



Australian immigration summary for Afghans (abroad and onshore)

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Table of contents

Update from Department of Home Affairs	2
If you are in Australia (TPV / SHEV holders)	4
If you are in Australia (and arrived on a valid visa)	6
Subclass 866 Protection Visa	6
Other visas	7
If you are outside of Australia (family visas)	8
Subclass 117 Orphan Relative Visa	8
Subclass 115 Remaining Relative Visa	9
Other visas	12
If you are outside of Australia (humanitarian visas)	13
Subclass 200 - Refugee	13
Subclass 201 - In-country Special Humanitarian	15
Subclass 202 - Global Special Humanitarian	17
Subclass 203 - Emergency Rescue	20
Subclass 204 - Woman at Risk	21

Update from Department of Home Affairs

In response to the situation unfolding in Afghanistan, in its 18 August 2021 'Afghanistan update',¹ the Department of Home Affairs (**the Department**) announced its recognition of the rapidly deteriorating situation in Afghanistan.

Currently, the focus is on establishing flight options for Australian citizens, permanent residents, and their family members. However, the Department has stated that they are working with other Government departments to prioritise Afghan applications, So far, this includes the Australian Government's announcement that an initial 3,000 humanitarian places will be allocated to Afghan nations in Australia's humanitarian program.²

Category of persons	Update
Afghan nationals in Australia	Afghan citizens in Australia on temporary visas will be supported by the Australian Government Afghan visa holders currently in Australia will not be asked to return to Afghanistan while their security is at risk
Citizenship applicants	Existing applications for citizenship by descent are being given high priority
Family members of Afghans in Australia	Visa applications from people in Afghanistan will be finalised as quickly as possible once all requirements are assessed
Family members of Temporary Protection Visa (TPV) / Safe Haven Enterprise Visa (SHEV) visa holders	Unfortunately, people who arrived in Australia without a valid visa on or after 13 August 2012, and hold a TPV or SHEV, are still not eligible to propose relatives through the Humanitarian Program

¹ <https://www.homeaffairs.gov.au/news-subsite/Pages/2021-Aug/afghanistan-statement.aspx>

² <https://minister.homeaffairs.gov.au/AlexHawke/Pages/3000-humanitarian-places-for-afghanistan.aspx>

Locally Engaged Employees (LEEs) and their family members	LEEs and their family members are considered high priority Extended family members of LEEs settled in Australia will be prioritised under the humanitarian program
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NOTE: This document has been prepared by Hannan Tew Lawyers to provide general guidance about various visa options which may be available to Afghans abroad or in Australia. It should not be considered as specific legal advice but has been developed to rapidly disseminate information that may be used to take an overall view of available options. Though we take pride in making sure the information is correct and detailed, we strongly encourage you to seek professional advice or contact us at info@hannantew.com.au for an obligation free discussion before making any decisions based on this document.

If you are in Australia (TPV / SHEV holders)

TPV and SHEVs are temporary protection visas for those who arrived in Australia without a valid visa. TPVs cease 3 years after the date of grant and SHEVs cease 5 years after the date of grant, unless you make a valid application for a subsequent TPV or SHEV while holding your visa.

If you hold a TPV or a SHEV and you want to remain in Australia beyond your visa cease date, you must apply for a subsequent TPV or SHEV or meet the “SHEV Pathway” requirements to gain access to other visas. Given the current situation in Afghanistan, we do not expect applicants will face a challenge demonstrating the criteria for a further TPV or SHEV at this point in time.

Note that if a SHEV holder, or a family member on their SHEV application completes 3.5 years of work or study in a regional area, then they may be able to apply for some work, student or family visas. You can refer to the useful guide from the Refugee and Immigration Legal Service for further information.³

³ <https://www.rails.org.au/sites/default/files/2021-02/SHEV%20Visas-Feb2021.pdf>

If you are in Australia (and arrived on a valid visa)

Subclass 866 Protection Visa

What is it?

The Protection visa is a permanent visa which can be applied for persons onshore (and who are not barred, for example, those who arrived by boat and without a valid visa).

Who is eligible?

As a summary, you may be eligible for this visa if:

- you are in Australia and you entered Australia with a valid visa;
- you are claiming Australia's protection as a refugee or under Australia's complementary protection scheme; and
- you are not barred from lodging a Protection visa application.

What is "persecution" and "complementary protection"?

