



## DEPORTATION LIABILITY ASSESSMENT

Sections 156 and 161 of the Immigration Act 2009

Case: 6283

CN: 9(2)(a)

### CLIENT

**Name**

Karel SROUBEK (Mr)  
AKA: Jan ANTOLIK

**DOB**

9(2)(a)

**Nationality**

Czech Republic  
Czech Republic

**s161 offence:** Importing ecstasy  
**Maximum penalty:** 14 years' imprisonment  
**Sentence:** Five years and nine months' imprisonment

**Offence date:** 17 September 2014      **Sentence date:** 3 June 2016  
**Next parole date:** September 2019      **Stat. release date:** 1 January 2022

**Reason for section 156 assessment:** Provided false identity documents when entering New Zealand and with residence application  
**Liability determined:** 156(1)(b) – by Minister

**Residence category:** Residence from Work, Talent - Sports      **First held residence:** 6 June 2008  
**Location:** Auckland South      **Employment:** Unemployed  
Corrections Facility

### FAMILY IN NEW ZEALAND

Name	Age	Relationship	Immigration status
9(2)(a) (Mrs)	9(2)(a)	Wife (separated)	Citizen

**Other family:** Mr Sroubek's parents live in the Czech Republic.

### Overview

[1] Karel Sroubek is a 37-year-old Czech national who was granted residence under the Residence from Work, Talent – Sports Category on 6 June 2008 under the identity of Jan Antolik. Mr Sroubek is potentially liable for deportation under section 156(1)(b) of the Immigration Act 2009 ("the Act") because he admits holding a resident visa under a false identity, being the identity of Jan Antolik, date of birth 20 October 1981.

[2] On 17 September 2014, Mr Sroubek imported ecstasy. He was convicted of that offence, sentenced on 3 June 2016, and is now liable for deportation from New Zealand under section 161(1)(c) of the Act.

### Immigration history

[3] Mr Sroubek's immigration history is not clear-cut. It appears that he may have travelled in and out of New Zealand using more than one travel document. Below is a history of all the recorded applications and movements for 'Jan Antolik'.

[4] On 16 September 2003, Mr Sroubek (as Mr Antolik) arrived in New Zealand and was granted a visitor's permit valid until 16 December 2003. A second arrival date (there is no recorded departure date) of 29 November 2003 is recorded. Mr Sroubek was granted a visitor's permit valid until 29 February 2004.

[5] The real Mr Antolik states that on 9(2)(a) [REDACTED]  
9(2)(a) [REDACTED]

[6] On 8 March 2004 (a week after his visitor's permit expired) and on 13 July 2004, Mr Sroubek departed New Zealand. There is no recorded arrival dates between these two dates.

[7] On 23 January 2005, Mr Sroubek returned to New Zealand, again using the Antolik identity. He was granted a visitor's permit valid until 23 April 2005.

[8] On 15 April 2005, Mr Sroubek, as Antolik, applied for a work permit and visa under the Work to Residence, Talent – Sports Category. The application was approved on 11 May 2005 and Mr Sroubek was granted a permit and visa valid until 15 December 2006. He was granted further work permits under this category until he was approved residence.

[9] On 5 November 2007, Mr Sroubek applied for residence under the Work to Residence, Talent – Sports Category, under the name Jan Antolik. The application was approved on 6 June 2008 and he was granted residence.

[10] Mr Sroubek has travelled in and out of New Zealand multiple times since his first recorded entry in 2003. He has remained in New Zealand since 24 September 2009.

[11] Pursuant to sections 415(1) and 434(1) of the Act, Mr Sroubek is now deemed to hold a residence class visa and is liable for deportation whether the reason for his deportation liability arose before or after he was deemed to hold the visa.

