

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Foreign Affairs Defence and Trade References Committee
Inquiry into Australia's Engagement in Afghanistan

15 November 2021

QoN Number: 39

Subject: Exclusion relating to private security contractors

Asked by: The Committee

Question:

Exclusion relating to private security contractors

There has been some confusion in evidence to date about the operation of the exclusion clause in the relevant LEE regulation, IMMI 12/127, which excludes individuals who were employed in a private security capacity from LEE certification.

1. What was the rationale for including this clause when the regulation was initially drafted?
2. Can you please outline the exact circumstances in which this exclusion for 'private security contractors' is intended to apply?
3. How have Defence, DFAT and Home Affairs interpreted and applied this exclusion over the duration of the LEE program?
4. In practice, has this exclusion only been applied in relation to private security contractors in relation to security staff external to the Australian embassy in Kabul, or are there other cohorts of contractors who worked with Australian forces that have been denied LEE certification because of this exclusion in the regulation?

Answer:

1. The legislative instrument that gives effect to the Afghan Locally Engaged Employee Program was drafted in 2012 in consultation with relevant agencies. Consideration was given to the likely risk to affected individuals, including due to the nature of their working relationship with the Australian Government.
2. Interpretation and application of Instrument is a matter for the certifying agencies. The Department has no visibility of the claims presented to certifying agencies or the processes of those Departments in relation to certification. The Department of Home Affairs did not employ any LEE in Afghanistan and is not a certifying agency.
3. Refer to 2.
4. Refer to 2.

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15 November 2021

QoN Number: 40

Subject: LEE Applications from Embassy Security Guards

Asked by: The Committee

Question:

How many contractors who worked providing security services to the Australian embassy in Kabul have applied to the Australian Government for humanitarian visas? Of these:

1. how many have been granted?
2. How many have been rejected?
3. How many applications are still being processed?

Answer:

Home Affairs does not record the specific roles and relationships that individuals may have had with the Australian government.

If an individual is certified by the relevant Minister to be considered under the LEE program, Home Affairs process the visa application against the applicable criteria. The assessment process does not record the nature of an individual's employment link to the Australian government.

If an individual applies under the broader Humanitarian Program, the same application form is completed and the applicant provides their employment history. However, that information is for an assessing officer to consider, the details are not recorded in a reportable field in a visa processing system.

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Senate Foreign Affairs Defence and Trade References Committee
Inquiry into Australia's Engagement in Afghanistan

15 November 2021

QoN Number: 41

Subject: LEE Visa application processing times

Asked by: The Committee

Question:

LEE visa application processing times

In response to QoN Number 17 from Senator Wong, Home Affairs responded that the average visa processing time for Afghan LEEs granted humanitarian visas rose from 21 weeks in 2019-20, to 51 weeks in 2020-21.

What are the reasons for this significant increase in average visa processing time for Afghan LEE in 2020-21?

Answer:

The number of visa applications lodged under the Afghan LEE program in 2019-20 was more than what was collectively received over the previous three years. The flow on effect of this was an increase in processing times. Less complex applications were finalised in 2019-20 (average 21 weeks), whereas the more complex cases took longer to be processed.

The COVID-19 pandemic has significantly impacted the Refugee and Humanitarian Program. Whilst the LEE program has a streamlined process and remained a Government priority, it was not immune from these impacts.

COVID-19 impacts included resource constraints at Posts due to other priority activities (assisting the return of Australians and Australian Permanent Residents for example) and workplace access issues for staff due to COVID-19 risk management practices.

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Senate Foreign Affairs Defence and Trade References Committee
Inquiry into Australia's Engagement in Afghanistan

15 November 2021

QoN Number: 42

Subject: Visa Processes for Afghan Nationals in Australia - 1,000 currently seeking asylum

Asked by: The Committee

Question:

The Refugee Council of Australia (RCA) submitted that there are nearly 1,000 individuals from Afghanistan in Australia who are currently seeking asylum, or appealing visa refusal decisions through the Immigration Assessment Authority or the Federal Court. The RCA argued that the Australian Government should urgently prioritise and assess the claims for asylum of people from Afghanistan, and automatically review the claims of those who have been refused a protection visa given the changed circumstances in Afghanistan.

What is the government's response to this suggestion? How has the Taliban taking control of Afghanistan affected how Australia is assessing and processing asylum claims?

Answer:

The Department's records do not accord with the numbers provided by the Refugee Council of Australia.

While the Department is unable to confirm these numbers without more information, Australia provides protection to individuals consistent with the obligations set out in the Refugee Convention, and other relevant international treaties to which Australia is a party and Australian legislation.

