

File number: CLF
Client ID number:

PROTECTION (CLASS XA) VISA DECISION RECORD

1. APPLICANT DETAILS

Family name:
Given names:
Known aliases:
Date of birth:
Country of birth:
Country of citizenship:

Identity concerns (if applicable)

[List all aliases in the above section. Also include discussion on any unresolved identity issues, including any biometrics match, providing information on how you have sought to clarify/establish identity and a finding.]

2. APPLICATION VALIDITY

The application complies with the validity requirements of the *Migration Act 1958* (Migration Act) and *Migration Regulations 1994* (Regulations). I find the application is valid.

3. CLIENT HISTORY/MIGRATION HISTORY

Details of arrival, visa subclass held, and migration history if applicable.

4. CLAIMS FOR PROTECTION

Outline applicant's claims

5. MATERIAL BEFORE THE DECISION-MAKER

1. Departmental file clf relating to the applicant.
2. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status (the UNHCR Handbook).
3. Relevant academic commentaries, including but not limited to Prof. Hathaway, James *The Law of Refugee Status*, 1991.
4. Relevant Commonwealth Law decisions
5. Additional information before the decision-maker.

6. LEGAL FRAMEWORK

Protection Obligations

Section 36 and later sections of the Migration Act require that, in order for a Protection visa to be granted to the applicant, the Minister must be satisfied that Australia has protection obligations under the Refugees Convention. This requires an assessment as to whether the person is a refugee in accordance with Article 1 of the Refugees Convention.

Other relevant provisions include subsections 36(3)-(7) and Subdivision AL of Division 3, Part 2 of the Migration Act, incorporating sections 91R-91V, and relevant provisions of the Regulations.

Definition of a Refugee – Article 1 of the Refugees Convention

Article 1A(2), of the United Nations 1951 Convention and 1967 Protocol relating to the Status of Refugees (Refugees Convention), provides that a “refugee” is a person who:

...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

7. REASONS AND FINDINGS

Criteria To Be Met At The Time Of Decision - Subclass 866 (Protection) visa

Under Migration Regulation 866.221, one of the primary criteria is *that, the Minister is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.*

The assessment as to whether the applicant is a person to whom Australia has protection obligations includes the following:

7.1 What is the applicant's country of reference?

Claimed nationality

Evidence (and discussion, if applicable)

Finding

I find that the applicant [insert name of applicant] is [a citizen of (insert relevant country)]/or is stateless and is a former habitual resident of (insert relevant country)].

7.2 Does the applicant have the right to enter and reside in a safe third country?

Claims

Evidence (and discussion, if applicable)

Finding

I find that the applicant does not have effective protection in a third country under section 36(3) of the Migration Act.

7.3 Is the harm feared for a Convention reason?

Claims

[Insert relevant elements of applicant's claims, and discussion if applicable]

I find that the Convention ground/s of [insert ground/s] [is/are] the essential and significant reason/s for the harm feared as outlined in subdivision AL of the Migration Act.

7.4 Does the harm feared amount to persecution?

Claims [Insert relevant elements of claims as they relate to the harm feared, remembering the application of s91R]

Analysis and discussion (ie, is the harm feared of sufficient seriousness to amount to persecution and is it systematic and discriminatory?)

Finding

I find that the harm feared involves serious harm and systematic and discriminatory conduct as outlined in subdivision AL of the Migration Act.

7.5 Is the fear of Convention-based persecution well-founded?

Reasons

[Case officer to clearly present facts and an analysis of information leading to decision]

[If the agent of persecution is non-state agent, insert consideration of whether effective state protection is available to the applicant and/or whether state protection may be withheld for a Convention reason]

[Consideration of whether internal relocation is a viable option for the applicant]

Finding

I find that the applicant has a genuine fear of harm and that there is a real chance of persecution occurring. I therefore find that the applicant's fear of persecution, as defined under the Refugees Convention, is well founded.

[Insert, if *sur place* considerations are applicable]

I find that the applicant engaged in conduct in Australia otherwise than for the purpose of strengthening the person's claim to be a refugee (s91R(3) of the Migration Act).

7.6 Does a cessation clause apply (Article 1C)?

I find that the cessation clauses in Article 1C do not apply to the applicant.

Does the applicant come within one of the exclusion clauses in Article 1D, 1E or 1F?

I find that the applicant does not come within Articles 1D, 1E and 1F of the Refugees Convention. I find that s91T of the Migration Act as it relates to Article 1F does not apply to the applicant.

7.7 Does the applicant come within Article 33(2) of the Refugees Convention, in respect of its express exception to the prohibition on refoulement?

I find that the applicant does not come within Article 33(2) of the Refugees Convention further to its application relative to s91U of the Migration Act.

Assessment finding

I am satisfied that the applicant, [insert name], is a person to whom Australia has protection obligations for the grant of a Protection (Class XA) visa. Accordingly, I am now required to consider other criteria prescribed in Part 866, Schedule 2 of the Migration Regulations. .

8. TIME OF APPLICATION AND TIME OF DECISION CRITERIA

Time of Application Criteria - Migration Regulations 866.211

The applicant claims to be a person to whom Australia has protection obligations under the Refugees Convention and:

- (a) makes specific claims under the Refugees Convention; or
- (b) claims to be a member of the same family unit as a person who:
 - (i) has made specific claims under the Refugees Convention; and
 - (ii) is an applicant for a Protection (Class XA) visa.

Decision on Time of Application Criteria

I find that [name of applicant] meets the Time of Application criteria for the grant of a Subclass 866 (Protection) visa.

Time of Decision Criteria - Migration Regulations 866.22

I am also satisfied that the applicant [insert name] has:

- undergone medical examinations carried out by a Commonwealth Medical Officer or another medical practitioner approved by the Minister or a medical officer employed by an organisation approved by the Minister;
- undergone a chest x-ray by a medical practitioner who is qualified as a radiologist in Australia or is under 12 years of age and is not a person in respect of whom a relevant medical practitioner has requested such an examination or is a person to whom the Minister is satisfied should not be required to undergo a chest x-ray examination at this time;
- satisfied public interest criteria 4001, 4002 and 4003A;
- (delete for applications made prior to 15 October 2007) satisfied the Australian Values Statement requirement, public interest criterion 4019;
- satisfied the Minister that the grant of a visa is in the national interest;
- Not been offered a temporary stay in Australia by the Australian Government for the purposes of regulation 2.07AC; and
- is in Australia.

Accordingly, I find that [insert name of applicant] has met all prescribed Time of Decision criteria for the grant of a Subclass 866 (Protection) visa.

9. DECISION ON PROTECTION (CLASS XA) VISA APPLICATION

I am satisfied that [name of applicant] is owed protection obligations for the purposes of section 36 of the Migration Act and has met the prescribed criteria in Schedule 2 of the Migration Regulations for the grant of a Subclass 866 (Protection) visa. Accordingly, I grant [name of applicant] a Subclass 866 (Protection) visa.

[Delegate's signature]

[Delegate's name]

Position no.

Delegate of the Minister for Immigration and Citizenship for the purposes of section 65 of the Migration Act.

[DATE]