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Senate Standing Committee on
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MIGRATION AMENDMENT (VISA REVALIDATION AND OTHER MEASURES) BILL 2016

We thank the Committee for the opportunity to make a submission to the Inquiry in relation to this Bill.

The Australian National University College of Law Migration Law Program, specialises in developing and providing courses to further develop their expertise in Australian migration law. These include the Graduate Certificate in Australian Migration Law and Practice and the LLM Migration Law.

The Program also as provides Continual Professional Development opportunities for Registered Migration Agents and professional short courses in migration law.

The Program is engaged in developing research in the practical operation of migration law and administration in Australia, and has previously provided submissions and presented evidence to a number of Parliamentary Committee inquiries, conferences and seminars.

Academics from ANU Migration Law Program have extensive practical experience in this area working for a decade providing pro-bono advice to clients through community organisations.

Submission

The Bill seeks to amend the *Migration Act 1958* (Cth) to establish a visa revalidation framework.

The Bill requires a visa holder complete a revalidation within a *specified* period and *pass* the revalidation within a particular *time* (Check time).

The Bill provides for two regimes of revalidation; one for a prescribed visa and one for a class of persons within a prescribed visa category.

This includes two different outcomes for when the visa 'ceases to be in effect' for visa holders who are offshore. S96B allows for visa holders of a prescribed class of visa to complete a revalidation within a specific time. S96D indicates the visa will cease to be in effect if a person is offshore and has not responded or not met the revalidation requirements at the end of the 'check time'.

S96E allows for the Minister to determine that a class of persons within a prescribed visa meet revalidation. S96H specifies that the visa ceases to be in effect for visa holders offshore, at the time a determination is made by the Minister that the visa holder is in a 'class of persons, who must complete a revalidation'.

The Explanatory Memorandum indicates that the legislation will initially apply to a new long term visitor visa initially available to Chinese nationals.

However the Bill [s96B] presents a general gateway for the Minister to prescribe any visa as one that will require a revalidation check.

This has the potential to affect a broad range of visa holders including permanent visa holders, thereby becoming an extra avenue for visa invalidation or cancellation in addition to the current cancellation and notification requirements provisions.

Whilst a visa is not cancelled if its holder fails a revalidation, the visa will cease to be in effect by law. This will leave open a visa holder to a situation where they have travelled offshore, fall under this provision and find their visa is no longer 'in effect', leaving them excluded from the country and placing visa holders in a legal limbo until they can meet the validation requirements.

Successful validation relies on establishing the absence of any 'adverse information'. The lack of definition of adverse information and the ability for this to include adverse information 'relating' to the person is a concern. There is a definition of 'adverse information' under reg 1.13A which is provided in the context of employer sponsorship and nomination and includes a broad range of matters. It is unclear as to if a similar definition will be inserted and what the scope of it will be. This broad application will lead to increased compliance obligations, burdening both the Department and individual visa holder.

Subsection 96E(1) allows the Minister to prescribe a 'class of persons' holding a prescribed visa as those who must complete a revalidation check for their visa. The EM reflects our concern when it indicates this power has the 'potential to affect the rights and interests of a large class of people.' This determination will not be disallowable [s96E(3)]. The affect of making such a determination that bypasses parliamentary disallowance increases the potential harm the legislation can do to both individuals and to Australia's reputation. To impose additional criteria on specific class of people can send a message of distrust to specific migrant cohorts reducing our attractiveness as a tourist and migrant destination.

The EM states that the determination may include those who belong to a specified class of persons who:

- Hold a particular passport
- Lives in a particular country
- Lives in a particular state or province within that country
- May have travelled through a particular area during a particular time or
- Applied for a visa during particular dates.

This description alludes to concerns that are broader than those related to the original visa criteria such as health, character and work. In doing so they go beyond revalidating a visa adding, additional criteria not applicable to the original grant.

Whilst there are provisions for notifying a visa holder that the visa is in effect...it is not apparent from the Bill that there is any obligation on the Minister to notify a visa holder who has failed to pass a revalidation.

In addition visa holders do not appear to have pathways for review of the decision or clear mechanisms for the ways they can revalidate a visa that has ceased to be in effect, if they attempt to or need to use the visa in the future.

As a result the Bill effectively negates the grant period allowing visa holders to be subject to multiple revalidation exercises.

Recommendation

For the above reasons, we believe that the Bill is broader than its rationale requires. It provides a significant power to the Minister that could, in the future be applied to any visa.

We therefore recommend that the Bill should not be passed in its current form. If it is to be passed, we recommend that:

- the Bill should be expressly limited to apply only to specific visas; and
- revalidation should be limited only to criteria that were criteria applicable to the grant of the relevant visa; and

- the Bill should expressly define relevant terms and require the Minister to notify a visa holder who has failed the revalidation of the method by which they can address any issues and meet revalidation requirements.
- The Bill should include a appropriate review mechanism.

We are happy to provide further comment if needed.

Yours sincerely

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