On 17 August 2021, the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs stated that "no Afghan visa holder currently in Australia will be asked to return to Afghanistan while the security situation there remains dire".

Assessments about whether an asylum seeker engages Australia's protection obligations are not based on broad assumptions about the safety of particular countries. Each case is assessed on the merits of its individual circumstances and in

light of the requirements of the *Migration Act 1958* (the Act) and international human rights treaties to which Australia is a party.

Action to return an unsuccessful asylum seeker to their country of origin or a third country where they have a right to reside does not take place until all claims for protection have been fully considered, including through any merits and judicial review.

Afghan citizens who have applied for either a temporary or permanent protection visa in Australia are a processing priority.

In addition, under some circumstances, Afghan citizens who have had their protection visas either refused or cancelled may be able to request ministerial intervention to allow them to apply for another protection visa.

Requests will only be referred to the responsible Minister, the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, if they meet the Minister's guidelines for referral, including if there are new protection claims that could not have been provided in the original application.

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15 November 2021

QoN Number: 43

Subject: Visa Processes for Afghan Nationals in Australia - Government should change its policy settings

Asked by: The Committee

Question:

Several submissions have argued that, given the Taliban takeover of Afghanistan, the Australian Government should change its policy settings by offering permanent protection for all Afghan refugees and asylum seekers currently living in Australia or otherwise under Australian control, including by:

- Giving permanent protection visas to the over 4,000 people Afghans in Australia recognised as refugees who currently are on TPVs and SHEVs;
- Resettling Afghans currently subject to offshore processing in Nauru and Papua New Guinea in Australia;
- Revoking Ministerial 'Direction 80', which prevents family reunification for refugees from Afghanistan on permanent protection visas who arrived in Australia before the re- introduction of TPVs.

What is the government's response to this argument? Please respond to each of the points above, explaining the government's rationale for maintaining these policies in light of changed circumstances in Afghanistan.

Answer:

- *Giving permanent protection visas to the over 4,000 people Afghans in Australia recognised as refugees who currently are on TPVs and SHEVs*

Unauthorised maritime arrivals who engage Australia's protection obligations are only eligible for temporary protection, that is, either a Temporary Protection visa (TPV) valid for three years or a Safe Haven Enterprise visa (SHEV) valid for five years.

This is in line with the Government's Operation Sovereign Borders policy that no one who comes to Australia illegally by boat will settle here – established to safeguard vulnerable people from exploitation by people smugglers, prevent the loss of life at sea, and ensure the integrity of Australia's borders.

These settings have successfully stemmed the flow of people smuggling ventures to Australia and saved countless lives at sea.

- Resettling Afghans currently subject to offshore processing in Nauru and Papua New Guinea in Australia

Regional processing is a key pillar of Operation Sovereign Borders, the Australian Government's response to maritime people smuggling, and has been instrumental in deterring potential illegal immigrants from engaging people smugglers to travel on dangerous voyages to Australia, which has in turn saved countless lives at sea.

Regional processing provides individuals the opportunity to have their protection claims assessed by the Governments of Nauru or Papua New Guinea (PNG) and, if found to be in need of international protection, receive support to engage in third country migration outcomes, including resettlement.

The Government's policy is steadfast; individuals who travel to Australia by boat without a visa will not settle permanently in Australia. Transitory persons under regional processing arrangement have durable migration options outside Australia and are engaging with those options. The Government encourages transitory persons found to be a refugee by the Governments of Nauru or PNG to engage in United States resettlement, PNG settlement or other third country options.

- Revoking Ministerial 'Direction 80', which prevents family reunification for refugees from Afghanistan on permanent protection visas who arrived in Australia before the re- introduction of TPVs.

Ministerial Direction 80, which replaced Ministerial Direction 72 and came into effect on 21 December 2018, provides the order for considering and disposing of Family visa applications. Ministerial Direction 80 is consistent with the Government's policy intentions in relation to the size, composition and integrity of the Migration Program, and the management of Australia's borders.

The Direction sets out the Family Program processing priorities from highest to lowest as follows:

- Applications where the Minister has exercised powers of intervention under sections 351 and 417 of the Act;
- Partner, Prospective Marriage and Child visa applications;
- Orphan Relative visa applicants;
- Contributory Parent and Contributory Aged Parent visa applications;
- Carer visa applications;
- Parent, Aged Parent, Remaining Relative and Aged Dependent Relative visa applications;
- Visa applications in which the sponsor is a person who entered Australia as an Illegal Maritime Arrival (IMA) and holds a permanent visa.