*Passport history*

[12] The real Jan Antolik provided a statement to Czech authorities stating that 9(2)(a) [REDACTED]

9(2)(a) [REDACTED]

[13] Mr Sroubek's lawyer, Simon Laurent, has provided an affidavit dated 28 March 2011 from the real Jan Antolik. In his affidavit Mr Antolik states 9(2)(a) [REDACTED]

9(2)(a) [REDACTED]

Travel date	Passport used
16 September 2003 (arrival)	9(2)(a) [REDACTED]
29 November 2003 (arrival)	[REDACTED]
8 March 2004 (departure)	[REDACTED]
13 July 2004 (departure)	[REDACTED]

23 January 2005 – 13 January 2006	9(2)(a)
3 November 2006 – 23 June 2008	
16 August 2008 (arrival) <sup>1</sup>	
16 August 2008 (arrival)	
30 April 2009 – 24 September 2009	

Application	Passport used
9(2)(a) (work permit)	9(2)(a)
(visitor permit)	
(work to residence permit)	
(replacement work permit)	
(work to residence permit)	
(residence permit)	

[14] On 9 March 2012, the Department of Internal Affairs (DIA) confirmed that Mr Sroubek is not a New Zealand citizen under either of his identities. On 19 December 2017, a follow up check was done and the DIA confirmed that Mr Sroubek is not a New Zealand citizen.

**Offence – s161 liability**

[15] Mr Sroubek operated a business known as 18(c)(ii). The business imported beverages and sold them at the wholesale level in New Zealand. The business involved arranging shipments of products, clearing them through Customs and arranging sales to various customers. One of the shipments was stopped by Customs. The shipment contained close to five kilograms of ecstasy. The ecstasy was hidden in packets of juice imported by Mr Sroubek's company and were the only items contained in the container.

[16] The shipment originated from Europe and stopped at various places, including Singapore, on the way to New Zealand. The evidence at Mr Sroubek's trial established that Europe was the likely point at which the ecstasy was introduced into the containers. It had been packed into a handful of individual one-litre cartons, themselves packed within boxes containing a number of cartons and themselves packed on pallets and placed into the shipping container.

[17] Prior to the container arriving in New Zealand, Mr Sroubek had been sent a car buffer machine through the mail. When checked by Customs officials, hidden within it were shipping container bolts. The significance of the shipping container bolts are that both of them, but one in particular, bore markings and a number strikingly similar to that on the shipping container which later arrived in Auckland. Mr Sroubek was found in possession of one of the bolts later on. These bolts potentially could have allowed a person to access the container, re-seal it and possibly escape detection. The sentencing notes of Judge E M Thomas are tagged B.

[18] Mr Sroubek pleaded not guilty to the offence but was found guilty by a jury. The Auckland District Court's record of hearing is tagged C.

*Pre-sentence report*

[19] On 1 June 2016, the Department of Corrections (Corrections) completed a Provision of Advice to Courts report. It is noted that Mr Sroubek was unable to be interviewed for the report so information from a 2014 Corrections' report was used. Mr Sroubek was assessed as being at low risk

<sup>1</sup> The two arrivals on 16 August 2008 were on the same flight. Two different passports were presented at the border and two different permits were granted. It is unknown if two people travelled using one passport each.

of re-offending due to it being his first serious drug offence and that it dated back to 2014. He was also assessed as being at low risk of causing harm to others, as he had no violent offences. The Corrections' report is tagged D.

#### *Sentencing*

[20] When sentencing Mr Sroubek, Judge E M Thomas noted that this was a one-off shipment and there was no suggestion that there were any other shipments before this one. The Judge stated that the offending involved a significant amount of ecstasy, it involved organisation and planning but on the other hand he had to balance it on the scale of complexity and planning and sophistication of drug operations generally.

[21] The Judge stated that during the trial it was established to the jury's satisfaction that Mr Sroubek was aware that the container contained drugs and that he had some role in them being there. The evidence was not able to establish what steps Mr Sroubek or anyone else took to place them in the container. The evidence was not able to establish whose idea it all was and was not able to establish who was to be solely responsible for its distribution in New Zealand and in what form and to whom. The Judge could not say that Mr Sroubek was the mastermind, or that he was at the top of the tree. However, he pointed out that Mr Sroubek was prepared to use his business as a front. He would have only done so if he was expecting a significant return or share in the return.

