



Submission No 83

Review of Australia's Relationship with the Countries of Africa

Organisation: Department of Immigration and Citizenship –
Answers to Questions on Notice



Australian Government
Department of Immigration and Citizenship

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ACTING DEPUTY SECRETARY

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Dr John Carter
Inquiry Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
Parliament House
Canberra ACT 2600
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Dear Dr Carter

Australia's Relationship with the Countries of Africa

Thank you for inviting the Department of Immigration and Citizenship to appear at the recent public hearing of your inquiry into Australia's Relationship with the Countries of Africa.

During our appearance at the public hearing a number of questions were raised by the Committee that the Department was unable to adequately respond to at the time. The Committee advised the Department that the questions should be taken on notice.

Please find attached the Department's responses to the questions on notice. During the hearing Mr Ruddock proposed a number of additional questions and the responses to these are also attached.

Once again thank you for the opportunity for the Department of Immigration and Citizenship, to contribute a submission, and to attend the public hearing.

Yours sincerely

Peter Vardos
A/g Deputy Secretary
Policy and Program Management Group

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**JOINT STANDING COMMITTEE ON FOREIGN
AFFAIRS, DEFENCE AND TRADE**

**Inquiry into Australia's Relationship with the
Countries of Africa**

21 April 2010
Questions on Notice

(1)

Senator FURNER—I go to your service delivery arrangements and, in particular, staffing numbers in each of the three centres. *Could you give me a breakdown of the number of staff in those? They have an enormous workload. I wonder how the numbers mount up with the workload they have.*

Answer:

Staff numbers for posts in Africa as at 1 April 2010.		
Post	Australian- based Staff	Locally Engaged Staff
Cairo	2	16
Nairobi	4	20
Pretoria	4	27
Port Louis		3
Harare		3
Total	8	69

Source: DIAC

Workload						
Post	Temporary Visas		Permanent Visas		Humanitarian Visas	
	2008/09	1 July 2009 – 30 April 2010	2008/09	1 July 2009 – 30 April 2010	2008/09	1 July 2009 – 30 April 2010
Cairo	3739	3523	696	517	808	3251
Nairobi	4418	3857	1434	1150	4949	2185
Pretoria	39487	31724	1202	863	3163	1145
Port Louis	5443	3786	0	0	0	0
Harare	3717	2825	0	0	0	0

(2)

Mr Frew—There are a range of processes that follow our integrity analysis of the caseload, which may be assessment of the way cases are processed prior to decision, and sampling and checking after.

Ms GRIERSON—*Can we have any information on the sorts of difficulties that emerge from these audits and if there is any trend and how you have responded to it?*

Answer:

Integrity and Quality Assurance

DIAC primarily manages integrity and compliance issues within the African caseloads from its Cairo, Nairobi and Pretoria offices. These offices are supervised by Australian-based (A-based) staff. Currently there are two A-based staff in Cairo, four in Nairobi and four in Pretoria. A number of the locally engaged staff are expatriates from Australia and other like-minded countries such as the United States, Canada, New Zealand and the United Kingdom. Recognising the increasing significance and complexity of our operations in Africa, from mid 2010 DIAC will re-establish a distinct Africa Region with a regional director located in Africa. At present DIAC has a Regional Director located in Dubai responsible for the Middle East and Africa.

The management teams in Nairobi and Pretoria include staff specifically focussing on integrity and compliance issues. These staff provide risk profiles, training and direct assistance to case officers to assist them to detect fraud. They also work with regional governments to disrupt fraud organisers. This includes with border officials and airline staff at Johannesburg airport.

In relation to compliance issues, the Pretoria office broadly has responsibility for countries in the southern parts of Africa and the Nairobi office has responsibility for countries in the northern parts of Africa.

DIAC is aware of widespread reporting of high rates of fraud and corruption in some parts of Africa. In DIAC's experience, many African visa caseloads are complex and relatively high risk involving a comparatively high level of bona fides checking. These caseloads have relatively high refusal rates.

Examples of compliance challenges being managed in Africa include:

- allegations of people smuggling in Australia's Refugee and Special Humanitarian Program from Liberia;
- increased risks around Zimbabwean visa applications including the Zimbabwean student caseload;
- the targeting of the Mauritius student program by fraud organisers;
- increased use of fraudulently obtained South African passports;
- document fraud from some third country nationals residing in South Africa and some Nigerian nationals applying from Nigeria;
- the use of Kenyan identification by some Somali nationals;
- allegations of Kenyan child trafficking;

- allegations of narcotics trafficking between Tanzania and Sydney; and
- allegations of visa applications by fraudulent Ghanaian sporting teams.