Broadly speaking, in order to be recognised as a refugee under Australian law, you must demonstrate that there is a well founded fear of "persecution" (that is, a real chance that you will be seriously harmed in your country of origin) because of your:

- race;
- religion;
- nationality;
- political opinion; and/or
- membership of a particular social group.

In order to be recognised as a person owed "complementary protection" by Australia, you must prove that as a necessary and foreseeable consequence of your removal to your country of origin, you would face a real risk of one or more of the following forms of significant harm:

- arbitrary deprivation of life;
- the death penalty;

7

- Torture;
- cruel or inhuman treatment or punishment; and/or
- degrading treatment or punishment.

In light of the current situation, most Afghans in Australia would be expected to meet the above criteria.

How to apply?

You can now apply for this visa online by first logging into or creating an ImmiAccount.⁴

What are the fees?

The government fee to lodge this application is \$40.

What are the processing times?

The processing time for this visa application is usually ~2 years, however, by applying for the visa online you will usually be granted a bridging visa that will allow you to remain in Australia during processing. In light of the Department's comments above, it may be that Afghan applications are prioritised in the near future.

Other visas

If you are an immediate family member of an Australian citizen, permanent resident or eligible New Zealand citizen, you may be eligible for Parent visas, Partner visas or Child visas.

Depending on your skill level and financial capacity, you may also be eligible for employers sponsored, skilled or investor visas.

If you need further information in relation to these other visa programs, please refer to our website.⁵

⁴ <https://immi.homeaffairs.gov.au/help-support/applying-online-or-on-paper/online>

⁵ <https://www.hannantew.com.au/australian-immigration-services/>

If you are outside of Australia (family visas)

Subclass 117 Orphan Relative Visa

What is it?

This visa is a permanent visa that can be applied for by a person who is outside Australia, and who is claiming to be the orphan relative of an Australian citizen, Australian permanent resident, or settled eligible New Zealand citizen.

Who is eligible?

The applicant must be an orphan relative of an Australian relative of the sponsor and subsequently sponsored by that relative, or by the spouse or de facto partner of that relative.

What is an orphan relative?

Briefly, an applicant for this visa is the orphan relative of another person who is their Australian relative if the applicant:

- has not turned 18;
- does not have a spouse or de facto partner;
- is a relative of that other person;
- cannot be cared for by either parent because each of them is either dead, permanently incapacitated or of unknown whereabouts; and
- there is no compelling reason to believe that the grant of a visa would not be in the best interests of the applicant.

Who can be the sponsoring relative?

The relative can be a sibling or step-sibling, grandparent or step-grandparent, aunt, uncle, step-aunt or step-uncle.

How to apply?

Complete the following 2 forms and send them together by post (with correct prepaid postage) or by courier to the Child and Other Family Processing Centre in Perth:

- Form 47CH Application for migration to Australia by a child⁶
- Form 40CH Sponsorship for a child to migrate to Australia⁷

By post (with correct prepaid postage):

Department of Home Affairs
Child and Other Family Processing Centre
Locked Bag 7
NORTHBRIDGE WA 6865

By courier:

Department of Home Affairs
Child and Other Family Processing Centre
Wellington Central
836 Wellington Street
WEST PERTH WA 6005

What are the visa fees?

The base visa application charge payable to the Department for an applicant is \$1,660.

What are the processing times?

The Department website notes that processing times for this application are generally 45 – 54 months. However, in light of recent announcements that “visa applications from people in Afghanistan will be finalised as quickly as possible once all requirements are assessed”, they may be faster.

Subclass 115 Remaining Relative Visa

What is it?

⁶ <https://immi.homeaffairs.gov.au/form-listing/forms/47ch.pdf>

⁷ <https://immi.homeaffairs.gov.au/form-listing/forms/47ch.pdf>

This visa is for persons outside Australia who are seeking a permanent visa on the basis of being the remaining relative (outside Australia) of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

Who is eligible?

The applicant must be:

- a remaining relative of an Australian relative for the applicant; and
- must be sponsored by an Australian relative who is over 18 and a settled Australian citizen, permanent resident or a New Zealand citizen (or the de facto partner or spouse of that relative).

What is a remaining relative?