[22] When determining a sentence for Mr Sroubek, the Judge used a starting point of six years and six months' imprisonment. Discount was given because:

- Mr Sroubek was highly regarded by many in the community;
- He successfully created and operated a business;
- He contributed in many ways to the community;
- He had no relevant previous convictions;
- It seemed that he had applied himself hard to his work and sport; and
- He had represented New Zealand in sports and trained and mentored others.

[23] On 3 June 2016, Mr Sroubek was sentenced to five years and nine months' imprisonment. For the sentencing notes of Judge E M Thomas, refer tag B.

#### *Unsuccessful appeal*

[24] Mr Sroubek lodged an appeal with the Court of Appeal against his conviction on the grounds that the jury's verdict was unreasonable and a miscarriage of justice had occurred. He contended that proper enquiries would have revealed the reasonable possibility that someone put drugs in the container without his knowledge in order to frame him. The Court concluded that the jury's verdict could not be said to be unreasonable and it was far from satisfied that there was any risk that justice had miscarried. On 11 December 2017, his appeal was dismissed. The Court of Appeal decision is tagged E.

#### *Referral from INZ office*

[25] This case was initially referred to Immigration Resolutions (Resolutions) as Mr Sroubek had criminal convictions (for producing false information and/or documents knowing them to be false) which appeared to make him liable for deportation under section 161(1) of the Act.

[26] Mr Sroubek had been charged with four counts of producing/surrendering a document or supplying information knowing it to be false/misleading and one count of offending against the

Passport Act 1992. During sentencing, Mr Sroubek's lawyer stated that if convicted, Mr Sroubek would be deported without the ability to appeal the decision. He urged the Judge to discharge Mr Sroubek without conviction to prevent him from being deported. The Judge believed that Mr Sroubek's life may be in danger if he returned to the Czech Republic and stated that he thought he had made a good contribution to New Zealand since his arrival. The Judge advised Mr Sroubek that he would be discharged without conviction if he completed his community work in relation to the charges. Mr Sroubek met those requirements and was ultimately discharged without conviction. That discharge without conviction meant that Mr Sroubek was not liable under section 161(1) of the Act.

[27] During his trial, in which he was charged under the name Jan Antolik, Mr Sroubek stated that his real name was Karel Sroubek and he came to New Zealand under a false identity (Jan Antolik) with a passport he obtained from a friend. He stated that he came to New Zealand after witnessing a murder in the Czech Republic and being in fear for his life after that event. Mr Sroubek now appears to be potentially liable for deportation under section 156(1)(b) of the Act.

**Assessment (section 156 of the Act – false identity)**

*Initial investigation by Resolutions*

[28] In October 2009, Czech Police contacted the New Zealand Police and advised that a man named Karel Sroubek was wanted in relation to a murder in 2003. The Czech Police informed the New Zealand Police that Mr Sroubek was living in New Zealand under the assumed identity of Jan Antolik. See notes tagged F.

[29] As stated above, in 2012, Mr Sroubek was discharged without conviction for four counts of producing/surrendering a document or supplying information knowing it to be false/misleading and one count of offending against the Passport Act 1992.

[30] On 20 March 2018, the New Zealand Police sought an update from the Czech Police as to the charge Mr Sroubek was facing there. The Czech police confirmed that Mr Sroubek is wanted for a prosecution in connection with an incident on 7 September 2003 where he was one of a group of men involved in a violent attack on a victim, during which the victim was shot dead by another member of the group. It is believed that Mr Sroubek faces charges of attempted bodily harm and disorderly conduct in connection with the incident.

[31] Mr Sroubek is also wanted by Czech authorities for service of 54 months' imprisonment in connection with an incident on 28 June 1999, in which he attacked and grievously injured two Police officers and another incident on 4 October 1999, where he attacked a taxi driver. It is understood that Mr Sroubek was convicted on 12 February 2002 of disorderly conduct, damaging of another's property and attacking a law enforcement officer. The email from the New Zealand Police is tagged G.

[32] Mr Sroubek has admitted in a New Zealand Court that he travelled to New Zealand under the false identity of Jan Antolik and that he used that identity when dealing with INZ.

