

Inquiry into multiculturalism in Australia

Submission in relation to maximising the positive effects of migration:

South Eastern Migration Advice Service (SEMAS)

SEMAS is a partnership program between the Springvale Monash Legal Service (SMLS) and the Springvale Community Aid and Advice Bureau (SCAAB). SEMAS offers immigration legal advice as part of its free legal service to the community in the South East of Victoria. The South East of Victoria is a popular settlement area among new migrants and refugees. We have identified a number of barriers, faced by migrants and refugees, to full participation and integration into Australia society.

Barrier to settlement and participation: re-uniting with families

Refugees and migrants face a number of challenges in settling in their new country. One of their main concerns is their ability to re-unite with their families. Over the years we have assisted a number of refugees to re-unite with family members under the Australia's Refugee and Humanitarian Program. We have also assisted a number of refugees and new migrants re-unite with family members through the family stream visa program. Further to this, since 2009 we have assisted over 40 unaccompanied Hazara refugee minors from Afghanistan. These young people were granted protection visas on Christmas Island and were referred to our service by the Department of Human Services (DHS) Refugee Minors Program to make application to be re-united with their families overseas.

The following submission examines and makes recommendation regarding the current immigration policy/regulations that have been applied to the processing of Humanitarian Visa applications and Australia's migration program that have had an adverse impact on our clients and their families. It is intended to address both Point 4 and Point 5 of the Inquiry into Multiculturalism in Australia Terms of References.

In relation to Point 4 this submission recommends strategies which will play a part in promoting long term settlement patterns, amongst Refugee's, "...all of which will achieve greater social and economic benefits for Australian Society as a whole..." In relation to Point 5 this submission seeks to identify some of the barriers to "...contributing to building Australia's productive capacity..." as experienced by Australia's Unaccompanied Minor Refugees. The following issues are the focus of this submission:

1. Australia's Refugee/ Humanitarian Visa Program quota system
2. Unaccompanied Refugees Minors
 - A. Guardianship arrangements
 - B. Processing of application inconsistencies
3. Re-uniting Families
 - A. Declaration of family member's requirement
 - B. Child Visa's definitions

1. Australia's Refugee/Humanitarian Visa Program

Currently, the quota for Refugees/Humanitarian Visas per annum is a total of 13,750. Out of these places a total of 6000 places are reserved for offshore referrals by the UNHR and visa applications for immediate family of such Refugee Visa holders. The remaining 7750 places were divided into two allocations including those granted to visa applicants proposed by family or friend in Australia by sea/air and those identified as part of the Special Humanitarian Program Category. The Special Humanitarian Program Category was further divided leaving a very small quota of places available for members of the immediate family referred to as 'Split Family' Application by Protection. We believe this figure is too low and does not address the demand for assistance that we are faced with. This creates problems for ease of settlement and exacerbates anxiety, stress and other health related problems for those in Australia.

Recommendation:

Australia increases its quota and adopts a more flexible quota that could respond to global demands as they occur, as opposed to fixed quotas for the allocation of visas under the Special Humanitarian Program and Protection visa categories.

2.A) Unaccompanied Refugee Minors – Guardianship arrangements:

Under the current guardianship arrangements the Immigration (Guardianship of Children) Act 1946 stipulates that the Minister for Immigration and Citizenship exercises Guardianship status over Unaccompanied Refugee Minors. This is problematic and clearly a conflict of interest because the Minister cannot fulfil his role as Guardian of these young people while at the same time work to assess their visa applications. Furthermore, the Department of Immigration and Citizenship under the Minister of Immigration and Citizenship sought to interpret visa applications regulations in such a way that clearly has had an adverse impact on refugee minors. These decisions include suspension of protection visa assessments of persons from Afghanistan and Sri Lanka in 2010. Further conflicts of interests have arisen in light of the fact that the Minister for Immigration and Citizenship decides on the guardianship arrangements for unaccompanied minors; which includes arrangements for their housing etc. Given that different states are allocated different funds for these purposes, the Victorian Department of Human Services has stated they do not have adequate funds, which has resulted in serious infringements of the rights of these children. To date the Minister has delegated his guardianship role to the Department of Human Services (DHS) in Victoria. However, DHS has complained that they are overwhelmed by this responsibility and have pointed to the arrangements between DIAC and the South Australia Department of Human Services as a funding model more conducive to the provision of this guardianship role. The impact this lack of family support has had on these young people has included problems with remaining in education; securing and retaining employment which often results with these young people coming into contact with the justice system.

