



27 April 2018

Committee Secretary
Joint Standing Committee on Migration
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: migration@aph.gov.au

Dear Committee Secretary

INQUIRY INTO THE REGULATION OF MIGRATION AGENTS

1. The Humanitarian Group is grateful for the opportunity to comment on the inquiry into the efficacy of the current regulation of Australian migration agents conducted by the Joint Standing Committee on Migration of the Commonwealth Parliament.
2. In addition to providing this submission, we also endorse the submission made by the Refugee Council of Australia (**RCOA**).

Background: The Humanitarian Group

3. The Humanitarian Group is a not-for-profit organisation in Western Australia. We are focused on empowering vulnerable people by providing professional and accessible migration assistance, legal advice and education. We strive to do this in a way that embraces diversity and strengthens communities. We help people new to Australia from culturally and linguistically diverse (**CALD**) backgrounds, including humanitarian visa holders, people seeking asylum, refugees and people who are otherwise disadvantaged in their access to legal services and who are located in Western Australia. Since its inception in 2002, our organisation has grown to be a primary provider of specialist legal services to the recently-arrived CALD community in Western Australia.
4. The Humanitarian Group has seen an ongoing and increasing demand for our services. In 2016-2017 we assisted over 3,300 people from 80 different countries, the majority of whom have experienced torture and trauma.¹
5. The Humanitarian Group provides specialist immigration and legal services. We assist people seeking asylum to claim protection, we assist permanent visa holders from humanitarian

¹ The Humanitarian Group Annual Report, 2016-2017
<<http://thehumanitariangroup.org.au/sites/thehumanitariangroup.org.au/files/Annual%20Report%202016-2017%20compressed.pdf>>.

Community focused legal services for people new to Australia

backgrounds to sponsor or propose family members for Australian visas through our Family Reunion Program and we assist clients seeking administrative review through the relevant administrative tribunals and courts. The Humanitarian Group provides migration and general legal advice to victims of family violence from CALD backgrounds. We also provide a general legal service to clients from CALD backgrounds. In addition, we deliver a wide range of Community Legal Education.

Our Clients

6. The clients whom The Humanitarian Group assists are from CALD backgrounds and face special vulnerabilities.
7. The Humanitarian Group's clients are diverse in terms of culture, religion, level of education, language(s) spoken, levels of skills or qualifications and social and political backgrounds. They may not fall neatly into categories of disadvantage identified by traditional measures, such as region, socio-economic status or local government area. Statistics in relation to the number of people born overseas, income, unemployment rates, level of education, social housing tenancies, Centrelink benefit recipients and ethnicity are crucial in providing an accurate demographic picture. However, they only tell part of the story for our clients.
8. Our clients also often face particular vulnerabilities:
 - (a) They have often come to Australia from backgrounds of torture and trauma.
 - (b) They frequently have limited capacity to understand, speak, or write in English.
 - (c) They commonly come from environments where protection of human rights, enforcement of legal rights and access to justice have not been available to them.
 - (d) There are cultural differences at play which include fear of and resistance to accessing services.
 - (e) They find it particularly difficult to access the Australian legal system and to understand their rights. When they do access the legal system, they experience specific and significant challenges.
 - (f) It is common for this group to additionally suffer from mental health issues, which further compounds the challenges they face.

Introduction

9. This submission reflects the knowledge and experience of The Humanitarian Group.
10. This submission particularly addresses the following two items in the terms of reference:
 - (a) The nature and prevalence of fraud, professional misconduct and other breaches by registered migration agents, the current review mechanisms for migration agents and the adequacy of penalties.
 - (b) Evidence of the volumes and patterns of unregistered migration agents and education agents providing unlawful immigration services in Australia.
11. The Humanitarian Group welcomes the opportunity to inform the Committee of our views on these important issues relating to migration agent regulation, in particular to the impact these matters have on vulnerable and/or disadvantaged visa applicants, sponsors and proposers.

Unethical Behaviour of Registered Migration Agents

12. The Humanitarian Group has had serious and long-running concerns about the unethical behaviour of a small number of migration agents and the apparent failure of the current regulatory regime to address this issue.
13. Practices that clients frequently report having experienced with other agents and which we regard as unethical include:
 - (a) registered migration agents overcharging and charging for the preparation of visa applications that have no real chance of success, particularly Class XB humanitarian visas;
 - (b) registered migration agents preparing protection visa applications with insufficient knowledge and experience of that discrete and complex area of law; and
 - (c) registered migration agents allowing unregistered individuals to operate out of their premises so that clients believe they are receiving qualified advice when they are not.

Case Study 1: Hazeem*

Hazeem and his brother arrived in Australia on student visas. The brothers consulted a migration agent in a well-established practice following the death of their parents. They each paid a fee and received assistance with preparing protection visa applications. The applications were lodged but the 'migration agent' failed to tell Hazeem and his brother that they were required to attend a biometrics appointment at the Department of Immigration and Border Protection. As a result, the applications were invalid. The 'migration agent' told the brothers that he would re-lodge the applications. However, unbeknownst to Hazeem, only his brother's application was re-lodged.