*Response from client*

[33] Mr Sroubek asks that his case be carefully considered with an open mind, based on events and facts that cannot be disputed or ignored and were acknowledged by the Crown and Court in 2011. Mr Sroubek states that those facts include:

- Fabricated warrants by the Czech Police used to put his name on the Interpol watch list;
- Threatening behaviour by the Czech Police before and after his escape; and
- Continuous publications in the Czech mainstream media providing false information and using an actor to portray him in a news interview.

[34] Mr Sroubek asks that the Minister takes into account Judge Wade's judgement and views in his 2011 District Court trial (see tag H). He says that the Judge fully understood his case, having witnessed all of the evidence presented in Court. Mr Sroubek also requests that the Minister conducts his own research into widespread and well-known corruption within the state authorities in the Czech Republic and the links between organised crime figures and Police officials. He also asks that the Minister take into consideration the circumstances he was facing when he left the Czech Republic and the unpredictable circumstances he may face if deported back there.

[35] Mr Sroubek states that if the above is considered then the Minister must recognise his use of a different identity as a necessary tool to be free from persecution and the ill treatment he faces in his home country.

[36] When asked why he travelled to New Zealand in 2003 using the false identity and passport of Jan Antolik, Mr Sroubek states that the details of his case were established at his trial in 2011. He adds that it was never his intention to use the false identity and mislead the New Zealand authorities. He says a person was shot to death and he was forced by the Police to make a false statement and told if he did not he would be charged with being an accessory to the murder, which was horrifying for him. Mr Sroubek decided that if he hid within the Czech Republic he would have been added to the fugitive database and shot at the first opportunity.

[37] Mr Sroubek and his parents consulted a lawyer about his situation and he says it became clear that he was not 100 percent safe and would need to leave the country until it was clear what was happening with his case. He states it was never his intention or plan to leave the Czech Republic and travel to New Zealand on a false identity. Unfortunately, the desperate situation he found himself in did not leave him with any other option.

[38] Mr Sroubek says that he crossed the border to Germany and intended on staying for a few days but then found out his parents had been threatened by the Czech Police and he knew he was no longer safe in Europe. Mr Sroubek says that the only way to leave Europe safely was to use a false identity. He says this fact was accepted by the Crown and the Court during his 2011 Court case. He says he did not know anything about New Zealand and did not speak any English but knew New Zealand was far away from his home country and believed he would be safe here.

[39] Mr Sroubek says that when he arrived at the New Zealand border he did not disclose his true identity, as he did not think he would be believed by the authorities. He says he did not intend to live in New Zealand permanently; it was just a place to stay until his situation in the Czech Republic was sorted. After a few months in New Zealand, Mr Sroubek missed his friends and family, so travelled to Germany to see them. At that point he was told by his parents that he was put on an Interpol list and was wanted in connection with a murder. He believed that he was not being given a fair investigation and that he would never be able to freely live in the Czech Republic.

[40] Mr Sroubek decided to leave Europe forever and returned to New Zealand. He says he wanted to use his true identity when returning to New Zealand. He knew he would be applying for residence and citizenship and did not want to lie anymore or pretend to be somebody else.

However, the fact he was now a fugitive under fabricated charges made it difficult for him to travel on his true identity. Mr Sroubek's deportation liability questionnaire is tagged I.

*Response from lawyer Simon Laurent*

[41] Mr Laurent talks about the evidence the real Mr Antolik gave in Court during Mr Sroubek's 2011 case regarding the use of his passport by Mr Sroubek (see paragraphs [12] and [13]). Mr Laurent states that it is clear that Mr Antolik's statement to Interpol in 2010 stating 9(2)(a) 9(2)(a) was not credible. 9(2)(a) 9(2)(a) Mr Laurent says that the second affidavit made by Mr Antolik where he says 9(2)(a) is consistent with Mr Sroubek's claims.

[42] Mr Laurent goes into more detail about the murder that Mr Sroubek witnessed, the police investigation and the subsequent charges against him. Mr Laurent then talks about the reasons why Mr Sroubek and his family felt it was no longer safe for him to live in Europe and why he needed to use a false identity to travel to New Zealand.