Where fraud is detected, DIAC follow-up includes advising relevant decision makers and policy areas of the incident and developing trends by updating alert and warning systems and distributing reports. Enhanced integrity measures can include expanded interviewing of applicants and their sponsors and verification of a higher percentage of supporting documentation such as bank statements. DIAC engages with other government agencies if the fraud falls within their portfolio responsibilities. An example is the Australian Federal Police on child trafficking and narcotic related offences.

DIAC has a number of quality assurance measures in place to ensure that visa decisions made overseas follow the correct procedures and relevant legislation. These measures include the following:

- DIAC has post specific measures by which A-based staff confirm the decisions made by staff at their post have been made lawfully. This usually involves sampling of a portion of the decisions made and rigorous follow-up of client and stakeholder feedback. These checks are used to monitor staff performance and to provide additional training as required. Information on the outcome of these post specific processes is not reported.
- DIAC closely monitors the Non-Return Rates in visa caseloads. The Non Return Rate is a calculation of the percentage of people who arrive and do not comply with the departure conditions of the visa on which they entered Australia. A high Non Return Rate can indicate issues in the quality of visa decision making and triggers further internal investigation of DIAC processes. By way of example, in 2008-09 the Non Return Rates for visitors from Kenya, South Africa and Zimbabwe were as follows:

Non Return Rate for visitors from Kenya, South Africa and Zimbabwe		
Post	Non Return Rate 2008-09	Non Return Rate 2009-10 (as at 31 March 2010)
Kenya	3.39	2.48
South Africa	1.54	1.48
Zimbabwe	6.92	3.58

Source: Reporting Assurance Section Data, DIAC

- DIAC implements a biannual Overseas Audit and Security Checklist (OASC) assurance process. DIAC National Office provides each post with a sample of their visa decisions and posts are required to confirm records for these cases have been completed correctly and the visa criteria for approved decisions were fully met prior to decision. Where the OASC highlights issues around processing and decision making, relevant staff members are counselled and additional training

and monitoring is provided to ensure the same issues are not repeated. No significant issues were raised in the previous two OASC checks.

- DIAC implements an annual internal audit program approved by the Departmental Audit Committee (DAC). These audits are undertaken by professional services firms operating under contract to DIAC. For example, Ernst and Young have recently completed an audit of DIAC's Cairo operations. This audit included an independent review of the processing and decision making of a sample of cases in the student and humanitarian caseloads. The internal audit report will be considered by the audit committee in June 2010 and any recommendations arising will be taken forward in accordance with the DAC's instructions.

(3)

Ms GRIERSON—You advise that asylum seekers from Africa account for less than 10 per cent of all applications under the onshore protection program and that Egyptians and Zimbabweans account for half of these applications.

(a) *What reasons are given by those originating from Egypt particularly?*

Answer:

In the 2008-09 program year we had 774 applications from African citizens, and that was approximately 15 per cent of the total lodgements for the program year. Among those applications from African citizens, there were 431 applications from Zimbabwean and Egyptian citizens for Protection visas and that was 56 per cent of the total applications from African citizens.

In the large majority of cases, Protection visa claims originating from Egyptian citizens are for a well-founded fear of being persecuted for the reason of religion. Departmental records show in the 2008-09 program year 57 per cent of applications from Egyptian citizens for Protection visas stated fear of being persecuted for the reason of "religion", 16 per cent for the reason of "political opinion" and 16 per cent for the reason of being a member of a particular social group.

(b) **GRIERSON**—*So when they say they originate from Egypt that does not necessarily mean they are Egyptian Africans?*

Answer:

During the 2008-09 program year, Australia received 113 Protection visa applications from Egyptian citizens. However, there were very small number of other applicants (just 2 in 2008-09 program year) who were born in Egypt but stated they had citizenship of another country.

Source: Integrated Client Services Environment System, DIAC

(4)

Mr RUDDOCK—*So are the arrangements that we had in place for return of undocumented arrivals still working reasonably well with South Africa?*

Answer:

Yes. The Department has a positive and cooperative relationship with the South African High Commission and has well established processes to facilitate return of undocumented South African nationals to South Africa.

The Department encourages all clients who do not have a right to remain in Australia to make their own arrangements to depart voluntarily, including obtaining required identity documents. Where a client does not have the means to depart voluntarily, they may be referred to the International Organisation for Migration (IOM) who will make an assessment as to whether the person is eligible for support under the Assisted Voluntary Returns program.

