

Senate Foreign Affairs, Defence and Trade References Committee
Inquiry into Australia's Engagement in Afghanistan, 2021 - 2022

QUESTION ON NOTICE / Spoken

QoN 010 Hearing 11 October 2021

Topic: LEE eligibility requirements

Senator the Hon Penny Wong

Question

Senator WONG: No-one did. Secondly: was there any discussion in the IDC about changes to the eligibility requirements of LEEs? I'm particularly thinking of the contractor/employee issue, which got a fair bit of media coverage and a fair bit of focus from veterans, particularly in relation to the embassy guards. Was there any discussion at any point on changing the eligibility requirements?

Mr Jeffrey: One of the key criteria is not only whether they meet the criteria in terms of being an employee but whether they are at serious risk to their security. People we had assessed in 2015 were maybe people who worked for Defence or [inaudible] but we could have judged then that they were not at risk. As the Afghan government began to look increasingly unstable, and the Taliban were making increasing gains, we reconsidered the cohort to determine those we had rejected on the basis that they were not at risk—to take that criteria out and say, 'We now assume that everyone is at risk.' We reviewed those we had rejected on that basis, and then recertified some of those individuals—not all those individuals we were able to get in contact with; many others had left for other programs with other ISAF contributing countries. That's one example of criteria change. We didn't change the criteria in the legislation; we just changed how we assessed people.

Senator WONG: Yes, but I'm asking particularly about the employee/contractor issue.

Mr Jeffrey: From Defence's perspective, we never made that distinction. For us, it was an employee-like relationship; therefore, we didn't distinguish whether that person was employed directly by Defence or whether Defence employed that person through a third party.

Senator WONG: Did DFAT take a similar approach to Defence? Or did you hold to a more conservative approach?

Answer

DFAT certification is governed by the eligibility criteria within legislative instrument IMMI 12/127. The instrument at 3 (b) excludes Afghan government or military officials or those employed in a private security capacity, and at 3 (c) excludes those who are nationals or citizens of a country other than Afghanistan.

Applicants need to prove their identity and employment with an Australian Government agency (in this case DFAT), and credibly demonstrate they are at significant individual risk of harm as a result of their employment. There is a time limit (applicants must apply within six months of ceasing employment), but the Minister has the discretion to waive that criterion in exceptional circumstances.

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The Foreign Minister has exercised this discretion, in the case of 43 individual certifications in 2021.

Contractors are not ineligible for certification simply because they have not been directly employed by the Australian Government.

Rather, they must demonstrate they were fully integrated with DFAT: that they were identified directly with our mission and worked with our mission in a sustained and substantial way. They could be regarded effectively as employees of Australia.

As at 22 October, 54 of 82 individuals certified by the Foreign Minister since May 2021 as at-risk DFAT LEE have been contractors.

At the request of the Foreign Minister in July, DFAT re-examined all certification refusals made from 2013 to 2020, which led to certification of 7 individual applicants.

QUESTION ON NOTICE / Spoken

QoN 011 – Public Hearing 11 October 2021

Topic: Evacuation operation

Senator Penny Wong

Question

Senator WONG: I'll come to the humanitarian visa issue. On 15 July our government declared it would not join the United States evacuation mission to rescue Afghan civilians who helped Australia, and that it had 'no plan' to mount such an operation. Can you tell me who made that decision?

It says:

"The Morrison government says Australia won't join a US evacuation mission to rescue Afghan support staff from advancing Taliban forces. A spokesman for Immigration Minister Alex Hawke said Australia would not join the US airlift, and had "no plan" to mount a similar operation to evacuate Afghans who had supported Australian soldiers and diplomats.'

A government source told The Australian—
that's the newspaper—

that the smaller number of Afghans seeking to come to Australia on Locally Engaged Employee (LEE) visas meant they could leave the country on commercial flights."

So I'm asking: who made the decision that we would not join Operation Allied Refuge and who made the decision that we at that stage had no plan to mount a similar operation?

Mr Newnham: We'd have to take that on notice.

Senator WONG: You have to take that on notice. Alright. When were you aware that we wouldn't join this evacuation operation and that we had no plan to engage in one? When was DFAT aware?

Mr Newnham: We'd have to take that on notice as well.

Answer

Operation Allied Refuge was a US initiative to fast-track the process for US Special Immigration Visa applicants to get to the US mainland. DFAT is not aware of any potential at the time to open the initiative to extract Afghan nationals with connections to other countries.

Operation Allied Refuge was an entirely separate operation to the military evacuation airbridge the US established with partner governments in mid-August to facilitate mass evacuations.

DFAT would direct questions on comments by a spokesperson for Minister Hawke to the Department of Home Affairs.

QUESTION ON NOTICE / Spoken

QoN 013 – Public Hearing 11 October 2021

Topic: Closure of Australian Embassy Kabul

Senator the Hon Penny Wong

Question

Senator WONG: Was the prospect of closing the embassy raised with ministers prior to April 2021?

Mr Marshall: I'll take that on notice to check the exact wording of our submission.

CHAIR: What did your risk assessment—

Senator WONG: Hang on. It's not the wording of your submission. With respect, you just tell the truth.

Mr Marshall: I just want to make sure that we provide accurate advice in terms of the wording that we provided. Certainly, as I said, we were advising on the increasing levels of concern. I don't think it was as specific as closing, but that occurred in April.

Answer

[Please note 'Question on Notice 107' from Senate Standing Committees on Foreign Affairs, Defence and Trade Budget Estimates 2021 – 2022]

The prospect of closing the embassy was always part of our contingency planning as one possible mitigation action. In a submission to the Minister for Foreign Affairs on 12 January 2021, DFAT noted the rising risks and that consideration of closure of the embassy may be required if risks became unacceptably high.