Cambridge University. Dr HANEEF further advised the AFP that in October 2005, Dr Kafeel AHMED loaned Dr HANEEF 300 British pounds to sit a medical exam.
15. When Dr HANEEF left for Australia, he left several items at the above mentioned Liverpool address, including his mobile telephone (including both the handset and the SIM card). The mobile telephone was connected to the UK service provider 'O2'.
16. Since leaving the UK, Dr HANEEF and Dr Sabeel AHMED have been in correspondence via on-line chat rooms. The most recent correspondence was on 26 June 2007, regarding the birth of Dr HANEEF's daughter. There is additional material to support the association that is protected under section 503A of the Act, and this is at Annex 3.
17. Based on the information provided in this submission, including section 503A protected information, it is open for you to reasonably suspect Dr Sabeel AHMED and Dr Kafeel AHMED are, or have been, involved in criminal conduct.
18. Based on the above information, it is open for you to reasonably suspect that Dr HANEEF has or has had an association with Dr Sabeel AHMED and Dr Kafeel AHMED.
19. Additional information relating to Dr HANEEF's possible association with Dr Sabeel AHMED and Dr Kafeel AHMED that is protected under section 503A of the Act, is at Annex 3. This evidence cannot be disclosed to Dr HANEEF or his authorised recipient for comment.
20. Based on the information provided in this submission, it is open for you to reasonably suspect that Dr HANEEF does not pass the *character test* at paragraph 501(6)(b) of the Act.

## National Interest

23. If you reasonably suspect that Dr HANEEF does not pass the *character test*, you may consider whether cancelling Dr HANEEF's visa under paragraph 501(3)(b) is in the *national interest*.
24. Paragraph 501(3)(b) of the Act provides the Minister with a discretion to cancel a person's visa, if the Minister reasonably suspects that the person does not pass the character test (paragraph 501(3)(c)), and the Minister is satisfied that the cancellation is in the *national interest* (paragraph 501(3)(d)) of the Act.
25. *National interest* is not defined for the purposes of subsection 501(3) of the Act. Courts have been reluctant to attempt to define the meaning of *national interest* in a statutory context, but *national interest* has been determined to be a different concept to the public interest.
26. The courts have accepted that the expression *national interest* is a broad one and that it can include a consideration of Australia's relationships with, and reputation among, other nations.
27. The Federal Court has observed that the expression "national" directs attention to the interests of Australia as a whole, distinct from local or regional interests within Australia. Generally, also, courts have not interfered with assessments by ministers as to what the national interest requires in particular statutory contexts. In the context of the Migration Act, it has been said that the question of what is or is not in the *national interest* is an evaluative one and is entrusted by the legislature to the Minister to determine according to his or her satisfaction which must nevertheless be attained reasonably: *Madafferi v Minister for Immigration and Multicultural Affairs* [2002] FCAFC 220.
28. The mere fact that a person does not pass the *character test* is not a sufficient basis for determining that it is in the *national interest* that their visa be cancelled. The terms of subsection 501(3) of the Act make it clear that *national interest* considerations are separate and distinct from the question whether a person passes the *character test*.
29. In considering whether it is in the *national interest* to cancel Dr HANEEF's visa, you may wish to consider the following factors:
30. The criminal conduct in which Dr HANEEF's associates are suspected to have engaged in is particularly serious.
31. On 14 July 2007, Dr HANEEF was formally charged with intentionally providing resources to a terrorist organisation, consisting of persons including Sabeel AHMED and Kafeel AHMED, being reckless as to whether the organisation was a terrorist organisation. The offence of providing support to a terrorist organisation is clearly a serious offence in national and international terms.
32. Dr HANEEF is also a person of interest to the UK MPS CTC's investigation of recent bombings in London and Glasgow, which is an illustration of the potential international dimension of terrorism.
33. Based on the above information, including that protected under section 503A of the Act, it is open for you to find that it would be in the national interest to cancel Mr HANEEF's Subclass 457 Business (Long Stay)(Class UC) visa .

### Possibility of revoking a decision to cancel a visa under section 501(3)

34. Subsection 501(5) provides that the rules of natural justice and the code of procedure set out in Subdivision AB of Division 3 of Part 2 of the Act, do not apply when the Minister personally decides to cancel a visa under subsection 501(3) of the Act.
35. However, subsequent to any cancellation decision under subsection 501(3)(b), subsection 501C(3) and subsection 501C(4) require that:

(3) *As soon as practicable after making the original decision, the Minister must:*

(a) *give the person in the way that the Minister considers appropriate in the circumstances:*

(i) *a written notice that sets out the original decision; and*

(ii) *particulars of the relevant information\*\*; and*

(b) *except in a case where the person is not entitled to make representations about revocation of the original decision (see subsection (10)) - invite the person to make representations to the Minister, within the period and in the manner ascertained in accordance with the regulations, about revocation of the original decision.*

(4) *The Minister may revoke the original decision if:*

(a) *the person makes representations in accordance with the invitation; and*

(b) *the person satisfies the Minister that the person passes the character test (as defined by section 501).*

*(\*\*'relevant information' is defined by subsection 501C(2) to mean information (other than non-disclosable information) that the Minister considers would be the reason, or a part of the reason, for making the original decision, and is specifically about the person, or another person, and is not just about a class of persons of which the person or other person is a member.)*

36. Additional information that is related to the possible cancellation of Dr HANEEF visa under subsection 501(3) is protected under section 503A (Annex 3). Section 503A protected information cannot be disclosed to Dr HANEEF or his authorised recipient for comment. You are advised that this may limit Dr HANEEF's ability to seek revocation under section 501C.

### **PART C: CONSIDERATION OF VISA CANCELLATION – EXERCISING THE DISCRETION**

37. If you reasonably suspect that Dr HANEEF does not pass the character test and you are satisfied that visa cancellation is in the national interest, you may consider whether to cancel Dr HANEEF's visa under paragraph 501(3)(b) of the Act.
38. Section 501(3) of the *Migration Act* 1958 provides you with a discretion to cancel a visa held by a non-citizen who you reasonably suspect does not pass the character test, and if you are satisfied that it would be in the national interest to do so. A former Minister issued Directions under section 499 to guide delegates and the Administrative Appeals Tribunal in the exercise of that discretion. The relevant Direction currently in force is Direction 21 on *Visa Refusal and Cancellation under Section 501* (the

Direction). As mentioned above, it is clear from a number of decisions of the Federal Court that, when you decide a case personally, you are not bound by a section 499 Direction. In making a decision on this case, however, it is open to you to be guided by the factors set out in the Direction. In balancing the relevant factors in this case, you are free to give whatever weight you regard as appropriate to those factors.

39. The Direction sets out three primary considerations to be taken into account when deciding whether to refuse or cancel a visa under section 501. These primary considerations are: the protection of the Australian community; the expectations of the Australian community; and the best interests of the child. The Direction also sets out a number of other considerations that may be relevant to any decision whether to refuse or cancel a visa under section 501. While you are not bound by the Direction, you may take any of these considerations into account in the exercise of your discretion.

