



P.O. Box 847, Cnr of Lelue Road & Mateialona Road, 2nd Floor Retirement Fund Building, Nuku'alofa
Phone : (676) 26 980; (676) 26984: Fax (676) 26 982

OMBUDSMANS FINAL REPORT ON THE COMPLAINT BY

MR HOMELO VI

CASE NO. CPR 17/49

**Whether the service provided by Immigration
Tonga to the complainants in March 2017 was
reasonable**

18th July 2018

Table of Contents

Executive Summary	3
Background	4
The Ombudsman Role	4
The Detainment of the Passport	4
The Visits to Immigration Office	5
The Responses from the Immigration Officers	5
The Expenses on the Extension of Airtickets	7
Opinions	7
Recommendations	8
Response from the Ministry of Foreign Affairs	9

EXECUTIVE SUMMARY

1. This is a complaint by Mr Homelo Vi (“the complainant”) arising from the actions of the Immigration Division of the Ministry of Foreign Affairs (“Immigration”) regarding the difficulty they were subjected to regarding the return of his wife, ‘Aiona Vi’s (“complainant’s wife”) New Zealand passport which Immigration had seized because its validity was less than 6 months.
2. When the passport was seized at Fu’amotu Airport, the complainant and his wife were told that they would need to pay a fee of \$230 at the Nuku’alofa Immigration Office and the passport would be returned to them there. The complainant and his wife twice visited the Immigration Office in Nuku’alofa, first on 28 March 2017 and again on 5 April 2017, but each time the immigration officer at the counter told them that the passport is still at the Immigration Office at Fua’amotu International Airport. On the visit of 5 April they were told to pay the fee of \$230 and pick up the passport at the airport upon their return to Australia.
3. When the complainant and his wife went to the airport on Saturday 15 April 2017 to catch their flight to Australia, they were told by Immigration that the passport was not at the airport but at their Nuku’alofa Office which was closed on the weekend.
4. The complainant and his wife could not leave Tonga as planned, therefore had to extend their air tickets at a cost of \$842 which Immigration refused to pay but they waived the immigration fee for the return of the passport.
5. The complainant lodged his complaint on behalf of his wife with this office on 21st April 2017 and flew out to Melbourne via Auckland on 22 April 2017.
6. I am recommending four (4) things in this Report pursuant to section 18(3) of Ombudsman Act 2001:
 1. That the Immigration Division of the Ministry of Foreign Affairs reimburse to the complainant the \$842 that he had to pay their airline agent to extend his and his wife’s airline tickets because her passport was not at Fu’amotu Airport on 15 April 2017 as advised by Immigration Officers.
 2. That the Immigration Division of the Ministry of Foreign Affairs seek legal advice from the Attorney General as to whether it is authorised by law to seize and detain foreign passports.

3. That subject to recommendation 2 that the the Immigration Division of the Ministry of Foreign Affairs develop a clear in-house working manual setting out proper procedures in the handling of foreign passports and to ensure staff provide accurate information to concerned passengers (*note that this recommendation is also subject to the outcome of a separate Ombudsman Report on whether the Ministry of Foreign Affairs has the discretion to allow foreigners who do not comply with section 10 of the Immigration Act into the Kingdom*).

4. That the Ministry of Foreign Affairs report back to me within two (2) months of the date this report is finalised to provide a follow up report on the recommendations.

BACKGROUND

7. The investigation was launched on 21 April 2017.
8. I assigned the investigation to my Investigation Team who undertook the investigation into the matter.
9. The team requested, received information from Immigration and the complainant.

THE ROLE OF THE OMBUDSMAN

10. This investigation has taken longer than expected for Immigration to respond to the Ombudsman's referral letter and then further information was required. Further, the case was referred for the legal opinion of the Attorney-General's Office regarding the validity of the immigration fee (this is covered in another Ombudsman Report).
11. Under section 11 of the *Ombudsman Act 2001*, the Ombudsman has the authority to make any such investigation either on a complaint made to the Ombudsman by any person or on his own motion relating to a matter of administration by any department or by any officer of any such department. (Section 18(1) and (2) of the *Ombudsman Act 2001*).
12. My investigation is not an appeal process. I would not generally substitute my judgment for that of the decision maker. Rather, I consider the substance of the act or decision and the procedure followed by Immigration, and then form an opinion as to whether the act or the decision and the procedures followed by Immigration was properly arrived at and was one that Immigration could reasonably make.

THE DETAINMENT OF THE PASSPORT

13. On the night of 23 March 2017, the complainant and wife arrived at Fua'amotu International Airport from Australia. The complainant's wife was travelling on a New Zealand Passport No. LN355120 which was to expire by 13 June 2017.