In order to return undocumented clients to South Africa the High Commission in Australia must satisfy themselves that the client returning is a South African national. The High Commission accepts a range of identity documents and bio data to satisfy themselves of a client's nationality. Problems can arise, however, with clients who are undocumented and refuse to cooperate in providing appropriate identity information to facilitate travel document issue.

Where clients are undocumented and uncooperative, offshore identity investigation is sought from post. On verification of a client's nationality, the South African High Commission will issue an emergency travel document within a short time frame (ranging from 3 – 10 days).

The Department continues to utilise security escort services provided through Snyman & Migliore International for onward travel for clients from Johannesburg.

There are around ten direct flights to Australia per week from Johannesburg. Persons traveling to Australia from Africa also frequently travel via a wide range of hub airports located in the Middle East and Asia. Annex Nine to the Chicago convention outlines the arrangements under which persons found to be inadmissible are transported to their last point of embarkation, or to another location where they will be found admissible, by the responsible airline. Only a small number of South African nationals have been refused entry to Australia, with six cases this financial year to date. In this context, the arrangements under Annex Nine generally work effectively in facilitating the return of persons found to be inadmissible.

(5)

Senator FERGUSON—They spoke about the large increase in passenger transport from Australia to Africa in the first eight or nine months of the year, I think, to 490,000 compared to 300 and something thousand the year before. *I asked them how many*

of those 494,000 were Australian citizens, and they said I should refer it to Immigration. I imagine they are not figures that you have on hand, but would you be able to get us those figures?

Answer:

Citizenship	Intended Residence*	2008-09 (Jul-Mar)	2009-10 (Jul-Mar)
Australia	Sub Saharan Africa	73 407	77 260
	North Africa	24 723	24 493
	Other	3 933 910	4 476 435
	TOTAL	4 032 040	4 578 188

* Intended Residence information refers to country/place/destination of intended residence, as provided by travellers in their outgoing passenger cards. Source: Overseas Arrivals & Departures Data.

(6)

CHAIR—For my final question I want to quote from the submission from Professor Helen Ware, who criticises the consistency of the assessment of refugees from the Sudan. I would like your response. She said:

Currently what causes so much anguish for people who are often already traumatised with the additional potential for bad blood is the fact that X's cousin is allowed in from Refugee camp KK whilst Y's cousin is not, even though, to both the Africans and the Australian NGOs trying to assist them, their circumstances appear identical. The current rumour is that the granting of a visa depends entirely on the day of the month the application form lands on the official's desk.

Further on in the submission she says:

If the system really is a lottery, then we should have the honesty to say so. Everyone involved understands that we cannot take every refugee from every camp—what they do not understand is how we select the minute fraction that we do take.

Have you got a response to that?

Answer:

Australia's Humanitarian Program includes an onshore and an offshore component. The onshore component is for people who arrive in Australia and apply for Protection. The offshore component includes:

- the Refugee category, mainly for people assessed by UNHCR and referred to Australia for resettlement; and
- the Special Humanitarian Program (SHP) category for people who are in humanitarian need and have a proposer in Australia.

The 2009-10 Program comprises 13 750 places, 6000 of which are allocated for Refugee visa grants and 7 750 for SHP and onshore Protection visas.

Australia does not have the capacity to accept every SHP applicant. In 2008-09 almost 34 500 people were proposed and around 4 500 were granted visas overseas.

While the SHP enables people to propose family members it is not in essence a family reunion program. The limited number of visas means that only those in greatest need of resettlement can be assisted under the SHP.

Greatest priority is given to those people assessed as refugees by UNHCR and referred to Australia for resettlement, and applicants who are proposed by an immediate family member in Australia.

Australia remains committed to assisting refugees and others in humanitarian need from Africa and continues to resettle people from Africa under the offshore Humanitarian Program, including people from Sudan referred as refugees by UNHCR and proposed under the SHP.

The department is also working with UNHCR in identifying emerging resettlement needs in the continent.

Nearly 30 000 Sudanese have been granted visas under Australia's Humanitarian Program since 1996–97. Sudanese entrants have been in the top five nationalities resettled under the Humanitarian Program over the last 10 years:

- o 631 visas were granted to persons born in Sudan in 2008–09 (115 Refugee visas and 516 SHP visas)

The NSW Offshore Humanitarian Processing Centre (OHPC) assesses SHP applications individually and refers applicants with the most compelling reasons for grant of a visa for further processing. All applicants must demonstrate compelling reasons for giving special consideration for the grant of a visa. Assessment against this requirement involves balancing the following factors:

- the degree of persecution or discrimination to which the applicant is subject in their home country;
- the extent of the applicant's connection with Australia;
- whether or not there is any suitable country available, other than Australia, that can provide for the applicant's settlement and protection from discrimination; and
- the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia.