### Primary Considerations

#### PROTECTION OF THE AUSTRALIAN COMMUNITY

40. The Direction sets out a number of factors under this heading, as follows:

##### **The seriousness and nature of the conduct**

41. Paragraph 2.6 of the Direction states:
- 2.6 *It is the Government's view that the following are examples of offences which are considered by the Government to be very serious:*
- (g) *terrorist activity;*
42. On 2 July 2007 Dr HANEEF was arrested by the AFP and the Queensland Police attached to the Joint Counter Terrorism Team (Brisbane) at Brisbane International Airport for allegedly Providing Support to a Terrorist Organisation contrary to section 102.7 *Criminal Code Act 1995* (Annex 2).
43. On 14 July 2007, Dr HANEEF was formally charged with intentionally providing resources to a terrorist organisation, consisting of persons including Sabeel AHMED and Kafeel AHMED, being reckless as to whether the organisation was a terrorist organisation, contrary to section 102.7 *Criminal Code Act 1995*. On 16 July 2007, Dr HANEEF was granted bail by the Brisbane Magistrates Court in relation to that charge.
44. Information provided by the MPS CTC stated Dr HANEEF is a person of interest to their investigation through his association with two of the suspects for the recent bombings in London and Glasgow.
45. Further information regarding the extent to which Dr HANEEF had knowledge of, or had involvement in, the relevant conduct is section 503A protected (Annex 3).
46. However, it needs to be emphasised that Dr HANEEF has been charged, but has not

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been convicted of intentionally providing resources to a terrorist organisation, consisting of persons including Sabeel AHMED and Kafeel AHMED, being reckless as to whether the organisation was a terrorist organisation. The statements in the Direction about the seriousness and nature of a non-citizen's conduct need, therefore, to be understood in this context.

**Likelihood that the conduct may be repeated (including any risk of recidivism)**

47. Again, the statements in the Direction under this consideration are of limited relevance due to the fact that Dr HANEEF has been charged but has not been convicted of intentionally providing resources to a terrorist organisation, consisting of persons including Sabeel AHMED and Kafeel AHMED, being reckless as to whether the organisation was a terrorist organisation.

***Whether the non-citizen has been previously warned about the risk of cancellation in relation to section 501 or section 201.***

48. Dr HANEEF has not been previously warned about the risk of visa cancellation under section 501, nor has Dr HANEEF been previously warned about the risk of criminal deportation under section 200/201.

***Whether the visa holder has a history of convictions or bad conduct.***

49. Dr HANEEF has no known convictions in Australia or elsewhere.

***The extent of rehabilitation already achieved, prospect of further rehabilitation and positive contribution to the community the person may make***

50. Since September 2006, Dr HANEEF has been employed as a Senior House Officer at the Gold Coast Hospital, Queensland. If Dr HANEEF continued to reside in Australia he may make a positive contribution to the Australian community.

**General deterrence – the likelihood that visa refusal or visa cancellation would prevent (or inhibit the commission of) like offences by other persons**

51. Paragraph 2.11 of the Direction states:

2.11 *General deterrence aims to deter other people from committing the same or a similar offence. While not a conclusive factor in itself, general deterrence is an important factor in determining whether to refuse or cancel a visa. The general deterrence factor may be relevant in a number of ways:*

- (a) *the nature of the offence may be such that visa refusal or cancellation may deter others from committing similar offences; and*
- (b) *the visa refusal or cancellation in respect of a non-citizen who has been involved in a criminal scheme or schemes may discourage or prevent another person or persons from engaging in similar schemes.*

52. The Australian Government has a strong interest in deterring non-citizens from

providing support to terrorist organisations/networks.

## EXPECTATIONS OF THE AUSTRALIAN COMMUNITY

53. Paragraph 2.12 of the Direction states:

*“The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has breached, or where there is a significant risk that they will breach this trust or where the non-citizen has been convicted of offences in Australia or elsewhere, it may be appropriate to refuse the visa application or cancel the visa held by such a person. Visa refusal or cancellation and removal of the non-citizen may be appropriate simply because of the nature of the character concerns or offences are such that the Australian community would expect that the person would not be granted a visa or should be removed from Australia.”*

54. The Australian community may expect that a non-citizen who has had an association with persons suspected of involvement in an act of terrorism and who has been charged with an offence of providing resources to a terrorist organisation, including those persons, would have their visa cancelled.

## THE BEST INTERESTS OF THE CHILD

55. The Direction states the following under this heading:

2.13 *This consideration only applies if the child is or would be less than 18 years of age at the time when the decision is intended to come into effect. The best interests of any children aged 18 years or more is not a primary consideration but may be considered with other considerations under paragraph 2.17.*

2.14 *Where there are two or more relevant children, it should not be assumed that the interests of each child will coincide, and it may be that the best interests of one child may indicate the non-citizen parent should not be refused a visa or removed from Australia, but that the best interests of another child may point towards visa refusal or cancellation.*

2.15 *In general terms, the child’s best interest will be served if the child remains with its parents. Countervailing considerations, which may point to the child’s best interests being served by separation from the non-citizen, include, but are not limited to:*

(a) *any evidence that the non-citizen has abused or neglected the child in any way, including physical, sexual and/or mental abuse or neglect; or*

(b) *any evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen’s conduct.*

2.16 *When considering the best interests of the child, decision-makers should have regard to the following:*

(a) *the nature of the relationship between the child and the non-citizen;*

- (b) *the duration of the relationship including the number and length of any separations and reason/s for the separation; the hypothetical prospect for developing a better/stronger relationship in future (whether or not there has been significant recent contact) would normally be given relatively less weight than the proven history of the relationship based on past conduct;*
- (c) *the age of the child;*
- (d) *whether the child is an Australian citizen or permanent resident;*
- (e) *the likely effect that any separation from the non-citizen would have on the child;*
- (f) *the impact of the non-citizen's prior conduct on the child;*
- (g) *the time (if any) that the child has spent in Australia;*
- (h) *the circumstances of the probable receiving country, including the educational facilities and the standard of the health support system of the country to which the child may have to go, or return to, should the non-citizen not be permitted to enter or remain in Australia;*
- (i) *any language barriers for the child in the probable country of future residence, but taking into account the relative ease with which younger children acquire new languages; and*
- (j) *any cultural barriers for the child in the probable country of future residence, but taking into account the relative ease with which younger children adapt to new circumstances.*

56. Dr HANEEF has one daughter, born in India on 26 June 2007.

57. Dr HANEEF's daughter is currently residing with her mother in India. Dr HANEEF has suggested that prior to his arrest, he was departing Australia to visit his daughter and wife in India.

58. Dr HANEEF's daughter is not an Australian citizen, and Dr HANEEF's daughter has never resided in Australia.

#### **OTHER CONSIDERATIONS**

59. Paragraph 2.17 of the Direction provides that other considerations may be taken into account by the decision-maker, where relevant. These considerations include (but are not limited to) the following:

- (d) *family composition of the non-citizen's family, both in Australia and overseas;*
- (e) *the likelihood of the non-citizen seeking to evade any outstanding legal matter or on-going liability;*

- (h) any evidence of rehabilitation and any recent good conduct;
- (j) the purpose and intended duration of the entry to or stay in Australia, including any significant compassionate circumstances; and
- (k) the fact that a non-citizen has been formally advised in the past by an officer of the Department of Immigration and Multicultural Affairs about conduct which brought him or her within the deportation provisions at section 200/201 of the Act or the visa refusal and cancellation provisions at section 501.

***Family composition of the non-citizen's family both in Australia and overseas;***

- 60. Dr HANEEF has no family in Australia. His wife, Ms Firdous ARSHIYA and daughter currently reside in India.
- 61. However, Ms ARSHIYA is a dependant on Dr HANEEF'S Subclass 457 Business (Long Stay)(Class UC) visa, she arrived with Dr HANEEF in Australia on 11 September 2006. Ms ARSHIYA departed Australia on 19 March 2007 and has not subsequently returned to Australia. Dr HANEEF has indicated that Ms ARSHIYA recently underwent an emergency caesarean section operation.

***The likelihood of the non-citizen seeking to evade any outstanding legal matter or on-going liability***

- 62. On 16 July 2007, Dr HANEEF was granted bail by the Brisbane Magistrates Court in relation to the charge against him under section 102.7 of the *Criminal Code Act 1995*.

***The purpose and intended duration of the entry to or stay in Australia***

- 63. Dr HANEEF arrived in Australia on 11 September 2006 on a Subclass 457 Business (Long Stay)(Class UC) visa. The period of stay is for 4 years from entry. Dr HANEEF arrived in Australia to take up the position of Senior House Officer at Gold Coast Hospital, Queensland.