Due to the passport validity being less than 6 months, the passport was seized by Immigration and the complainant advised that there was a fee of \$230 to be paid before return of the passport as provided by Item 21 in the Schedule of Fees, Regulation 11 of the Immigration Regulation.¹

14. The complainant's wife did not have Tongan currency at that time and therefore agreed with Immigration Officer Grade 1 Ms Lovina Ula that her passport would be detained until the \$230 fees was paid and the passport would be released from the Immigration Office in Nuku'alofa.

THE VISITS TO IMMIGRATION OFFICE

15. The complainant's wife visited the Immigration Office at Fa'onelua on 28 March 2017 to pay the \$230 fee and pick her passport but the female officer at the counter told her that the passport was still at the Immigration Office at the airport, and that it would brought over to the Nuku'alofa office. The complainant and his wife visited the Immigration office again on 5 April 2017 at Nuku'alofa and were served by a different female officer who again told them that the passport was still at the Immigration office at the airport. She told them to pay the fee and pick up the passport at the airport on day of their departure from Tonga.

RESPONSE FROM THE IMMIGRATION OFFICERS

16. Acting Director of Immigration Mrs Telesia Kaitapu aadvised us on 16 August 2017 that they had tried but could not identify the two officers who had been working at the service counter when the complainant and his wife had visited the Immigration officer on 28 March and 5 April. In addition Senior Immigration Officer Grade IV, Mr Tasimani Telefoni wrote to the Principal Immigration Officer (Secretary of Foreign Affairs), Mr Va'inga Tone on 12 July, 2017:

"We have asked the staff of the passport section regarding the inquiry made into the complainant's wife's passport but no one knew anything about it".²

17. Immgration Officer Grade 1, Ms Lovina Ula, who had seized the passport when the complainant and his wife had arrived on 23 March 2017 told us that upon agreement with the complainant's wife, she had delivered the passport to the Immigration Office at Nuku'alofa through Senior Immigration Officer Tasimani Telefoni on the same day the complainant and his wife had arrived.

¹ Item 21 of the Schedule of Fees, Regulations 11 of the Immigration Regulations

² Senior Immigration Officer's Letter to the Secretary of Foreign Affairs dated 12 July 2017

18. In response³, Mr Telefoni said whenever a passport is seized at the airport he will hand-carry it to the Nuku'alofa office. *"The day Lovina gave me the passport but I didn't know whose passport was it, all I know was that the validity of the passport was less than 6 months, and the fees wasn't paid at the airport, therefore require to make the payment at the Nuku'alofa office and to pick the passport from there".*

*"The next morning I went in to Ms Telesia Kaitapu's office who is in charge of seized passports. We talked and I handed her the passport and told her that the passport validity is less than 6 months, but the fees weren't paid at the airport, and that the holder had agreed to make the payment and pick the passport from the Nuku'alofa office."*⁴

Ms. Ula said on a telephone interview on March 27, 2018:

"I have done what I was supposed to do. The passport was delivered to the Nuku'alofa Office, and I haven't received any enquiry on the passport from either the Immigration Office, the passport holder or complainant. She (the complainant's wife) came to me on the night of 15 April 2017 when she was supposed to return and asked for her passport. She told me she had asked the staff at the Nuku'alofa Office but was told the passport was still at the immigration office at the airport."

The complainant's wife had a different recollection of their conversation at the airport on 15 April 2017:

*"The female staff told us that we should extend our air tickets and then visit the office to pick up my passport and discuss with the management on the reimbursement of the extra costs to our air tickets."*⁵

In his complaint, the complainant said that Mr Telefoni told them on their discussion of 18th April 2017 (because Monday, April 17 was a public holiday⁶) to leave with them the receipt⁷, and they will find out who served them at the airport.

The complainant said:

"I visited again on Thursday 20 April and Tasi (Mr Telefoni) told me that they had not been able to work on the reimbursement because it would have to go through formal interrogation of the staff to find out who worked on the passport, and that it would take a long time."

³ Telefoni's email response dated 4 May 2018

⁴ Telefoni's email response dated 4 May 2018

⁵ Email statement by Mrs Vi dated 23 March 2018

⁶ Monday April 17, 2017 was Easter Monday public holiday

⁷ The complainant & his wife's extended airline tickets,

*“He told me Immigration can only waive the \$230 fee because the passport’s validity was less than 6 months. I told him that’s not a problem because we have been willing to pay the fees. The problem lies in our being misinformed of the whereabouts of the passport that caused us the unnecessary expenses of \$842 to extend our airtickets.”*⁸

19. Mr Telefoni in his letter of 12 July 2017 stated that the complainant’s wife had told him (on 17 April) that she had visited the Immigration Office twice but was told that the passport was still at the Fua’amotu Office.