[43] Mr Laurent states that the legal opinion of 9(2)(a) was provided for the defence of Mr Sroubek's immigration charges. 9(2)(a) says that if Mr Sroubek had been convicted in the Czech Republic with his co-offenders then he would have only been found to have committed riotous conduct and likely have received a suspended sentence. A second opinion some 19 months later says that in the lawyer's opinion the Czech law enforcement was not following proper procedure in respect of Mr Sroubek, including the manner of approach by Police officers to his parents. The legal opinions and a statement by 9(2)(a) are tagged J.

[44] Mr Laurent says that it was anomalous that Interpol's record of the European Union arrest warrant issued for Mr Sroubek lists him as wanted for both attempted bodily harm and hooliganism (see tag H). He says the warrant was issued on 10 August 2009, some years after others involved in the murder in the Czech Republic were convicted. Mr Laurent says this raises the question of whether someone influenced the inflation of Mr Sroubek's culpability for an improper purpose. Mr Laurent says this and other evidence provided in Mr Sroubek's trial for the immigration charges persuaded the Judge to enter a discharge without conviction. He says the Judge appears to have accepted Mr Sroubek's account of events and comments and that the Crown did not dispute them. Mr Laurent says that the Judge took the stance that Mr Sroubek held a subjective fear of serious harm and unfair treatment by the authorities in the Czech Republic.

[45] Mr Laurent has provided statements from Mr Sroubek and his parents that were used during his immigration Court case as well as a number of Czech Court documents. These documents are tagged L.

[46] Mr Laurent has obtained reports from private investigators dated May 2018. He says that the reports note that there has been an increased interest in Mr Sroubek generated following the person who was convicted of the crime in the Czech Republic being released from prison. He says that the report states that the Police themselves remain corrupt and are responsible for severe mistreatment of detainees in order to force testimonies. The private investigators' reports are tagged M. Mr Laurent has provided media reports regarding Czech Police mistreatment and has had them partially translated into English. Mr Laurent says that just a few months ago the Czech

Prime Minister stated publically that one could get a prosecution "made to order" in his country. Mr Laurent's submission is tagged N.

#### Conclusion

[47] During his 2011 trial for immigration offending, Mr Sroubek admitted in Court that he entered New Zealand using the false identity of Jan Antolik and went on to gain residence under that false identity. He and his lawyer have also confirmed this in their deportation submissions to INZ. Mr Sroubek states that he used the false identity because he was fearful of his safety in the Czech Republic, but the fact remains that he gained temporary permits and then went on to gain residence under a false identity.

[48] If Mr Sroubek believed his life was in danger he could have arrived at the New Zealand border and made a claim for protected person status or made a refugee claim using his true identity. INZ would not have returned him to his home country without fully investigating his claims.

#### Relevant legislations

[49] Section 161(1)(c) of the Act states that a residence class visa holder is liable for deportation if he or she is convicted, in New Zealand or elsewhere:

- (c) of an offence and sentenced to imprisonment for a term of 5 years or more (or for an indeterminate period capable of running for 5 years or more), if the offence was committed not later than 10 years after the person first held a residence class visa.

[50] Mr Sroubek is liable for deportation under section 161(1)(c) because he was convicted and sentenced to imprisonment for five years and nine months for an offence committed no later than 10 years after he first held a residence class visa.

[51] Section 156(1)(b) of the Act states that a person is liable for deportation if:

- (b) the Minister determines that the person holds a visa under a false identity.

[52] If you determine that Mr Sroubek holds his resident visa under a false identity, then he will become liable for deportation under section 156(1)(b) of the Act.

#### Comments on offending

[53] Mr Sroubek states that his offending is of a serious nature and he is very disappointed that he had put himself in a position where he was found guilty of knowledge of the shipment. He states that he must accept the verdict of the jury even though there were several issues with how the Crown ran their case, and how the cargo especially buffer machine containing seals were intercepted by Customs. Mr Sroubek states that no proper investigation was carried out into who placed the drugs into the container and who sent the buffer machine, as he does not know himself.