***Whether the non-citizen has been previously warned about the risk of cancellation in relation to section 501 or section 201.***

- 64. Dr HANEEF has not been previously warned about the risk of visa cancellation under section 501 nor has Dr HANEEF been previously warned about the risk of criminal deportation under section 200/201.

**Other International Obligations**

- 65. The Direction states the following under this heading:
  - 2.18 *Where relevant, decision-makers are required to consider the international obligations contained in this section.*
  - 2.19 *The International Convention on Civil and Political Rights (ICCPR) has an implicit non-refoulement obligation where as a necessary or foreseeable consequence of their*

*removal or deportation from Australia, the person would face a real risk of violation of his or her rights under Article 6 (right to life), or Article 7 (freedom from torture and cruel, inhuman or degrading treatment or punishment) of the ICCPR, or face the death penalty, no matter whether lawfully imposed (Second Optional Protocol to the ICCPR).*

- 2.20 The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) has an explicit prohibition against refoulement "where there are substantial grounds for believing (the person) would be in danger of being subject to torture".*
  - 2.21 The prohibition of refoulement under the CAT and ICCPR is absolute: there is no balancing of other factors if refusal or cancellation would amount to refoulement under the CAT or ICCPR.*
  - 2.22 In cases where issues of protection pursuant to the Convention and the Protocol Relating to the Status of Refugees (the Refugees Convention) are raised, they must be given consideration in the decision making process.*
  - 2.23 If Article 33(1) of the Refugees Convention does not apply to the non-citizen, there is no obligation on Australia to provide the non-citizen with protection under the Refugees Convention. If Article 33(1) applies, then there will need to be consideration whether the non-citizen can claim the benefit of Article 33(1).*
  - 2.24 Notwithstanding international obligations, the power to refuse or cancel must inherently remain a fundamental exercise of Australian sovereignty. The responsibility to determine who should be allowed to enter or to remain in Australia in the interests of the Australian community ultimately lies within the discretion of the responsible Minister.*
66. The department is not aware of any international obligations that require assessment in relation to Dr HANEEF.

**PART E: EVIDENCE OR OTHER MATERIAL ON WHICH THIS ISSUES PAPER IS BASED**

67. In preparing this Issues Paper I had regard to the following material:

- Annex 1 - Dr HANEEF's Movement Records.
- Annex 2 - Part A – Australian Federal Police Information provided to DIAC for consideration of action under section 501(3) Migration Act 1958 against Dr Mohamed Haneef.
- Annex 3 - Section 503A Protected Information.
- Annex 4 - Details of the Attempted London Bombings.
- Annex 5 - Details of the Glasgow Airport Bombings.
- Annex 6 - "Britain wants doctor extradited", Sydney Morning Herald, 4 July 2007.
- Annex 7 - "Suspect arrested at Brisbane airport used to be doctor at NHS hospital in Liverpool", The Guardian, 4 July 2007.
- Annex 8 - "Hospital keeping Haneef's job open", ABC News Online, 4 July 2007.

Zoë Clarke  
Character Policy Section  
Character Assessment and War Crimes Screening

16 July 2007

Peter White  
Assistant Secretary  
Character Assessment and War Crimes Screening

16 July 2007

**POSSIBLE VISA CANCELLATION UNDER SUBSECTION 501(3) OF THE  
MIGRATION ACT 1958**

**DECISION BY THE MINISTER FOR IMMIGRATION AND CITIZENSHIP**

I have considered all relevant matters including an assessment of the character test as defined by subsection 501(6) of the Migration Act 1958, the Ministerial Direction under section 499 of that Act, an assessment of the national interest, and all evidence before me provided by, on behalf of, or in relation to Dr HANEEF's in connection with the proposed cancellation of his Subclass 457 Business (Long Stay)(Class UC) visa.

*(Delete whichever is NOT applicable)*

(a) ~~I am satisfied that Dr HANEEF passes the character test.~~

OR

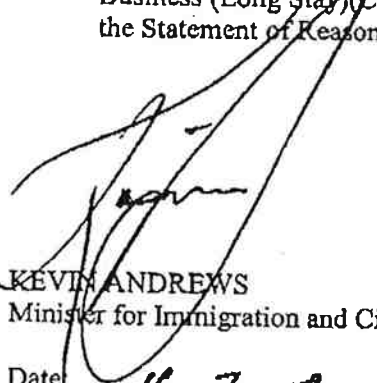
(b) ~~I reasonably suspect that Dr HANEEF does not pass the character test but I am not satisfied that cancellation would be in the national interest. I have decided to warn Dr HANEEF about his conduct in relation to subsection 501(3).~~

OR

(c) ~~I reasonably suspect that Dr HANEEF does not pass the character test AND I am satisfied that cancellation of the visa is in the national interest. However, I have decided NOT to exercise my discretion under subsection 501(3)(b) to cancel his Subclass 457 Business (Long Stay)(Class UC) visa. I have decided to warn Dr HANEEF about his conduct in relation to subsection 501(3).~~

OR

(d) I reasonably suspect that Dr HANEEF does not pass the character test AND I am satisfied that cancellation of the visa is in the national interest. I have decided to exercise my discretion under subsection 501(3)(b) to cancel his Subclass 457 Business (Long Stay)(Class UC) visa. My reasons for my decision will be set out in the Statement of Reasons.

  
KEVIN ANDREWS  
Minister for Immigration and Citizenship

Date: 16.7.07



Australian Government

Department of Immigration and Citizenship

Dr Mohamed Haneef  
By hand

Dear Dr Haneef

**NOTICE OF VISA CANCELLATION UNDER SECTION 501(3) OF THE *MIGRATION ACT 1958***

I am writing to advise that the Minister for Immigration and Citizenship (the Minister) decided to cancel your subclass 457 – Business (Long Stay)(Class UC) visa on 16 July 2007 under section 501(3) of the *Migration Act 1958* (the Act).

Section 501(3) of the Act provides that the Minister may cancel a visa granted to a person, without notice, if the Minister reasonably suspects that the person does not pass the character test, and the Minister is satisfied that the cancellation is in the national interest. The relevant ground of the character test is section 501(6)(b), which states that a person does not pass the character test, if the person has or has had an association with someone else, or with a group or organisation, whom the Minister reasonably suspects has been or is involved in criminal conduct. A copy of the full text of section 501, as well as all other relevant legislation referred to in this letter, is included for your information (see [Attachment A](#)).

In making this decision, the Minister also had reference to Ministerial General Direction Number 21 – “*Visa Refusal and Cancellation under Section 501 of the Migration Act 1958*”. While the Minister is not bound by the Direction in making a decision under section 501(3), it is open to him to be guided by the Direction in making a decision personally. I have included a copy of Direction 21, for your information (see [Attachment B](#)).

I have also attached a copy of the submission and the attached evidence that the Minister considered in making the decision to cancel your visa under section 501(3). One of the documents considered by the Minister (Annexe 3 of the Issues Paper) is protected under section 503A of the Act and cannot be disclosed to you. I have included a copy of the text of section 503A for your information (see [Attachment C](#)).

Section 501C of the Act gives you the opportunity to make representations to the Minister about revocation of the decision to cancel your visa under s501(3) (a copy of the text of 501C is at [Attachment D](#)). You are invited to make representations to the Minister in this regard.

The representations must be made in accordance with regulation 2.52 of the *Migration Regulations 1994*. Therefore, they must:

- be in writing and in English, or accompanied by an accurate English translation;
- include the following information:
  - your full name;
  - your date of birth;

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- your client number, immigration file number or the number of the receipt issued by immigration when the visa application was made;
  - if your visa application was made outside Australia – the name of the Australian mission or Immigration office at which the visa application was given to the Minister; and
  - a statement of the reasons on which you rely to support the representations;
- any document accompanying the representations must be either an original document, or a copy of the original document that is certified in writing to be a true copy:
    - by a Justice of the Peace;
    - by a Commissioner for Declarations;
    - by a person before whom a statutory declaration may be made under the Statutory Declarations Act 1959; or
    - if the copy is certified in a place outside Australia, by either a person who is the equivalent of a Justice of the Peace or a Commissioner for Declarations in that place, or a Notary Public.