“I apologised to her for the shortfalls that had occurred but that she had made her enquiries at the counter for the Tongan passports but she should have enquired at the Visa counter.”

“I then asked the staff at the Visa Section whether they had inquiries on the complainant’s wife’s passport, but they said that they had not had inquiries from her and further that this is the first time they had heard of issues relating to the complainant’s wife’s passport.”

*“A search for the passport was conducted and was found from Sia’s room (Mrs Telesia Kaitapu) from which confiscated passport are kept for further process.”*⁹

THE EXPENSES ON THE EXTENSION OF AIRTICKETS

20. The complainant told Mr Telefoni that they spent \$842 to extend their airtickets¹⁰ and that they had no money to pay the \$230 fees.
21. Ms Mele ‘Aho, Immigration Officer Grade 2 who was the desk officer at Fua’amotu International Airport on 15 April 2017 said the complainant had asked about Immigration reimbursing them with the extra expenses to extend their tickets but she told them *“that they should discuss it with the Senior Management at our Nuku’alofa Office”*.

OPINIONS

1. That I accept that the complainant and his wife were given advice by Immigration that they had no reason not to rely on.
2. That I accept that the complainant and his wife were unable to travel out of Tonga as they had planned to do so on 15 April 2017 due to Immigration misplacing their passports.

⁸ Complainant statement dated 21 April 2017

⁹ *ibid*

¹⁰ Air New Zealand e-tickets: Mrs ‘Aiona Vi Tkt No. 08621172566686; Mr Homelo Vi Tkt No. 086211725666566

3. That I accept that the complainant and his wife had to pay \$842 to change their airline tickets because Mrs. Vi's passport was not at the Fu'amotu Airport on 15 April 2017 as they had been advised by Immigration that it would be.

4. That the authority of Immigration to seize and detain foreign passports should be clarified from the Attorney General.

RECOMMENDATIONS

I am recommending four (4) things in this Report pursuant to section 18(3) of Ombudsman Act 2001:

1. That the Immigration Division of the Ministry of Foreign Affairs reimburse to the complainant the \$842 that he had to pay their airline agent to extend his and his wife's airline tickets because her passport was not at Fu'amotu Airport on 15 April 2017 as advised by Immigration Officers.



2. That the Immigration Division of the Ministry of Foreign Affairs seek legal advice from the Attorney General as to whether it is authorised by law to seize and detain foreign passports.

3. That subject to recommendation 2 that the Immigration Division of the Ministry of Foreign Affairs develop a clear in-house working manual setting out proper procedures in the handling of foreign passports and to ensure staff provide accurate information to concerned passengers (*note that this recommendation is also subject to the outcome of a separate Ombudsman Report on whether the Ministry of Foreign Affairs has the discretion to allow foreigners who do not comply with section 10 of the Immigration Act into the Kingdom*).

4. That the Ministry of Foreign Affairs report back to me within two (2) months of the date this report is finalised to provide a follow up report on the recommendations.

RESPONSE FROM THE MINISTRY OF FOREIGN AFFAIRS

- 22 On 31 May 2018, I delivered my Provisional Report to the Ministry of Foreign Affairs setting out my findings, opinions and recommendations. On 13 July 2018¹¹, I received a letter from the Ministry accepting the recommendations of this Report. As required under section 18(5) of the Ombudsman Act 2001, a copy of this letter is attached to this Report as Annex 1.



Aisea H. Taumoepeau, SC
Ombudsman

18th July 2018

¹¹ Letter from Mahe 'Uli'uli Tupouniua, Secretary for Foreign Affairs, dated 12 July 2018



Ministry of Foreign Affairs
Nuku'alofa
Kingdom of Tonga

RECEIVED

13/7/18

12/7/18

DOI
Fy
13/07/18

12th July 2018

'Aisea H. Taumoepeau, SC
Ombudsman
Office of the Ombudsman
Nuku'alofa

@ L

16/7

→ PT of
mail
L

Dear Sir,

**RE: PROVISIONAL REPORT UNDER THE OMBUDSMAN'S ACT – COMPLAINT
FROM HOMELO VI AGAINST IMMIGRATION TONGA – CASE NO. OMB 17/49**

The Ministry is to acknowledge the receipts of your letter dated 31st May 2018 regarding the above subject matters.

The Ministry duly noted the provisional report for the above case and to advice here that we have no further comments.

Yours sincerely,



Mahe 'Uli'uli Tupouniua
Secretary for Foreign Affairs