

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING : 27 February 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(AE17/082) - Department's policy to refuse work rights for people who are in that category of having a negative decision pending judicial review - Programme 2.3: Visas

Senator McKim, Nick (L&CA 128) asked:

Senator McKIM: I am happy for you to do so. Is it the department's policy to refuse work rights for people who are in that category of having a negative decision pending judicial review? I am being informed by various stakeholder groups that they cannot get clarity on this, despite their best efforts, so I am trying to resolve it here.

Mr Manthorpe: I would like to take that on notice. I would prefer not to get into a speculative conversation.

Senator McKIM: That is fair, but do you understand the information that I am seeking?

Mr Manthorpe: I certainly know that, at a point in time, some people who have come out the other end of the process with a negative have not been found to be a refugee. Ultimately, we get to the point where we say, 'Really, it is time for you to return home', and that might entail us detaining and seeking to return them or it might entail people continuing to live in the community—in effect, unlawfully, like an overstayer on any other kind of visa. We have, as we have probably talked about with you or certainly with other senators over time, something like 60,000 unlawful noncitizens in the community at any given point time. So people who have applied for a visa, not got it, appealed, gone through a merits review process and still not got it may be in some form of judicial review. Whether or not those individuals are on a bridging visa or not would, I suspect, turn on the facts of their particular case, and that is why I am reluctant to give you a blanket answer tonight. But I am happy to take it on notice and come back to you.

Answer:

Individuals who are found not to meet the requirements of a protection visa are expected to depart Australia.

Permission to work on Bridging E visas (BVEs) for these individuals will be decided based on the Migration Regulations 1994 (the Regulations), departmental officer's discretion, or the Minister's discretion depending on the individual's circumstances.

While BVE grants are largely managed by the Department there is a relatively small cohort of individuals whose BVE grants are managed by the Minister personally.

Where a BVE is granted by the Minister personally, he has the discretion to decide whether or not to impose a 'no work' condition.

Where a BVE is granted by a departmental officer, permission to work is determined by the Regulations if the person is at judicial review or Ministerial intervention, or is discretionary if the person has no ongoing processes.

If the grant of permission to work is discretionary, there are several factors that will determine whether permission to work is given including whether an individual has any ongoing processes and their financial situation.