Under section 501C(4) of the Act, if you make representations in accordance with regulation 2.52, and you satisfy the Minister that you pass the character test (as defined by section 501(6)), the Minister may revoke the decision to cancel your visa.

Under regulation 2.55(5), you are taken to have received this letter when it was handed to you. If you wish to make representations about revocation of the decision to cancel your visa, the representations must be made within seven (7) days after you are deemed to have received this letter. If you have not responded by this date, the revocation of the cancellation of your visa cannot be considered.

You should mail or fax your response to the following address:

Director, Character Policy Section  
Department of Immigration and Citizenship  
PO Box 25  
BELCONNEN ACT 2616  
AUSTRALIA  
Fax: (02) 6264 3542

Yours sincerely



Peter White  
Assistant Secretary  
Character Assessments and War Crimes Screening Branch

16 July 2007

**MIGRATION ACT 1958 - SECT 501**

**Refusal or cancellation of visa on character grounds**

Decision of Minister or delegate--natural justice applies

(1) The Minister may refuse to grant a visa to a person if the person does not satisfy the Minister that the person passes the character test.

Note: *Character test* is defined by subsection (6).

(2) The Minister may cancel a visa that has been granted to a person if:

- (a) the Minister reasonably suspects that the person does not pass the character test;
- and
- (b) the person does not satisfy the Minister that the person passes the character test.

Decision of Minister--natural justice does not apply

(3) The Minister may:

- (a) refuse to grant a visa to a person; or
- (b) cancel a visa that has been granted to a person;

if:

- (c) the Minister reasonably suspects that the person does not pass the character test;
- and
- (d) the Minister is satisfied that the refusal or cancellation is in the national interest.

(4) The power under subsection (3) may only be exercised by the Minister personally.

(5) The rules of natural justice, and the code of procedure set out in Subdivision AB of Division 3 of Part 2, do not apply to a decision under subsection (3).

Character test

(6) For the purposes of this section, a person does not pass the *character test* if:

- (a) the person has a substantial criminal record (as defined by subsection (7)); or
- (b) the person has or has had an association with someone else, or with a group or organisation, whom the Minister reasonably suspects has been or is involved in criminal conduct; or
- (c) having regard to either or both of the following:
  - (i) the person's past and present criminal conduct;
  - (ii) the person's past and present general conduct;
 the person is not of good character; or

(d) in the event the person were allowed to enter or to remain in Australia, there is a significant risk that the person would:

- (i) engage in criminal conduct in Australia; or
- (ii) harass, molest, intimidate or stalk another person in Australia; or
- (iii) vilify a segment of the Australian community; or
- (iv) incite discord in the Australian community or in a segment of that community; or
- (v) represent a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way.

Otherwise, the person passes the *character test*.

#### Substantial criminal record

- (7) For the purposes of the character test, a person has a *substantial criminal record* if:
- (a) the person has been sentenced to death; or
  - (b) the person has been sentenced to imprisonment for life; or
  - (c) the person has been sentenced to a term of imprisonment of 12 months or more; or
  - (d) the person has been sentenced to 2 or more terms of imprisonment (whether on one or more occasions), where the total of those terms is 2 years or more; or
  - (e) the person has been acquitted of an offence on the grounds of unsoundness of mind or insanity, and as a result the person has been detained in a facility or institution.

#### Periodic detention

(8) For the purposes of the character test, if a person has been sentenced to periodic detention, the person's term of imprisonment is taken to be equal to the number of days the person is required under that sentence to spend in detention.

#### Residential schemes or programs

(9) For the purposes of the character test, if a person has been convicted of an offence and the court orders the person to participate in:

- (a) a residential drug rehabilitation scheme; or
- (b) a residential program for the mentally ill;

the person is taken to have been sentenced to a term of imprisonment equal to the number of days the person is required to participate in the scheme or program.

Pardons etc.

(10) For the purposes of the character test, a sentence imposed on a person is to be disregarded if:

- (a) the conviction concerned has been quashed or otherwise nullified; or
- (b) the person has been pardoned in relation to the conviction concerned.

Conduct amounting to harassment or molestation

(11) For the purposes of the character test, conduct may amount to harassment or molestation of a person even though:

- (a) it does not involve violence, or threatened violence, to the person; or
- (b) it consists only of damage, or threatened damage, to property belonging to, in the possession of, or used by, the person.

Definitions

(12) In this section:

*"court"* includes a court martial or similar military tribunal.

*"imprisonment"* includes any form of punitive detention in a facility or institution.

*"sentence"* includes any form of determination of the punishment for an offence.

Note 1: *Visa* is defined by **section 5** and includes, but is not limited to, a protection visa.

Note 2: For notification of decisions under subsection (1) or (2), see section 501G.

Note 3: For notification of decisions under subsection (3), see section 501C.

**DIRECTION 21**  
**MIGRATION ACT 1958**

**B**

**DIRECTION UNDER SECTION 499**

*Visa refusal and cancellation under section 501 of the Migration Act 1958*

**DIRECTION-VISA REFUSAL AND CANCELLATION UNDER SECTION 501 – No. 21**

**PREAMBLE:**

This Direction provides guidance to decision-makers in making decisions to refuse or cancel a visa under section 501 of the *Migration Act 1958* (the Act).

The object of the Act is to regulate, in the national interest, the coming into and presence in Australia of non-citizens. To facilitate this object the Minister has been given a discretion to refuse or cancel a visa where the visa applicant or visa holder does not pass the Character Test. In exercising this power, the Minister has a responsibility to the Parliament and to the Australian community to protect the community from criminal or other reprehensible conduct and to refuse to grant visas, or cancel visas held by non-citizens whose actions are so abhorrent to the community that they should not be allowed to enter or remain within it. The powers conferred under section 499 enable directions to be given, in exercising discretions under section 501, for the protection of the Australian community.

Under the Character Test, visa applicants and visa holders must satisfy decision-makers that they can pass the test. When a visa applicant or visa holder does not pass the Character Test, decision-makers will decide whether to refuse the application or to cancel a visa. Exercise of this discretion will take into account a wide range of factors including the expectations of the community, the nature of crimes committed, the non-citizen's links to Australia and any relevant international law obligations.

The Act enables the Minister to give precise written directions on what weight is to be given to each of these factors. These directions are binding to all decision-makers, including merits review tribunals, to ensure a consistency of approach.

The Act also enables the Minister to order the deportation of non-citizens under section 200/201 of the Act in certain cases. The Government is currently considering recommendations of the Joint Standing Committee on Migration on criminal deportation matters. Following that consideration, there may be a further direction in respect of the exercise of deportation powers.

For the purposes of this Direction the term **decision-maker** includes both the Minister's delegates for the purposes of section 501 of the Act, and members of the Administrative Appeals Tribunal when conducting a review of a decision made under section 501 of the Act.

**THEREFORE** I, Philip Maxwell Ruddock, the Minister for Immigration and Multicultural Affairs, hereby give the following Direction pursuant to section 499 of the *Migration Act 1958* to any person or body having functions or powers under section 501 of the Act.

1. This Direction may be cited as "Direction- Visa Refusal and Cancellation under section 501 - No.21". This Direction revokes and replaces Direction No.17.
2. The purpose of refusing or cancelling a visa under section 501 is to protect the safety and welfare of the Australian community and to exercise a choice on behalf of the Australian community as a whole as to who should be allowed to enter or to remain in the community.

#### **PRELIMINARY**

This Direction consists of two parts. Part 1 provides directions on the application of the Character Test. Non-citizens who are being considered under section 501 must satisfy the decision-maker that they pass the Character Test. If the non-citizen does not pass the Character Test, decision-makers are to exercise the discretion to consider whether to refuse or cancel a visa, taking into account primary and other considerations. Part 2 provides directions on what these considerations are and the weight to be given to them.