Recommendation:

That the role of guardianship at Ministerial level be allocated to a more appropriate office and that the agreements by which these duties are delegated be transparent to ensure that they are in keeping with the principles of the best interest of these young people. Further to this we support

the recent suggestion of the establishment of a Children's Commissioner which would undertake the role of Guardianship of Unaccompanied Minor Refugees.

2. B) Unaccompanied Refugee Minors - Processing of Split Family Application

Previously, unaccompanied refugee minors lodging visa applications to be re-united with their immediate family were assured Refugee and Humanitarian Visa Class XB Subclass 202 as long as they established that the person they were applying for was a member of their immediate family.

Refugee Minors/split family applicants were also given priority in processing, with decisions being made on visa applications within 6 to 9 months.

Since about April 2010 DIAC, relying on a strict interpretation of Subclass 202 provisions R202.221 (1) (c) in the Migration Regulations 1994 have insisted that the young person's meet the following criteria:

- Be under the age of 18 at the time of lodging the visa application for re-unification with their immediate family members,
- Be under the age of 18, at the time of decision as to whether a Visa would be granted.

This regulation has previously not been applied / interpreted in this manner. However, all applications lodged since September 2009 are now more likely to be refused on the application and interpretation of this Regulation. The application of this regulation is arbitrary in that there is no fixed period within which the decision maker is required to make a decision concerning the visa application.

At present we have visa applications lodged by refugee minors for family re-unification that have been waiting decisions for over 12 months. Given the current processing delays it is envisaged that a majority of the refugee minors will be ineligible to be re-united with their families in Australia as they will have turned 18 by the time of decision.

Recommendation:

Amend regulation 202.211 (1)(b) of the Migration Regulations 1994 to include one qualifying test i.e under the age of 18 at the time of application and to exclude the additional test of being under the age of 18 at the time of the decision.

3.A) Family Stream Visa - Declaration of family member's requirement

Currently, many Australian residents who were granted Refugee and Humanitarian Visas find that they are ineligible to propose immediate family members under the Split Family Provision of Australia's Refugee and Humanitarian program as they do not meet the following qualifying requirement:

- Declare all their immediate family members in their own application for a visa to Australia. (if they inadvertently left a family member off, they are unable to apply under this visa category)
- Proposal is made within 5 years after the grant of their own visa.

- A parent can only propose children under the age of 18 years and;
- Children can only propose parents as long as they are under 18 at the time of lodgement and at the time of visa grant under the split family program.

Given this, many refugees and humanitarian visa holders rely on family stream visas to be re-united with members of their family. Family stream visa allocation has been reduced by 7.9% from the preceding year and other family visas from 2500 to 750 visas. The reduced annual quotas for family stream visas introduced in 2010 have left refugees and humanitarian visa holders with no other options. Many families relied on the Family Stream visas if they could not qualify under the Refugee and Humanitarian Program. Once again this has a tremendous impact on their successful settlement as they are now faced with the prospect of long and protracted separation.

These changes also affect those applying for Orphan Relative Visas, (visas for children and young people under the age of 18) Remaining Relative Visas, Aged Dependent Relative visa, Carer Visas and Parent Visas. At present parent visas involve processing delays of over 15 years. However, those who are able to afford to pay for a visa Australia pay \$34,330 per parent are granted visas within 2 years.

3.B) Family Stream Visa - Child visas definitions

Young people between the ages of 18 and 25 are deemed ineligible for 'child visas' unless they are in full time study and dependent on their parents. The children of Australian Citizens or permanent residents who are living in conflict or post conflict environments have difficulty in meeting this test as they have difficulty being admitted to full time study. Even if their country of origin has regained some stability, the children have faced long interruptions to their study making it difficult for them to return to their pre-conflict situation. Moreover, many children in non western societies are not considered independent at the age of 18.

Recommendation:

Adopt more flexible tests for refugee and humanitarian entrants applying for family re-unification under the family stream visa.

Increase the quota for visas under the family stream category.