When the brother was called for an interview some nine months later, Hazeem telephoned his 'migration agent' to ask when he would have his interview. Hazeem's calls and messages went unanswered. Eventually, over a year later, the Department of Immigration and Border Protection telephoned Hazeem to inform him that he was unlawful because his student visa had expired.

When Hazeem went to the migration practice, he was told that the person who assisted him was no longer present, was not in fact a registered migration agent but only a 'helper' and that the fee he had paid had not been received by the practice. The practice failed to assist further and refused to refund the fee Hazeem had paid.

The Humanitarian Group assisted Hazeem with a fresh protection visa application, which was ultimately successful. The migration practice continues to operate.

Case Study 2: Noor*

Noor arrived in Australia in 2015 on a visitor visa from Malaysia. She sought advice from a migration agent about options for remaining in Australia. She was advised to lodge an application for a protection visa. She was not given any advice about the criteria or consequences involved in making such an application or on her prospects of success. She was not given any letters of advice or even a copy of her application. When the criteria for the visa was subsequently explained to her, Noor acknowledged that she was not eligible for the visa and should not have proceeded with the application. Noor was very upset that the refusal of the protection visa application would affect her ability to apply for alternate visas or to travel to Australia again.

Unregistered and Unqualified Assistance

14. The Humanitarian Group considers that unregistered and unqualified assistance, in the various forms that it takes, impacts disproportionately on disadvantaged and vulnerable visa applicants, proposers and sponsors.
15. The removal of funding under the Immigration Advice and Application Assistance Scheme (IAAAS) for family reunion assistance has placed a heavy burden on people from refugee or refugee-like backgrounds who wish to sponsor or propose family members to come to Australia, but cannot access the funds required to pay a commercial registered migration agent. Often these people are also those who are least capable of preparing visa applications themselves, due to weak English language or literacy skills. Yet these are people whose family members overseas are enduring extremely difficult conditions. The reduced scope of this funding in other areas has a similar impact on clients who are onshore and seeking advice about visa options.
16. These circumstances combine to push such clients towards unregistered assistance in relation to preparing applications or other documents. Often this comes from family or friends in Australia who have only somewhat better English or literacy than the person seeking to apply, sponsor or propose, and who have very poor knowledge of Australian migration law.² Arrangements such as these can be lawful, provided no fee is charged. However, the visa applicant/sponsor/proposer is generally incapable of checking the visa application forms and other documents in English and merely signs the forms without understanding what they are signing. Any errors made by people providing well-intentioned help are then attributed to the applicant/sponsor/proposer, whether these arose from mistranslations, misunderstandings or simply human error. The Humanitarian Group has seen hundreds of applications refused in such scenarios.

² The definition of 'immigration assistance' is set out in *Migration Act 1958* (Cth) s 276. Under *Migration Act 1958* (Cth) s 276(3), a person is not considered to be providing immigration assistance if they merely provide limited help such as clerical work to prepare an application or document, or providing translation or interpretation services as part of that preparation. Additionally, while a person who is not a registered migration agent must not give immigration assistance per *Migration Act 1958* (Cth) s 280(1), this does not prevent a close family member from providing immigration assistance in accordance with *Migration Act 1958* (Cth) s 280(5A).

Case Study 3: Zala*

Zala is from South Sudan. She arrived in Australia in 2010. In 2017 she travelled overseas to get married. Following her marriage ceremony she lodged an application for a partner visa so that her husband could join her in Australia. Zala could not afford a migration agent, but she was assisted by a community member in lodging her application. Zala subsequently discovered that her marriage was not legally recognised in Australia and so she was not eligible to apply for a partner visa. She had paid over \$7,000 for the visa application fee and the community member had also charged her a fee, even though they were not a registered migration agent.

Zala was reluctant to lodge a complaint against the community member for fear of repercussions within the community.

17. The lack of funded migration assistance for vulnerable and disadvantaged proposers, sponsors and visa applicants also contributes to the problem of unregistered agents.
18. The Humanitarian Group believes it is essential that funding for family reunion applications is reinstated in order to protect people from refugee and refugee-like backgrounds who to be reunited with their close family members.
19. The importance of family reunification has been universally acknowledged as critical to successful settlement. An almost worldwide experience of refugees is the separation of the family unit. Members of the family unit may be forced to flee based on resources or opportunities, or travel in different directions. Refugees who are separated from family members are often unable to devote their full energies to learning the new language, seeking employment and establishing themselves in the new community as they are:
 - (a) preoccupied with locating lost family members, desperately trying to find out whether they are dead or alive;
 - (b) deeply concerned for the well-being of relatives who are in precarious situations in the country of origin or the country of first asylum;
 - (c) forwarding a large part of their income to supporting family members overseas; and
 - (d) unable to make any long term career or business plans, believing that they must not do so until the family can be reunited.
20. On the other hand, intact families are more likely to be able to devote their full energies to rebuilding their lives and the host country will, in turn, benefit from the economic and social contributions the family can make to their new country. The presence of a supportive family assists refugees to settle into their new country and facilitates far more successful longer term integration than that of individual refugees with no family support.³