#### **PART 1 - APPLICATION OF THE CHARACTER TEST**

The Minister may refuse or cancel a visa if the non-citizen does not satisfy the Character Test

- 1.1 Non-citizens who are being considered under section 501 must satisfy the decision-maker that they pass the Character Test. If there is reasonable suspicion that a non-citizen does not pass the Character Test, the non-citizen must also provide evidence to satisfy the decision-maker that the non-citizen passes the Character Test.
- 1.2 If a non-citizen is unable to satisfy the decision-maker that they pass the Character Test, subsection 501(1) provides the authority to refuse to grant a visa and subsection 501(2) provides the authority to cancel a visa that has already been granted.
- 1.3 There are four grounds against which a non-citizen may be considered to not pass the Character Test under subsection 501(6).

##### **Paragraph 501(6)(a) "substantial criminal record"**

- 1.4 A non-citizen does not pass the Character Test if they have a substantial criminal record. Substantial criminal record is defined in subsection 501(7).

Paragraph 501(6)(b) "association" grounds

1.5 The meaning of "association" for the purposes of the Character Test encompasses a very wide range of relationships including having an "alliance" or a "link" or "connection" with a person, a group or an organised body that is involved in criminal activities. "Association" does not require actual membership of a group or an organised body that is involved in criminal activities. In establishing criminal association, the decision-maker may have regard to the following:

- (a) the degree and frequency of association the non-citizen had or has with the individual, group or organisation;
- (b) the duration of the association; and
- (c) the nature of the association.

1.6 In some cases the information concerning association will be protected from disclosure by section 503A of the Act. In all cases, great care should be taken not to disclose information that might put the life or safety of informants or other persons at risk.

Paragraph 501(6)(c) – not of good character on account of past and present criminal or general conduct

1.7 Under paragraph 501(6)(c), decision-makers are required to make a finding that a non-citizen is "not of good character" on account of the non-citizen's past and present, criminal or general conduct and thereby does not pass the Character Test. In reaching the conclusion that a non-citizen is not of good character, decision-makers must take into account all the relevant circumstances of a particular case, including evidence of rehabilitation and recent good conduct.

• **Subparagraph 501(6)(c)(i) – past and present *criminal* conduct**

1.8 In considering whether a non-citizen is not of good character against subparagraph 501(6)(c)(i), decision-makers should take into consideration the following:

- (a) the nature, severity and frequency of the offence/s;
- (b) how long ago the offence/s were committed;
- (c) the non-citizen's record since the offence/s were committed, including:
  - any evidence of recidivism or continuing association with criminals;
  - a pattern of similar offences; and/or
  - pattern of continued or blatant disregard/contempt for the law; and

(d) any mitigating circumstances such as may be evident from judges' comments, parole reports and similar documents.

• **Subparagraph 501(6)(c)(ii) – past and present *general* conduct**

1.9 In considering whether a non-citizen is not of good character against subparagraph 501(6)(c)(ii), decision-makers should consider the following matters (where they are relevant to the facts of the particular case), and where they are relevant, would, in the absence of any countervailing factors, constitute a failure to pass the Character Test:

(a) whether the non-citizen has been involved in activities indicating contempt, or disregard, for the law or for human rights. This could include, but need not be limited to:

- engaging in business activities which fall short of criminal fraud requiring proof beyond reasonable doubt, but which, on a more likely than not basis, are disreputable and reflect poorly on a non-citizen's moral qualities;
- continual evasion or non-payment of debt;
- continual disregard as to payments of family maintenance;
- involvement in activities such as organised crime, terrorism, drug related activities, political extremism, extortion, "white collar" crime, fraud, breaches of immigration law; or
- involvement in war crimes or crimes against humanity.

(b) whether the non-citizen has, in connection with any application for the grant of a visa or any kind of Government benefit, provided a bogus document or made a false or misleading statement;

(c) whether the non-citizen has ever made a false or misleading declaration on an approved form, as defined in subsection 5(1) of the Act, about the non-citizen's character or conduct or both;

(d) whether the non-citizen has been removed/deported from Australia or removed/deported from another country; or

(e) whether the non-citizen has been dishonourably discharged from the armed forces of any country or discharged prematurely as the result of disciplinary action in circumstances, or because of conduct, which would be regarded as serious in Australia.

1.10 In addition to the above matters, a non-citizen is, in the absence of any countervailing factors, not of good character under the general conduct provisions if the conduct of the non-citizen has:

(a) resulted in offences that are the subject of charges but are not resolved pending a hearing or trial. Matters to be considered when deciding the weight to be given to unresolved charges could include, (but are not limited to):

- whether there is a pattern of conduct relating to the applicant (eg similar charges in the past, other criminal behaviour); and/or
- the seriousness of the offence with which the applicant has been charged; or

(b) resulted in the non-citizen being acquitted of a criminal offence or where there has been no conviction recorded.

1.11 General conduct also includes recent good conduct. Any good acts of the non-citizen after reprehensible conduct are indications that the non-citizen's character may have reformed. Thus, both good and bad conduct must be taken into consideration in obtaining a complete picture of the non-citizen's character. However, where the decision-maker is not fully persuaded that the non-citizen has reformed, the discretion to refuse or cancel a visa is enlivened, and evidence of good acts and recent conduct becomes relevant to the exercise of the discretion (see Part 2).

Paragraph 501(6)(d) - "significant risk" of future conduct grounds

1.12 For the purposes of the Character Test, it is not sufficient to find that a non-citizen has engaged in conduct specified in paragraph 501(6)(d) in the past, rather, decision-makers are required to determine whether there is a significant risk that a non-citizen would engage in the specified conduct set out in paragraph 501(6)(d) in the future.

1.13 The "significant risk" criterion will be met if there is evidence which suggests that there is more than a minimal or trivial likelihood that a non-citizen would, if allowed to enter or to remain in Australia, engage in conduct specified in paragraph 501(6)(d).

• Subparagraph 501(6)(d)(i) - "engaging in criminal conduct in Australia"

1.14 The reference to criminal conduct must be read as requiring there to be a significant risk of the person engaging in conduct for which a criminal conviction could be recorded. Decision-makers must make a finding that there is a significant risk that the non-citizen would engage in conduct which, if proven, would amount to a criminal offence.

• Subparagraph 501(6)(d)(ii) - "harass, molest, intimidate, or stalk another person in Australia"

1.15 For the purposes of section 501(6)(d)(ii), the words "harassment", "molestation", "intimidation" and "stalking" are to be given their ordinary meaning and should not be narrowly interpreted. However, decision-makers should note that subsection 501(11) defines the scope of conduct amounting to harassment or molestation. A wide variety of conduct and behaviour fall under this category including, (but is not limited to) the following:

(a) conduct that does not breach the terms of an Apprehended Violence Order, or similar order, but nevertheless could be construed as harassment or intimidation;

(b) engaging in conduct recognised as placing children in danger, such as unwelcome and inappropriate approaches, particularly to children; or

(c) any conduct that causes a person to be severely apprehensive, fearful, alarmed or distressed regarding the behaviour or alleged behaviour of the non-citizen, towards a person or in relation to his or her or another person's property.