Ministerial Direction 80 provides lowest processing priority to visa applications in which the sponsor is a person who entered Australia as an IMA and holds a permanent visa. This is consistent with the Government's policy of discouraging people from risking their lives on a dangerous boat journey.

The Department has established a specialised team to progress Direction 80 impacted caseloads to ensure a consistent, focused and intensive approach is taken to resolving cases. This will help drive a reduction in the number of older cases on hand.

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15 November 2021

QoN Number: 44

Subject: Visa Processes for Afghan Nationals in Australia - Afghans in Australia not to be returned while situation is dire.

Asked by: The Committee

Question:

Noting the Australian Government's statements that people from Afghanistan in Australia will not be returned while the security situation there remains dire, RACS submitted:

This commitment is insufficient as it does not provide many people who are recognized as refugees and currently on temporary protecting visas with any certainty about their future. It also doesn't alleviate many of the legal issues, processes and barriers people need to navigate in order to live with agency whilst in Australia. A genuine commitment to this would see visa's granted to nationals of Afghanistan imminently through powers under ministerial intervention, for instance. It is not sufficient a commitment not to remove people from Australia, people need access to stability and a visa in order to live safely in the Australian community.

What is the government's response to these concerns?

Answer:

Unauthorised maritime arrivals who engage Australia's protection obligations are only eligible for temporary protection, that is, either a Temporary Protection visa (TPV) valid for three years or a Safe Haven Enterprise visa (SHEV) valid for five years.

This is in line with the Government's Operation Sovereign Borders policy that no one who comes to Australia illegally by boat will settle here – established to safeguard vulnerable people from exploitation by people smugglers, prevent the loss of life at sea, and ensure the integrity of Australia's borders.

These settings have successfully stemmed the flow of people smuggling ventures to Australia and saved countless lives at sea.

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15 November 2021

QoN Number: 45

**Subject: Extension granted for LEE 449 Visa Holders still outside Australia –
Announcement of 18 November 2021**

Asked by: Kimberley Kitching

Question:

At the public hearing on 15 November 2021, officials indicated that, as at 12 November 2021, 2,086 individuals who had been issued subclass 449 visas had not yet arrived in Australia.

On 18 November the Minister for Immigration announced that subclass 449 visa holders outside Australia who are connected to the LEE program (that is, certified LEEs 'as well as persons with other working relationships with the Australian Government and their families who were issued temporary humanitarian visas') would have their visas extended on an ongoing basis.

Of the total subclass 449 cohort still outside of Australia (2,086 individuals as of 12 November):

- How many individuals have now had their visas extended as a result of the 18 November announcement?
- How many individuals are not covered by the above announcement and have now had their subclass 449 visa expire?

Answer:

Since the Minister's announcement of 18 November 2021, 244 (as at 22 November 2021) subclass 449 visas have been granted to eligible persons as described in the announcement. The Department has prioritised grants for those with imminent travel arrangements. The Department is currently working through the cohort of eligible subclass 449 holders, offshore, for further subclass 449 visa grants.

The announcement refers to the extension of visas. However, in practice due to the operation of the legislation, individuals are granted a further visa. All initial subclass 449 visas were issued with three-month validity from the date of the grant and will cease at the end of that period.

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15 November 2021

QoN Number: 46

Subject: Use of the PCASS System

Asked by: Kimberley Kitching

Question:

Use of the PCASS system

Submitters including Mr Jason Scanes have raised significant concerns about how the PCASS system has been used in relation to LEE certification and visa applications, arguing that results from this system have been used for purposes for which they were never intended, and that PCASS results have effectively been 'weaponised' to deny humanitarian assistance to legitimate applicants.

1. What was the intended purpose for which the PCASS system was used in assessing potential Afghan employees?
2. Please outline exactly how the PCASS system has been utilised by Defence, DFAT and Home Affairs in assessing applications for LEE certifications, and in visa application processing for certified LEEs and others seeking humanitarian visas.
3. How do Defence, Home Affairs and DFAT weigh the results of PCASS assessments alongside other forms of information about the character of an LEE applicant (for example, personal references from ADF members who worked with the individual)?
4. What records do Defence, DFAT and Home Affairs hold about PCASS results for Afghan staff involved in Australia's operations?

Answer:

The Department of Home Affairs does not use the PCASS system when processing humanitarian visa applications.

The Department of Home Affairs process humanitarian visa applications from LEEs certified by Australian Government agencies.