[54] Mr Sroubek says that he and his family have suffered significantly because of this offence. Because of this offence he says that he has lost everything he truly cared about, his house, his freedom and his wife. He says he has brought shame upon himself and his family.

#### Personal circumstances

##### Family

[55] Mr Sroubek is married to 9(2)(a) a New Zealand citizen. He says 9(2)(a) 9(2)(a)



9(2)(a) 18(c)(ii) 9(2)(a)  
9(2)(a) 18(c)(ii) 9(2)(a) 9(2)(a) states that they are currently not together but she financially and mentally supports him while he is in prison.

[56] Mr Sroubek says that he only keeps in contact with his parents who are 9(2)(a) 9(2)(a)

*Skills and employment*

[57] Mr Sroubek reports that he has 9(2)(a) which he gained in the Czech Republic 9(2)(a) He is currently working 9(2)(a) while in prison. He is building pre-manufactured walls for homes and gaining experience in the building and construction industry. While in prison he has completed 9(2)(a) qualification and received a National certificate in 9(2)(a) . He is currently completing a 9(2)(a) 9(2)(a)

[58] While in prison Mr Sroubek has gained a large number of certificates covering topics such as finance, health, family and personal development.

[59] When Mr Sroubek lived in the Czech Republic he worked for 9(2)(a) company as a manager. While in New Zealand he has professionally competed and represented New Zealand internationally in kickboxing, Muay Thai and K1. He then worked for a gym and later as a general manager for his company 18(c)(ii) This company was used by Mr Sroubek to import drugs.

[60] Mr Sroubek states 9(2)(a) 9(2)(a) He reports that he has two full-time job offers and one contract base offer for when he is released from prison. 9(2)(a) 9(2)(a)

*Financial*

[61] Mr Sroubek reports that 9(2)(a) 9(2)(a)

*Health*

[62] Mr Sroubek is in good physical health. No health issues were noted at residence.

*Character*

[63] Mr Sroubek has been convicted of the following three convictions in New Zealand:

Offence date	Offence	Sentence date	Sentence
11 August 2005	Operating a vehicle carelessly	12 October 2006	Fined \$100 and \$500 reparation
6 July 2012	Refused officer's request for blood specimen	24 January 2013	Fined \$200 and disqualified from driving for six months
17 September 2014	Importing a Class B controlled drug (MDMA)	3 June 2016	Five years and nine months' imprisonment

[64] Mr Sroubek's New Zealand police criminal record is tagged P.

[65] Mr Sroubek appears to be wanted by Police in the Czech Republic for his involvement in a murder in 2003 and for an outstanding sentence that has yet to be served.

[66] On 17 September 2018, Mr Sroubek appeared before the Parole Board in relation to his conviction and imprisonment for importing drugs. He was denied parole. He has also been denied parole in March 2018, when the Parole Board noted that Mr Sroubek has been assessed as being a low risk to re-offend. Mr Sroubek pleaded not guilty to the offence and was subsequently found guilty by a jury. He then lodged an appeal against that conviction with the Court of Appeal. His appeal was dismissed in December 2017. It is noted in the Parole Board decision that Mr Sroubek now acknowledges the offending and is aware of the harm that drugs cause in the community. A copy of the Parole Board's March 2018 decision is tagged Q. The September 2018 decision was not available at time of writing. Mr Sroubek's statutory release date is January 2022.

#### Effect of deportation

##### *Mr Sroubek*

[67] Mr Sroubek believes that there is a danger to his health and well-being, as well as unfair treatment by the Czech Police, which is still real and almost guaranteed. He goes on to list a number of ways he would not like to see himself die, with the implication being that the authorities would kill him while making it look like an accident. Mr Sroubek reports that he has no support in the Czech Republic and 9(2)(a) Mr Sroubek says that if he is deported it would be a death sentence and a very difficult way of rebuilding his life.