In making this assessment decision-makers must consider Australia's capacity to provide resettlement, in the context of the number of visa places available and the number of applicants for those places. Applicants must also satisfy the health, character and national security requirements set out in the Migration Regulations.

OHPC arrangements provide an opportunity to undertake greater proposer liaison than is possible when all processing takes place overseas, and has given proposers better access to DIAC staff to enquire on the status of visa applications and reasons for visa refusal. An independent evaluation of the OHPC arrangements by the Refugee Council of Australia (RCOA) found that onshore processing significantly addressed lodgement, processing and communication issues, as well as issues relating to proposer's perceptions about corruption and inconsistent practice in overseas posts.

In conjunction with senior OHPC staff, Humanitarian Branch delivers regular community information sessions to priority communities/groups. These sessions are designed to provide clear information on the Humanitarian Program, how to propose relatives, clarify misconceptions (such as those alluded to by Professor Ware) and deliver key messages on current priorities and pressures within the Program. These information sessions reinforce local stakeholder engagement activities undertaken by OHPC staff throughout the year.

Department of Immigration and Citizenship

JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

Inquiry into Australia's Relationship with the Countries of Africa

21 April 2010

Questions on Notice from Mr Ruddock

Page references refer to the submission by the Department of Immigration and Citizenship to the Joint Standing Committee on Foreign Affairs, Defence and Trade in relation to the Inquiry into Australia's Relationship with the Countries of Africa. The submission is at <http://www.aph.gov.au/house/committee/jfadt/africa%2009/subs.htm>

(1)

You provide (p. 5) information on Australia's temporary entry program.

(a) What proportion of people from Africa with temporary entry visas become overstayers?

Answer:

The proportion of people from African countries arriving on temporary entry visas who become overstayers is in line with the overall non compliance rate of temporary entrance rate of less than one per cent.

(b) Are visitors from particular African countries at greater risk of becoming overstayers?

Answer:

There is no significant difference between overstayer rates for persons from African countries compared to the overstayer rate for the pool of all nationalities arriving on temporary visas.

(c) Have you been able to identify any trends in the incidence of overstayers?

Answer:

Trends in aggregate overstay rates for non-citizens are regularly analysed. More detailed country or region specific analysis will be considered should this higher level analysis show cause.

(2)

You advise (p. 6) that the majority of African students intend to reside in Victoria and Western Australia and study in the Higher Education and Vocational Education and Training sectors. *How have the African students been affected by the recent spate of financial collapses of education providers?*

Answer:

The Department of Immigration and Citizenship does record the number of students affected by each college closure, however, it does not have a breakdown of this data by nationality. Since 1 January 2009 (as at 1 May 2010) 39 education providers have closed affecting over 8 200 students.

(3)

You advise (p. 6) that there has been a recent announcement of “strengthened integrity measures for selected high risk student visa caseloads” and that some African countries have been impacted.

(a) *Would you brief the Committee on the new measures?*

Answer:

In August 2009 the Minister for Immigration and Citizenship, Senator Chris Evans, announced strengthened integrity measures in high risk Student visa caseloads.

This included a focus on Student visa cohorts from Zimbabwe and Mauritius. The integrity measures applied were not new, but rather an increase of existing checks and analysis to address integrity concerns.

More recently there have been several changes made to migration legislation both to improve the integrity of the Student visa program and to streamline processing for low risk applicants.

These measures include:

- changes to require Student visa applicants who wish to study two or more courses as a package on their Student visa, to meet the highest Assessment Level (i.e. highest risk level) which applies to any of the courses in their package of study (with the exception of ELICOS courses);
- a reduction of the Assessment Levels for Postgraduate Research (subclass 574) visas. This change was in response to a report tabled by the House of Representatives Standing Committee on Industry, Science and Innovation, *Building Australia's Research Capacity*; and
- clarification of discretionary cancellation provisions, which allow the Department of Immigration and Citizenship to consider cancellation of a Student visa if a student's studies are deferred or suspended for reasons other than compelling or compassionate reasons.

(b) Which African countries have been affected?

Answer:

The Minister announced strengthened integrity checks in high risk areas of the Student visa program in August 2009. Zimbabwe and Mauritius were the African countries that were initially affected by the strengthened integrity checks.

(4)

You provide information (p. 6) on Student Assessment Levels and advise that assessments range from AL1 for South African schools and postgraduate students to AL3 and 4 for other countries.

(a) What are the assessment levels for students from African countries?

NOTE: All passports not listed below are Assessment Level 3 (except in subclass 576).