- Subparagraph 501(6)(d)(iii) - "vilify a segment of the community",
- Subparagraph 501(6)(d)(iv) - "incite discord"

1.16 Factors that must be considered in deciding whether or not a non-citizen passes the Character Test on subparagraph 501(6)(d)(iii) "vilify a segment of the community", and (iv) "incite discord" grounds includes, (but is not limited to), evidence that the non-citizen:

(a) holds or advocates extremist views such as a belief in the use of violence as a legitimate means of political expression;

(b) intends to vilify a part of the community;

(c) has a record of behaviour linked to or encouraging disregard for law and order, for example in the course of addressing public rallies;

(d) has engaged or threatens to engage in conduct likely to be incompatible with the smooth operation of a multicultural society, for example advocating that particular ethnic groups should adopt political, social or religious values well outside those generally acceptable in Australian society, and if adopted or practised, might lead to discord within those groups or between those groups and other segments of Australian society;

(e) participates in, or is active in promotion of politically motivated violence or criminal violence and/or being likely to propagate or encourage such action in Australia;

(f) is likely to provoke civil unrest in Australia because of the conjunction of the non-citizen's intended activities and proposed timing of their presence in Australia with those by another person who may hold opposing views;

(g) evidence that the presence in Australia of the non-citizen will result in there being a significant risk that Australia's foreign relations will be prejudiced; or

(h) any other credible material which may be relevant to the exercise of the discretion under subsections 501(1) & (2) or to the determination under Public Interest Criterion 4003 of Schedule 4 of the Migration Regulations.

1.17 When considering a non-citizen against subparagraph 501(6)(d)(iii) "vilify a segment of the community", and (iv) "incite discord", the decision-maker should bear in mind that subparagraphs 501(6)(d)(iii) and (iv) are not intended to provide a charter for denying entry or continued stay to non-citizens merely on the ground that they hold and are likely to express unpopular opinions, even if these opinions may attract strong expressions of disagreement and condemnation from some elements of the Australian community. It is therefore incumbent on the decision-maker to balance

the operation of these subparagraphs against Australia's well established tradition of free expression.

## **PART 2 - EXERCISING THE DISCRETION**

2.1 If a non-citizen does not pass the Character Test, decision-makers must have regard to the following considerations when exercising the discretion to decide whether or not the non-citizen should be permitted to enter or remain in Australia.

### **Weight of considerations**

2.2 The Government is mindful of the need to balance a number of important factors in reaching a decision whether or not to refuse or cancel a visa. In making such a decision, a decision-maker should have regard to three primary considerations and a number of other considerations. The primary considerations are set out at paragraphs 2.3 - 2.16 and other considerations are set out at paragraphs 2.17 - 2.24. Decision-makers must have due regard to the importance placed by the Government on the three primary considerations, but should also adopt a balancing process which takes into account all relevant considerations.

### **PRIMARY CONSIDERATIONS**

2.3 In making a decision whether to refuse or cancel a visa, there are three primary considerations:

- (a) the protection of the Australian community, and members of the community;
- (b) the expectations of the Australian community; and
- (c) in all cases involving a parental or other close relationship between a child or children and the person under consideration, the best interests of the child or children.

### **Protection of the Australian Community**

2.4 The Government seeks to take reasonable steps to protect the Australian community from the actions of criminals and to take action to lessen the risk of crime and disorder within the Australian community. The Government is especially mindful to take reasonable steps to protect the safety of the more vulnerable members of the community, such as children and young people who are especially at risk. This is of particular importance when the offences in question are in relation to drugs and crimes of violence.

2.5 The factors relevant to an assessment of the level of risk to the community of the entry or continued stay of a non-citizen include:

- (a) the seriousness and nature of the conduct;

- (b) the likelihood that the conduct may be repeated (including any risk of recidivism); and
- (c) whether visa refusal or cancellation may prevent or discourage similar conduct (general deterrence).

a. *The seriousness and nature of the conduct*

2.6 It is the Government's view that the following are examples of offences which are considered by the Government to be very serious:

- (a) the production, importation, distribution, trafficking (including possession for this purpose), commercial dealing, or selling of illicit drugs:
- persons who embark upon drug-related crime for financial gain have shown a callous disregard for the insidious effects of illicit drugs on the health and welfare of Australia's young people;
  - the Government views non-citizens who have sought to profit from the import or supply of drugs, whether or not motivated by their own need for illicit drugs, as extremely serious offenders. It is important both as a deterrent to other criminals and to protect Australian society that it is clearly understood that crimes involving drug trafficking, which puts the lives of young Australians at risk, be viewed as completely unacceptable to the community; and
  - offences involving illicit drugs of dependency or addiction, such as heroin, are also of particular concern to the Government and the community;
- (b) organised criminal activity resulting in a conviction in Australia or elsewhere;
- (c) serious crimes against the *Migration Act 1958*, including, but not limited to, offences attracting a sentence of imprisonment of 12 months or more for bringing non-citizens into Australia in contravention of the Act; or to harbour unlawful non-citizens; arranging a contrived marriage, de facto relationship or interdependency to obtain permanent residence; or providing certain false or misleading information about a marital, de facto or interdependency relationship, applying or nominating for permanent residence on the basis of a contrived marriage, de facto relationship or interdependency relationship; or using or possessing a visa granted to another person; or presenting false or forged documents or making a false or misleading statement in connection with entry or stay in Australia;
- (d) sexual assaults are particularly repugnant to the Australian community, especially sexual assaults involving children regardless of whether there was overt violence or the threat of violence;
- (e) armed robbery (including robbery involving the use of imitation weapons), home invasion;
- (f) murder, manslaughter, assault or any other form of violence against persons;

- (g) terrorist activity;
- (h) kidnapping;
- (i) blackmail;
- (j) extortion;
- (k) arson;
- (l) serious theft (including "white collar" crimes):
  - such crimes are of concern because of the amounts of money involved and/or the disruption caused to individuals, business and Government;
- (m) crimes against children:
  - due to their vulnerability as victims and potential victims, crimes against children take on a special significance, especially crimes involving inducing children to take illicit drugs, sexual assaults on children, child prostitution, violence to children, kidnapping and crimes taking advantage of children;
- (n) any other crimes involving violence or the threat of violence:
  - such crimes are of special concern to the welfare and safety of the Australian community; and
- (o) ancillary offences in respect to any of the above offences, including:
  - convictions for attempting to commit any of the above offences;
  - convictions for conspiracy to commit any of the above offences; and
  - convictions for being an accessory before or after the fact in any of the above offences.

2.7 It is the Government's view that the sentence imposed for a crime is an indication also of the seriousness of the offender's conduct against the community. Decision-makers should have due regard to the Government's view in this respect, including:

- (a) the extent of the person's criminal record, including the number and nature of offences, the time between offences, and the time that has elapsed since the most recent offence; and
- (b) the repugnance of the crime:
  - crimes involving violence or fraud against defenceless persons (such as children, the elderly, the disabled and the incapacitated) are especially repugnant to the whole community.

2.8 When exercising discretion, decision-makers must also take the following factors into account as relevant considerations:

- (a) any relevant factors provided by the non-citizen as mitigating factors;
- (b) the offence is not classified as an offence in Australia.
  - for example, a non-citizen who has been subjected to imprisonment as a result of political, religious or ethnic persecution may fail the substantial criminal record component of the Character Test. However, discretion may be exercised to grant the visa permitting the non-citizen to enter or stay;
- (c) a lighter sentence would be incurred in Australia for a similar offence; or
- (d) the non-citizen has been pardoned:
  - Note in some jurisdictions "pardons" may only have the status of spent convictions legislation in Australia.

2.9 In relation to non-citizens who do not pass the Character Test due to convictions resulting from unsoundness of mind or insanity, the degree of recovery must be taken into consideration. If the non-citizen continues to rely on medication to control their condition, the non-citizen cannot be defined as having fully recovered. Moreover, the likely consequences of a non-citizen deliberately or accidentally not taking their medication must be considered.

*b. likelihood that the conduct may be repeated (including any risk of recidivism)*

2.10 It is the Government's view that the person's previous general conduct and total criminal history are highly relevant to assessing the likelihood of an offence and risk of recidivism. In particular, the following factors will be relevant to the assessment:

- (a) a non-citizen commits a further offence after having been warned previously about the risk of refusal or cancellation;
- (b) a non-citizen with several previous convictions in Australia should be considered as having an increased risk of recidivism in light of that past behaviour. In cases where there is a gap or gaps between convictions, the inference may be open that the non-citizen has demonstrated that a substantial period since an earlier conviction is not a reliable indicator that future offences will not be committed; and
- (c) the extent of rehabilitation already achieved, the prospect of further rehabilitation and the positive contribution to the community the person may reasonably be expected to make.