³ There is significant research about the importance of family reunion, the impact of family separation on settlement outcomes and the considerable economic, social and civic contributions the broader humanitarian visa entrant cohort makes to Australia, e.g. Refugee Council of Australia, 'Humanitarian Family Reunion: The

Case Study 4: Ahmed

Ahmed* is from Afghanistan and has limited English. He arrived in Australia on a humanitarian visa. He lodged an orphan relative visa application through a person he believed to be a registered migration agent who was recommended from within his local ethnic community. Ahmad paid for the migration agent to make the application, but was not given a receipt. Ahmed developed concerns when he did not receive any contact from the Department of Immigration and Border Protection or his migration agent for a substantial period. Ahmed subsequently discovered that he was the victim of fraud and the person he had paid to assist him was not in fact a migration agent. Although this person had lodged a valid application, it contained insufficient and incorrect information. By the time Ahmed realised what had happened, the visa application was refused and the orphan relative was no longer eligible for the visa.

It became apparent that this 'migration agent' had engaged in similar behaviour with a number of other community members, including claiming he had lodged applications which had not in fact been lodged or lodging incomplete and inaccurate applications which were subsequently refused. In one case, The Humanitarian Group lodged a Freedom of Information request for another victim, only to discover that the application had also been refused.

Although the 'migration agent' was reported to the Criminal Investigations Unit of the Department of Immigration and Border Protection, they finalised their investigation without taking further action or proceeding with a prosecution. Ahmed was provided with advice about recovering money from the 'migration agent' through a civil claim. However, the 'migration agent' was unable to be located and had likely left Australia, so Ahmed was unable to recover any money from him.

Building Block of Good Settlement' (Report, April 2012) <<https://www.refugeecouncil.org.au/r/rpt/2012-Family.pdf>>; Graeme Hugo, 'Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants' (Final Report to Department of Immigration and Citizenship, May 2011) <<https://www.homeaffairs.gov.au/ReportsandPublications/Documents/research/economic-social-civic-contributions-about-the-research2011.pdf>>.

Access to Redress

21. Although clients report unethical practices to The Humanitarian Group on a relatively frequent basis, they rarely lodge a complaint with the Office of the Migration Agents Registration Authority (OMARA).
22. The reasons for the reluctance to lodge complaints can vary. If the agent comes from the same cultural community, they may fear repercussions or experience pressure from other community members not to speak out.
23. Many times, however, the remedies are not attractive to clients. Rather than see the agent reprimanded, they would like their fees refunded and their application restored to the place it would be in, had they received competent, ethical assistance. Neither of these remedies are available through the existing complaints system.
24. Although the OMARA can counsel or request an agent to change their behaviour, ultimately it has limited powers to enforce requests. While sanctions such as cautioning and suspension exist, there are limited powers to restrict agents following re-registration. Ultimately the registration of Migration Agents can be cancelled. However, this does little to protect consumers in the first instance.
25. Further to this, the OMARA has no powers to deal directly with persons purporting to be agents who are not actually registered with the OMARA.
26. Even when complaints are made, clients are often unsatisfied with the outcomes. The Humanitarian Group is aware of agents against whom serious complaints have been made in the past and who continue to practice. A small number of agents come to our attention repeatedly, leading us to question the efficacy of the regulatory system.

Case Study 5: Leonce*

Leonce is from Burundi. She arrived in Australia in 2015. Subsequently she decided to sponsor her sister who was living in a refugee camp. She was offered help with the visa application for a fee that exceeded \$15,000. Leonce was urged to pay the fee in cash. The person who offered help fraudulently held himself out to be a migration agent. He said that if she slept with him, he would ensure that her sister would get a visa. Leonce was fearful of making a complaint because the 'migration agent' had her contact details.

Although Leonce made a complaint to the Migration Agents Registration Authority, there was no outcome.

Recommendations

27. It is essential that funding be available for qualified, independent, immigration professionals to provide immigration assistance to vulnerable people living in the community. This includes for family reunion applications, as well as for onshore protection visa applications and for victims of family violence.
28. The efficacy of the powers of OMARA to sanction migration agents who engage in unethical behaviour, including the ability to compensate clients who are the victims of such behaviour, should be reviewed.

Please do not hesitate to contact us should you require any additional information.

Yours sincerely



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*Client's real names have not been used in case studies. We have withheld our client's identifying details to respect their confidentiality.