[68] Mr Sroubek says that if he is deported it would cause his entire family extreme hardship, financially as well as mentally. He says his family would not want him to return to the Czech Republic so would try and keep him away from the country "under all circumstances". Mr Sroubek states that he would not be able to financially support himself in any country he was to move to as he only has support in New Zealand. He states that he and his family have invested vast amounts of money and effort into his company and if he had to leave it would put that investment at risk.

[69] Mr Sroubek states that his wife is a New Zealand citizen and would not be able to leave all her friends and life here to travel to a country where 9(2)(a) 9(2)(a)

##### *Lawyer – Simon Laurent*

[70] Mr Laurent says that while Mr Sroubek cannot completely prove that he will be harmed if he returns to the Czech Republic it can be inferred based on the above evidence. He says that when the Minister considers Mr Sroubek's case he must weigh up the real risk that by ordering deportation, he may well be sending Mr Sroubek back to an environment dangerous to his personal safety, if not his life. Mr Laurent says this risk should be balanced against the significance of the false information provided by Mr Sroubek in order to gain residence nine years ago. He also says that weight should be given to the positive contribution Mr Sroubek has made to New Zealand.

[71] Along with his submission, Mr Laurent has provided the following supporting documents:

- Two CDs containing media reports;
- Sentencing notes of Justice Woodhouse dated 9 April 2014;
- Sentencing notes of Judge E M Thomas dated 3 June 2016;

- European Commission report on corruption;
- Czech Republic 2016 Human Rights report;
- Czech Republic 2017 Human Rights report;
- Czech Government Anti-Corruption Corruption Conception for the years 2015 to 2017;
- Article titled 'The fight for fair police practices in the Czech Republic';
- Companies Office documents relating to 18(c)(ii)
- Financial statement for 18(c)(ii)
- Photographs;
- A deposit from Mr Sroubek under the name Jan Antolik;
- Transcript of a media story about Mr Sroubek;
- Numerous media articles supporting Mr Sroubek's claims;
- Private investigators' report, likely from 2012; and
- Summary of Facts for 2011 Court case relating to the immigration charges.

[72] The supporting documents are tagged R.

*Letters of support*

[73] 9(2)(a) has provided a letter in support of her husband.<sup>2</sup> She says that her husband is a supporting and caring person to his friends, family and people in need. She says that her husband's conviction and imprisonment has taken a toll on their relationship, and while they are not currently together, she provides him with financial and mental support. 9(2)(a) does not approve of her husband's past actions and knows that he is extremely ashamed of them.

[74] 9(2)(a) says that her husband loves New Zealand and calls it home. She says there is nothing waiting for him in the Czech Republic. He has told her in the past that he fears the corruption in his home country and he will face extreme hardship if he were to return. 9(2)(a) letter is tagged S.

[75] Mr Sroubek's parents have provided a letter in support of their son. They say that their son was forced to leave his home country to save his life. They say that the person that committed the crime in the Czech Republic and two Police officers have threatened to shoot their son. Mr Sroubek's parents say that they still are afraid of his future and that since the Czech authorities learnt that he is in New Zealand they have not ceased their efforts for his deportation back to the Czech Republic.

[76] Mr Sroubek's parents say that the idea that their son may have to return to his home country is scary for them and for him. 6(d) & 9(2)(a)

[77] Mr Sroubek's parents say 9(2)(a)

9(2)(a) Mr Sroubek's parents ask that their son be allowed to remain in New Zealand. Their letter is tagged T.

[78] Letters of support from Mr Sroubek's friends, business associates and fellow sports people have been provided. They talk about Mr Sroubek's good character, how he is a kind, generous and caring person. They talk about his successful business in New Zealand and the charity work he does.

<sup>2</sup> 9(2)(a) refers to her husband as Jan Antolik in her letter.

The letters mention that he is a family man and discuss his positive relationship with his wife. The letters of support are tagged U.

#### **International obligations**

[79] In making this decision, you must consider New Zealand's international obligations, for example those relating to the best interests of any child.<sup>3</sup> You have been briefed on the role of international obligations in decision-making on immigration-related matters.

#### **Role of decision maker and your options**

[80] Your role is to consider the matters set out in this report and determine whether deportation should proceed. In making this decision you should weigh the competing interests of the client (including their family) and the State. In doing so, greater weight will be given to some factors than to others.