*c. general deterrence - the likelihood that visa refusal or visa cancellation would prevent (or inhibit the commission of) like offences by other persons*

2.11 General deterrence aims to deter other people from committing the same or a similar offence. While not a conclusive factor in itself, general deterrence is an important factor in

determining whether to refuse or cancel a visa. The general deterrence factor may be relevant in a number of ways:

- (a) the nature of the offence may be such that visa refusal or cancellation may deter others from committing similar offences; and
- (b) the visa refusal or cancellation in respect of a non-citizen who has been involved in a criminal scheme or schemes may discourage or prevent another person or persons from engaging in similar schemes.

#### **Expectations of the Australian community**

2.12 The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has breached, or where there is a significant risk that they will breach this trust or where the non-citizen has been convicted of offences in Australia or elsewhere, it may be appropriate to refuse the visa application or cancel the visa held by such a person. Visa refusal or cancellation and removal of the non-citizen may be appropriate simply because the nature of the character concerns or offences are such that the Australian community would expect that the person would not be granted a visa or should be removed from Australia. Decision-makers should have due regard to the Government's view in this respect.

#### **The best interests of the child**

2.13 This consideration only applies if the child is or would be less than 18 years of age at the time when the decision is intended to come into effect. The best interests of any children aged 18 years or more is not a primary consideration but may be considered with other considerations under paragraph 2.17.

2.14 Where there are two or more relevant children, it should not be assumed that the interests of each child will coincide, and it may be that the best interests of one child may indicate the non-citizen parent should not be refused a visa or removed from Australia, but that the best interests of another child may point towards visa refusal or cancellation.

2.15 In general terms, the child's best interest will be served if the child remains with its parents. Countervailing considerations, which may point to the child's best interests being served by separation from the non-citizen, include, but are not limited to:

- (a) any evidence that the non-citizen has abused or neglected the child in any way, including physical, sexual and/or mental abuse or neglect; or
- (b) any evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen's conduct.

2.16 When considering the best interests of the child, decision-makers should have regard to the following:

- (a) the nature of the relationship between the child and the non-citizen;
- (b) the duration of the relationship including the number and length of any separations and reason/s for the separation; the hypothetical prospect for developing a better/stronger relationship in future (whether or not there has been significant recent contact) would normally be given relatively less weight than the proven history of the relationship based on past conduct;
- (c) the age of the child;
- (d) whether the child is an Australian citizen or permanent resident;
- (e) the likely effect that any separation from the non-citizen would have on the child;
- (f) the impact of the non-citizen's prior conduct on the child;
- (g) the time (if any) that the child has spent in Australia;
- (h) the circumstances of the probable receiving country, including the educational facilities and the standard of the health support system of the country to which the child may have to go, or return to, should the non-citizen not be permitted to enter or remain in Australia;
- (i) any language barriers for the child in the probable country of future residence, but taking into account the relative ease with which younger children acquire new languages; and
- (j) any cultural barriers for the child in the probable country of future residence, but taking into account the relative ease with which younger children adapt to new circumstances.

#### **OTHER CONSIDERATIONS**

2.17 When considering the issue of visa refusal or cancellation, other matters, although not primary considerations, may be relevant. It is the Government's view that where relevant, it is appropriate that these matters be taken into account but that generally they be given less individual weight than that given to the primary considerations. These other considerations may include:

- (a) the extent of disruption to the non-citizen's family, business and other ties to the Australian community;
  - "Article 23.1 of the International Covenant on Civil and Political Rights (ICCPR) provides that:  
*"The family is the natural and fundamental group unit of society, and is entitled to protection by society and the State."*

Article 17.1 provides that:

*"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, not to unlawful attacks on his honour and reputation."*

- (b) genuine marriage to, or de facto or interdependent relationship with, an Australian citizen, permanent resident or eligible New Zealand citizen:
- in assessing the compassionate claims of the Australian partner (Australian citizen, resident or eligible New Zealand citizen), decision-makers must consider the circumstances under which the relationship was established and whether the Australian partner knew that the non-citizen was of character concern at the time of entering into or establishing the relationship;
- (c) the degree of hardship which would be caused to immediate family members lawfully resident in Australia (including Australian citizens), including whether the immediate family members are able to travel overseas to visit the non-citizen, the nature of the relationship between the non-citizen and the immediate family members, whether immediate family members are in some way dependant on the non-citizen for support which cannot be provided elsewhere;
- (d) family composition of the non-citizen's family, both in Australia and overseas;
- (e) the likelihood of the non-citizen seeking to evade any outstanding legal matter or on-going liability;
- (f) the likelihood of the non-citizen breaching any conditions attached to the outstanding legal or on-going matter, any cost or bilateral implications of such a breach (eg extradition);
- (g) the nature and seriousness of the offence(s) or alleged offence(s) (in the context of seeking to evade an outstanding legal matter);
- (h) any evidence of rehabilitation and any recent good conduct;
- (i) whether the application is for a temporary visa or permanent visa;
- (j) the purpose and intended duration of the entry to or stay in Australia, including any significant compassionate circumstances; and
- (k) the fact that a non-citizen has been formally advised in the past by an officer of the Department of Immigration and Multicultural Affairs about conduct which brought him or her within the deportation provisions at section 200/201 of the Act or the visa refusal and cancellation provisions at section 501.

7

Person Id: [REDACTED]

User Id: [REDACTED]

No. Mvts: 1

F-Name: MOHAMED HANEEF

G-Name: -

Citz-Date:

DOB: 29/09/1979 Sex: M Marital Status: M COB: INDI Lawful Until: 30/08/201

0

ARR Date: 11/09/2006 TDid: E3903022

Ctry: INDI Micro: [REDACTED] Ref:

Port: KI Vessel: QF6 Evid:

Cat: UC-457P192 Cease: 30/08/201

0

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Cont Help Prnt Exit Next Full Variatns Bkwd Fwd Visas TDs Main Menu

## HIGHLY PROTECTED

**Mohamed Haneef**

**Born 29 September 1979**

**Information for consideration of action under subsection  
501(3) Migration Act 1958**

### PART A

1. About 0140 hours on Friday 29 June 2007 (UK local time), a Vehicle-Borne Improvised Explosive Device (VBIED) was located in a green coloured Mercedes parked outside the Tiger Tiger Nightclub, Haymarket, London, United Kingdom (UK). The device was manually defused and the UK Metropolitan Police Service (MPS) Counter Terrorism Command (CTC) commenced a major investigation into the incident. UK explosive experts advise that the VBIED had the potential to result in mass casualties.
2. About 2000 hours on Friday 29 June 2007, UK MPS CTC confirmed that they had discovered a second vehicle (a blue Mercedes) located at a clamping company garage off Park Lane in Mayfair configured in the same manner as the green Mercedes. This vehicle was also defused by police.
3. About 1515 hours on Saturday 30 June 2007, a Jeep Cherokee was driven into the front doors of terminal one at Glasgow Airport. The vehicle burst into flames. Two suspects were at the scene, one of whom was severely burnt in the fire.
4. In relation to these bombing incidents, UK authorities have arrested seven (7) persons on suspicion of being or having been concerned in the commission, preparation or instigation of an act of terrorism, pursuant to section 41 *Terrorism Act 2000* (UK), (hereinafter referred to as *the UK suspects*).
5. Advice was provided to the AFP by MPS CTC that an Australian resident, Dr Mohamed Haneef (Haneef), born 29 September 1979, is a person of interest to their investigation through his association with two of the UK suspects. Further detail on this association has been provided to the AFP and is expanded in the document titled 'Part B'.