An applicant for a visa is a remaining relative of another person who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen if:

- the other person is a parent, brother, sister, step-brother or step-sister of the applicant the other person is usually resident in Australia; and
- the applicant, and the applicant's spouse or de facto partner (if any), have no near relatives other than near relatives who are:
 - usually resident in Australia; and
 - Australian citizens, Australian permanent residents or eligible New Zealand citizens; and

A near relative, in relation to an applicant, means a person who is:

- a parent, brother, sister, step-brother or step-sister of the applicant or of the applicant's spouse or de facto partner (if any); or
- a child (including a step-child) of the applicant or of the applicant's spouse or de facto partner (if any), being a child who:
 - has turned 18 and is not a dependent
 - child of the applicant or of the applicant's spouse or de facto partner (if any); or has not turned 18 and is not wholly or substantially in the daily care and control of the applicant or of the applicant's spouse or de facto partner (if any).

How long will it take?

Other Family category visas are subject to a s85 cap and a s499 queuing direction which means they conventionally can expect significant delays. However, in light of recent announcements that “visa applications from people in Afghanistan will be finalised as quickly as possible once all requirements are assessed”, there is scope for these visas to be progressed faster in the future.

How to apply?

Complete the following 2 forms and send them together by post (with correct prepaid postage) or by courier to the Child and Other Family Processing Centre in Perth.

- Complete Form 47OF Application for migration to Australia⁸
- Form 40 Sponsorship for migration to Australia⁹

By post (with correct prepaid postage):

Department of Home Affairs
Child and Other Family Processing Centre
Locked Bag 7
NORTHBRIDGE WA 6865

By courier:

Department of Home Affairs
Child and Other Family Processing Centre
Wellington Central
836 Wellington Street
WEST PERTH WA 600

What are the visa fees?

The base visa application charge payable to the Department for an applicant is \$1,825.

⁸ <https://immi.homeaffairs.gov.au/form-listing/forms/47of.pdf>

⁹ <https://immi.homeaffairs.gov.au/form-listing/forms/40.pdf>

Other visas

If you are an immediate family member of an Australian citizen, permanent resident or eligible New Zealand citizen, you may be eligible for Parent visas, Partner visas or Child visas.

Depending on your skill level and financial capacity, you may also be eligible for employers sponsored, skilled or investor visas.

If you need further information in relation to these other visa programs, please refer to our website.¹⁰

¹⁰ <https://www.hannantew.com.au/australian-immigration-services/>

If you are outside of Australia (humanitarian visas)

As a matter of practicality, it should be noted that most offshore humanitarian visas ultimately require allocation from UNHCR. However, in exceptional cases Australia's humanitarian program can grant visas to persons both in their home country and outside without this registration. As a rule of thumb, the first point of action for a potential applicant is to contact UNHCR at their location.¹¹

Subclass 200 - Refugee

What is it?

The Refugee Program is for persons who are **outside** their home country and have a well founded fear of persecution should they return to their home country (almost exclusively referred by UNHCR).

Who is eligible?

A Subclass 200 visa may be granted to an applicant who is either:

- A person living in their home country and who is subject to persecution living **outside** of their home country; or
- A person certified by the Minister to be in a class of persons who is at risk of harm (LEE's); or
- A member of the immediate family of a proposer who holds or held a Subclass 201 visa, this application is made within 5 years of the date of that visa approval, and the proposer completed an approved Form 681 (split family).

Who are the prescribed persons?

The prescribed¹² persons include non-citizens who have been assessed to be at significant risk of harm as a result of their employment with Australian organisations.

¹¹ <https://www.unhcr.org/afghanistan.html>

¹² <https://www.legislation.gov.au/Details/F2012L02566>

Specific to the Afghanistan situation this includes those who have been assessed as being at significant individual risk of harm as a result of their support to Australia's whole of Government mission in Afghanistan due to their role, location, employment period and currency of employment; including:

- interpreters in Uruzgan Province in positions funded by DFAT; or
- interpreters or instructors employed with the ADF or AFP; or
- project, facilities management and advisory staff in the Provincial Reconstruction Team in Uruzgan on behalf of AusAID and/or DFAT; or
- a person who is able to satisfy the relevant agency Minister that exceptional circumstances exist for that Minister to certify that the non-citizen is in that class of persons.

At this point, people who were or are in the Afghan government or military official or employed in a private security capacity are excluded from this provision (as are individuals who have dual citizenship).

Who can actually get this visa?

There is no legal requirement for the applicant to be registered with UNHCR or the government authorities in the country of refuge. In practice, however, most visa applicants have been mandated as refugees by UNHCR and have been referred to the department for resettlement. Although registration is not a requirement for subclass 200, applicants are usually asked to provide evidence of registration with UNHCR.