Passport held	Visa subclass						
	570 ELICOS	571 Schools	572 VET	573 Higher Education	574 Postgraduate Research	575 Non Award	576 AusAID/ Defence
Botswana	2	2	2	1	1	2	all 576 travel documents are Assessment Level 2
Egypt	3	3	3	3	2	3	
Ghana	3	3	4	4	3	3	
Kenya	3	2	3	3	2	3	
Malawi	3	3	3	3	2	3	
Mauritius	1	2	2	1	1	2	
Mozambique	3	3	3	2	2	3	
Nigeria	3	3	3	3	4	3	
Seychelles	2	2	2	1	1	2	
South Africa	2	1	2	1	1	1	
Tanzania	3	3	3	3	3	3	
Zambia	3	2	3	2	2	3	
Zimbabwe	3	2	3	4	2	3	

(b) What are the criteria that are used for determining risk levels?

Answer:

To determine the Assessment Level (AL) for the listed countries, the Department conducts a statistical analysis of risk indicators for each country in each education sector. The Department also conducts an analysis with relevant parties to assess any specific country issues and broader regional concerns. This allows relevant environmental, security, economic or other influences to be objectively assessed and incorporated into the process for determining Assessment Levels.

Several risk indicators are taken into consideration for each Student cohort when determining Assessment Levels.

These indicators include:

- The rate of detection of fraudulent documentation within Student visa applications
- the Student visa cancellation rate
- the rate of overstay
- applicants for residence
- visa application (offshore) refusal rate; and
- the number of applications to engage Australia's protection obligations.

(c) Is there flexibility for students to have their assessment level made less stringent?

Answer:

Student visa Assessment Levels are approved by the Minister for Immigration and Citizenship and once approved are recorded by Gazette notice within migration legislation.

Assessment Levels are determined by objective measures that are applied to each student cohort, and are based on the performance against those measures.

When reviewing Assessment Levels, DIAC consults widely and seek comments from other government departments, foreign governments and Australia's International Education Industry.

Once Assessment Levels are set, there is no ability within Australia's migration legislation for an individual student's Assessment Level to be made less stringent for their particular circumstance or Student visa application.

(d) How regularly are the assessment levels revised?

Answer:

Assessment Levels are reviewed and amended periodically, with changes timed to avoid peak Student visa processing periods. The last Assessment Level changes were made in September 2008. The next Assessment Level review will take place in the second half of this year.

(5)

You note (p. 6) that some students from African countries have been unable to pay tuition fees due to the difficulty with transferring funds to Australia. You add to that, students who are reported by the education provider for non-payment of education costs are not subject to mandatory cancellation but are given adequate opportunity to find an alternative education provider or apply for another visa category.

(a) Why do some African students have difficulty with transferring funds to Australia?

Answer:

Reports from education providers have indicated that some Zimbabwean students have experienced difficulty due to variations in the way laws governing the transfer of funds out of Zimbabwe have been applied.

(b) How can these difficulties be overcome?

Answer:

In some cases, students have been able to access funds from relatives in other countries. In other cases, universities have extended payment periods to students

(c) Would you brief the Committee on the process which is initiated when students are reported for the non-payment of education costs?

Answer:

Education providers are required, as a part of providing education services to overseas students, to report activity of enrolled students on the Department of Education, Employment and Workplace Relations, (DEEWR's) Provider Registration and International Student Management (PRISMS) System. The Department of Immigration and Citizenship has a direct link between PRISMS and its systems and records details of these reports.

The Migration Regulations do not require the mandatory cancellation of a Student visa for a failure to pay tuition fees. If a provider cancels enrolment as a result of non-payment however, the student must obtain another enrolment within 28 days or face visa cancellation. Where an enrolment is cancelled because a student does not pay their fees, a provider reports the student through PRISMS.

In many cases, education providers approach the Department before canceling the enrolment. In such cases, the Department works with the education provider and the student to resolve non-payment issues. If non-payment issues cannot be resolved, and the student's enrolment is cancelled by the provider, then the student's visa may be cancelled.

The cancellation process is initiated by Department through the issue of a Notice of Intention to Consider Cancellation. The student would then be given 28 days to respond to the notice, through providing evidence of access to funds or a new enrolment. If the client does provide evidence the visa will not be cancelled. If the client does not provide evidence of a current enrolment and no evidence of funds to support themselves, the visa must be cancelled, pursuant to regulation 2.43 of the migration regulations. If the visa is cancelled the client would generally be given an appropriate bridging visa E to depart Australia. Departmental officers can assist to make departure arrangements if the client is unable to make them of their own accord.