## HIGHLY PROTECTED

6. On the basis of this advice, the AFP commenced an investigation into Haneef's association with the UK suspects and his possible connection to the terrorist incidents in London and Glasgow.
7. It was identified that Haneef, an Indian national, arrived in Australia on 11 September 2006 on a current work visa, resides in Southport Queensland and works as a Senior House Officer at the Southport Hospital.
8. The following bona fides have been established for Haneef:

Name:	Mohamed Haneef
Other name:	Also known as 'Ather'
DOB:	29/9/1979
POB:	Mudigere - INDIA
Nationality:	Indian
Resides:	Unit 15/45 Pohlman Street, Southport QLD
Mother:	Qurradhulain
Brother:	Mohammed Shuaib
Sister:	Sumayya Tabbasum
Brother-in-law:	Siddique (aka Siddiq) Ahmed (27 years of age)
Wife:	Firdous Arshiya

9. In the evening of 2 July 2007, Haneef departed his residence in Southport, Queensland and attended Brisbane International Airport where he attempted to board a one-way flight to Bangalore, India, via Singapore. The ticket had been purchased the same day.
10. AFP and Queensland Police members attached to the Joint Counter Terrorism Team (Brisbane) attended the airport and arrested Haneef for Providing Support to a Terrorist Organisation, contrary to section 102.7 *Criminal Code Act 1995*. This offence carries a penalty of 25 years imprisonment.
11. Haneef participated in a taped record of interview with police. During this interview Haneef stated the following:
  - He first arrived in the UK in March 2004;
  - He is related to two of the UK suspects (hereinafter referred to as UK suspect 2 and UK suspect 5), who are brothers, and second cousins to Haneef on his mother's side of the family;

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- He resided with the UK suspect 5 at 13 Bentley Road Liverpool, UK, which is a boarding house;
- This was the main address he resided in the UK;
- A number of doctors of like nationality resided at the address;
- He visited Cambridge University in June/July 2004 and also in November 2004 to visit UK suspect 2, who was studying a PhD in Engineering at the university;
- In October 2005, UK suspect 2 loaned him 300 pounds so he could sit a medical exam;
- When he left the UK in September 2006, he left a number of items at the Liverpool address to minimise excess baggage;
- He left behind his mobile telephone SIM card, which was connected to the UK service provider 'O2' and due to expire in August 2006;
- UK suspect 5 wanted the SIM card to access the 'extra minute deal' offered by O2 at that time;
- UK suspect 5 said he would take over the SIM card and register it with UK suspect 5's details;
- He and UK suspect 5 have continued to correspond in on-line chat rooms, the most recent of which was following the birth of Haneef's child on 26 June 2007;
- He occasionally chats with UK suspect 5 on-line. The last time was around March/April 2007;
- He knows a person named 'Bilal', however knew no further details apart from this name;
- That he had only met Bilal once in Cambridge;
- He is currently employed as a medical doctor with the Gold Coast Regional Health Services at Southport Hospital;
- He has been a doctor since April 2002 and graduated from the Dr B.R.Ambedkar Medical College in Bangalore. He then did a term of 12 months internship;
- He is a trainee physician with the Australian Royal College of Physicians;
- On 2 July 2007 he attended Brisbane International Airport in an attempt to travel to Bangalore where his wife has recently given birth. There were complications during the birth and he was travelling to Bangalore to see his wife;
- Earlier on 2 July 2007 he had a telephone conversation with his father-in-law in Bangalore for approximately 5 minutes, who then made the flight arrangements for Haneef to return to Bangalore to see his family;
- The ticket was purchased one-way to Bangalore;

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- When questioned why it was a one-way ticket Haneef stated that there was no particular reason for this and he intended to return to Australia within 7 days;
  - He was not returning to Bangalore for any reason connected with the bombing incidents in London and Glasgow;
  - He later checked his yahoo e-mail account and noticed that he had been sent an e-ticket from a travel agency that he cannot remember;
  - On 2 July 2007 he advised the medical administrator of Southport Hospital that he had to return to Bangalore urgently to see his family due to issues with his newborn child;
  - He is a devout Muslim; and
  - He did not wish to discuss his political views with police.
12. Haneef remains in police custody following an order pursuant to section 23CA(8)(m) Crimes Act 1914 authorising the disregard of a specified period in the calculation of the investigation period.

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## ANNEX 3

The material contained in this Annex is protected under section 503A of the Act and cannot be disclosed.

A copy of the text of s503A follows.

**MIGRATION ACT 1958 - SECT 503A****Protection of information supplied by law enforcement agencies or intelligence agencies**

(1) If information is communicated to an authorised migration officer by a gazetted agency on condition that it be treated as confidential information and the information is relevant to the exercise of a power under section 501, 501A, 501B or 501C:

(a) the officer must not divulge or communicate the information to another person, except where:

(i) the other person is the Minister or an authorised migration officer; and

(ii) the information is divulged or communicated for the purposes of the exercise of a power under section 501, 501A, 501B or 501C; and

(b) an authorised migration officer to whom information has been communicated in accordance with paragraph (a) or this paragraph must not divulge or communicate the information to another person, except where:

(i) the other person is the Minister or an authorised migration officer; and

(ii) the information is divulged or communicated for the purposes of the exercise of a power under section 501, 501A, 501B or 501C.

Note: *Authorised migration officer* and *gazetted agency* are defined by subsection (9).

(2) If:

(a) information is communicated to an authorised migration officer by a gazetted agency on condition that it be treated as confidential information and the information is relevant to the exercise of a power under section 501, 501A, 501B or 501C; or

(b) information is communicated to the Minister or an authorised migration officer in accordance with paragraph (1)(a) or (b);

then:

(c) the Minister or officer must not be required to divulge or communicate the information to a court, a tribunal, a parliament or parliamentary committee or any other body or person; and

(d) if the information was communicated to an authorised migration officer--the officer must not give the information in evidence before a court, a tribunal, a parliament or parliamentary committee or any other body or person.

(3) The Minister may, by writing, declare that subsection (1) or (2) does not prevent the disclosure of specified information in specified circumstances to a specified Minister, a specified Commonwealth officer, a specified court or a specified tribunal. However, before making the declaration, the Minister must consult the gazetted agency from which the information originated.

Note: *Commonwealth officer* is defined by subsection (9).

(3A) The Minister does not have a duty to consider whether to exercise the Minister's power under subsection (3).

(4) If a person divulges or communicates particular information to a Commonwealth officer in accordance with a declaration under subsection (3), the officer must comply with such conditions relating to the disclosure by the officer of the information as are specified in the declaration.

(4A) If a person divulges or communicates particular information to a Commonwealth officer in accordance with a declaration under subsection (3):

(a) the officer must not be required to divulge or communicate the information to the Federal Court or the Federal Magistrates Court; and

(b) the officer must not give the information in evidence before the Federal Court or the Federal Magistrates Court.

The information may only be considered by the Federal Court or the Federal Magistrates Court if a fresh disclosure of the information is made in accordance with:

(c) a declaration under subsection (3); or

(d) subsection 503B(6).

(5) If a person divulges or communicates particular information to a tribunal in accordance with a declaration under subsection (3), the member or members of the tribunal must not divulge or communicate the information to any person (other than the Minister or a Commonwealth officer).

(5A) If a person divulges or communicates particular information to a tribunal in accordance with a declaration under subsection (3):

(a) the member or members of the tribunal must not be required to divulge or communicate the information to the Federal Court or the Federal Magistrates Court; and

(b) the member or members of the tribunal must not give the information in evidence before the Federal Court or the Federal Magistrates Court.

The information may only be considered by the Federal Court or the Federal Magistrates Court if a fresh disclosure of the information is made in accordance with:

(c) a declaration under subsection (3); or

(d) subsection 503B(6).

(6) This section has effect despite anything in:

(a) any other provision of this Act (other than sections 503B and 503C); and