#### *Insufficient grounds to determine*

[81] If after reading this report you consider there are insufficient grounds to determine that Mr Sroubek holds a visa under a false identity, then he is not liable for deportation under section 156 and you should sign the no-determination letter. Doing so would not prevent this case being reconsidered if further relevant information became available. He will however, remain liable for deportation under section 161.

#### *Confirming deportation liability*

[82] If you decide that deportation should proceed, and deportation is eventually effected, Mr Sroubek will be permanently barred from returning to New Zealand unless the Minister of Immigration or the Immigration and Protection Tribunal removes or reduces the period of prohibition on entry. If you decide on deportation, please sign all copies of the deportation liability notice.

#### *Cancelling deportation liability*

[83] Pursuant to section 172(1) of the Act, you have absolute discretion to cancel the liability for deportation. Merely cancelling deportation liability would, however, mean that Mr Sroubek would continue to hold a residence class visa under a false identity – a result contrary to the intent of the Act which could also cause problems for him in the future. It is therefore recommended that if you decide on cancellation, you also grant Mr Sroubek a new residence class visa under his true identity. If you decide on this course, please sign the deportation liability cancellation letter.

#### *Suspending deportation liability*

[84] Pursuant to section 172(2) of the Act, you have absolute discretion to suspend the liability for deportation for a period of up to five years. The suspension period would be subject to certain conditions; if these were breached, you would have the option to reactivate the deportation liability. If the conditions were not breached during the suspension period, you would be required to cancel the liability for deportation at the end of the suspension period.

[85] Suspending deportation liability in this case would be problematic: doing so would mean that Mr Sroubek would continue to hold a residence class visa under a false identity.

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<sup>3</sup> Art 3(1) of the Convention on the Rights of the Child provides that "in all actions concerning children...the best interests of the child shall be a primary consideration".

[86] If you wish to give Mr Sroubek a chance to remain in New Zealand, but subject to conditions of the kind normally imposed on a suspension period, you may grant him a new residence class visa in his true identity and impose conditions on it under section 50(1) of the Act. If you decide on this course, please sign the conditional-residence letter.

[87] You may decide to impose conditions other than those in the attached conditional-residence letter. If so, please provide your instructions in the *Record of decision* section below and return the file to Immigration Resolutions so a new letter can be drafted.

[88] Neither granting a further visa nor cancelling the liability for deportation on this occasion would prevent Mr Sroubek from becoming liable for deportation for a different reason in the future.

Prepared by  
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Immigration Resolutions  
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For  
Hon Iain Lees-Galloway  
Minister of Immigration

18 September 2018

Released under the Official Information Act

**RECORD OF DECISION**

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*Criminal convictions only*

If you consider there are insufficient grounds to determine that Karel Sroubek holds a visa under a false identity, then he is not liable for deportation under section 156(1)(b) but remains liable under section 161(1)(c). If so, your options contained in FOLDER 1 are:

- A. Decide that deportation should proceed under section 161 only.  
*Sign both copies of the deportation liability notice.*
- B. Cancel deportation liability (section 161).  
*Sign the cancellation letter.*
- C. Decide that the deportation liability (section 161) will be suspended for five (5) years.  
*Sign both copies of the deportation liability notice, plus the suspension letter.*

*Criminal convictions and false identity*

If you have determined that Karel Sroubek holds a visa under a false identity, then he will be liable for deportation under sections 156(1)(b) and 161(1)(c), and your options contained in FOLDER 2 are:

- D. Decide that deportation should proceed under both sections.  
*Sign all four copies of the deportation liability notice under section 161 and 156.*
- E. Cancel deportation liability and grant him a resident visa in his true identity.  
*Sign the cancellation letter.*
- F. Decide that a resident visa should be granted in his true identity, subject to the conditions in the conditional-residence letter.  
*Sign the conditional-residence letter.*

*You are free to impose suspension conditions other than those presented*

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*Please sign:*



Hon Iain Lees-Galloway  
Minister of Immigration

Date: 19/09/18