



Submission

Inquiry into the Migration Amendment (Visa Revalidation and Other Measures) Bill 2016 [Provisions]

Never Stand Still

Law

Andrew & Renata Kaldor Centre for International Refugee Law

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

BY ELECTRONIC SUBMISSION

21 November 2016

Dear Committee Secretary,

Migration Amendment (Visa Revalidation and Other Measures) Bill 2016 [Provisions]

We welcome the opportunity to provide a submission to the Committee's Inquiry into the Migration Legislation Amendment (Visa Revalidation and Other Measures) Bill 2016 [Provisions].

We are concerned that this Bill:

- has the potential to adversely affect refugees, as explained below;
- gives the Minister excessive discretion to impose checks on visa holders; and
- does not make clear whether a person who fails the visa validation check may have that decision reviewed.

Introduction

The Bill seeks to insert a visa revalidation framework into the Migration Act. The Bill's Explanatory Memorandum explains (page 5) that the Bill's purpose is to support the introduction and trial of 'a new longer validity visa visitor visa' (up to 10 years in duration). As this visa would allow a holder to travel in and out of Australia over a long period of time, the proposed measures are intended to allow the government to 'manage the risk' to the Australian community resulting from a person's changes relating to health, character, security and other requirements for entry into Australia.

The proposed framework

The Bill seeks to establish the revalidation framework by inserting new sections 96A–J into the Migration Act. There are two visa revalidation powers, as follows.

Under proposed section 96B, the Minister may require a person, from time to time, who holds a visa of a prescribed kind to complete a revalidation check for the visa. This power can be delegated to departmental officers. A 'revalidation check' is defined in section 96A to

be a check as to whether ‘there is any adverse information relating to the person’ who holds a visa. A person can only pass the revalidation check if there is no adverse information relating to the person, or it is reasonable to disregard any adverse information relating to the person.

Under section 96C, if a person passes the revalidation check, the Minister must notify the person that their visa is in effect. Conversely, if a person does not pass the revalidation check, or does not complete the check, their visa ceases to be in effect by virtue of section 96D. The Explanatory Memorandum (page 12) provides that where a person does not pass a visa validation check, the policy intention is that ‘the adverse information will be referred to a delegate who will consider whether a ground for cancellation of the visa exists and may issue a notice to consider cancellation of the visa’.

Under proposed section 96E, the Minister may determine that certain visa holders must complete a revalidation check in the public interest. This power is exercisable by the Minister only, and the Minister must table the determination in each house of Parliament. Visa holders may be required to complete a visa validation check at any time during the visa period and more than once during the visa period (s 96J).

Under sections 96D (general) and 96H (public interest), if a person does not pass or complete a revalidation check, his or her visa will cease to be in effect. The provision details when a visa will cease to be in effect for someone within Australia and someone outside Australia.

Application beyond the proposed long stay visitor visa

While the Explanatory Memorandum provides that the intention of the Bill is to support the proposed introduction of a longer stay visitor visa, we are concerned that the revalidation framework has the potential to adversely impact on *all* visa holders, including refugees.

First, the definition of a revalidation check is extremely wide. A person must demonstrate that there is no ‘adverse information’ relating to them, or, if there is, that it would be reasonable to disregard that information. The term ‘adverse information’ is not defined by the Migration Act and Regulations and gives the visa decision-maker considerable discretion to determine that a person does not pass the revalidation check. The Explanatory Memorandum (p11) refers to a number of examples of adverse information, including that the person:

- has been convicted of an offence since the grant of the visa;
- may present a health concern to the Australian community;
- no longer intends to stay in Australia for temporary or tourism purposes; or
- may present a security risk to the Australian community.

The Explanatory Memorandum explains that the revalidation check is ‘generally directed to determining whether the person continues to meet the criteria for the visa that has been granted’ (p11). In effect, the proposed provisions enable the government to impose surveillance measures on temporary, and possibly, permanent visa holders. It undermines the long-standing rationale and stability of Australia’s migration system, which is premised on the notion that once a person has been issued a visa, he or she is entitled to have that visa be in effect until the visa period expires (subject to any grounds for visa cancellation).

The revalidation framework has the potential to adversely affect refugees. For example, it would require a refugee to respond to information relating to a change in circumstances in their country of origin, or a health problem, or a minor traffic infringement. It means that a

refugee potentially has to continually validate his or her claims for protection, and information supplied may be used to cancel a visa. This is likely to have significant consequences for refugees' ability to adjust to life in Australia, to feel safe and well-integrated in the community, and to recover from trauma or general stress associated with the reasons for flight and/or experiences as an asylum seeker. It may also raise issues of incompatibility with article 1C of the Refugee Convention (cessation of refugee status).

Lack of accountability and scrutiny

We are also concerned about the Minister's power to decide that it is in the public interest that certain visa holders must complete a revalidation check. There is no definition of 'public interest' in the Migration Act, and in practice this would give the Minister considerable discretion to impose checks on any number of visa holders.

It is equally concerning that the Bill makes no reference to whether a decision that a person does not pass the visa validation check is subject to administrative review. While the ultimate decision to cancel a visa may be subject to administrative and judicial review, it does not appear that the decisions as to whether a person passes the revalidation check would be.

Recommendation

The Bill should be amended to make clear that it applies only in respect of the proposed visitor visa class and not more broadly to any other visa class.

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

Yours sincerely,

Khanh Hoang
Centre Member
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