Notwithstanding the above, failure to register with UNHCR or government authorities of the host country is not grounds for refusing the applicant this visa so an applicant may present strong claims against subclass 200 criteria and be eligible to be granted the visa even though they have not registered with UNHCR or the local authorities.

What are the government fees?

Nil.

How do you apply?

Applying using this form: <https://immi.homeaffairs.gov.au/form-listing/forms/842.pdf>

Applicants wishing to be considered for a visa in the Refugee category must lodge their form at an Australian overseas mission.

Subclass 201 - In-country Special Humanitarian

What is it?

The Subclass 201 visa is the **in-country component** of the Refugee category of the humanitarian program. The Government's priority is to resettle persons who have been assessed as refugees by UNHCR and referred to Australia for resettlement though in exceptional cases there may be grants without this registration.

What are the eligibility requirements?

The primary criteria provide that a visa may be granted to an applicant who is either:

- A person living in their home country and who is subject to persecution **in that country**
- A person certified by the Minister to be in a class of persons who is at risk of harm (LEE's); or
- A member of the immediate family of a proposer who holds or held a Subclass 201 visa, this application is made within 5 years of the date of that visa approval, and the proposer completeds an approved Form 681 (split family).

The Minister must also be satisfied that there are compelling reasons for giving special consideration to granting to the applicant a permanent visa having regard to the degree of persecution, connection to Australia, the capacity of Australia for resettlement and whether there are any suitable third countries for settlement.

What are the prescribed classes?

he prescribed¹³ persons include non-citizens who have been assessed to be at significant risk of harm as a result of their employment with Australian organisations.

Specific to the Afghanistan situation this includes those who have been assessed as being at significant individual risk of harm as a result of their support to Australia's whole of Government mission in Afghanistan due to their role, location, employment period and currency of employment; including:

- interpreters in Uruzgan Province in positions funded by DFAT; or
- interpreters or instructors employed with the ADF or AFP; or
- project, facilities management and advisory staff in the Provincial Reconstruction Team in Uruzgan on behalf of AusAID and/or DFAT; or
- a person who is able to satisfy the relevant agency Minister that exceptional circumstances exist for that Minister to certify that the non-citizen is in that class of persons.

At this point, people who were or are in the Afghan government or military official or employed in a private security capacity are excluded from this provision (as are individuals who have dual citizenship).

Who can actually get this visa?

The Government's priority in the refugee category is to resettle persons who have been assessed as refugees by UNHCR and referred to Australia for resettlement. Subclass 201 was established to enable Australia to assist in exceptional cases and for these reasons there is no regular allocation of places so can be challenging to obtain. As such, there are very limited positions available

What are the government fees?

Nil

How do you apply?

Applying using this form: <https://immi.homeaffairs.gov.au/form-listing/forms/842.pdf>

¹³ <https://www.legislation.gov.au/Details/F2012L02566>

Applicants wishing to be considered for a visa in the above category must lodge their form at an Australian overseas mission.

Subclass 202 - Global Special Humanitarian

What is it?

The Special Humanitarian Program (**SHP**) is for persons who are outside their home country and subject to substantial discrimination amounting to gross violation of their human rights in their home country. The applicant's entry must be proposed by an Australian citizen or permanent resident, an eligible New Zealand citizen or an organisation that is based in Australia.

What are the eligibility requirements?

The applicant must:

- be outside of Australia;
- be proposed by an approved sponsoring organisation (listed here) and is subject to substantial discrimination, amounting to gross violation of human rights, in the applicant's home country and is living in a country other than the applicant's home country (noting individuals can propose through the approved sponsoring organisations) or
- be proposed by an Australian citizen or permanent resident using a Form 681 (link here) (split family); or
- be subject to substantial discrimination, amounting to gross violation of human rights, in the applicant's home country and is living in a country other than the applicant's home country.

Who is an eligibility Australian citizen or permanent resident sponsor?

If sponsored by an Australian citizen or permanent resident:

- the proposer must hold or have held a Subclass 202 visa, Subclass 866 visa, or Resolutions of Status visa;
- the applicant must have been a resident of a member of the immediate family of the proposer at the date of grant of that visa;

- the application must be made within the last 5 years; and
- the proposer is not excluded by virtue of having been an unlawful non-citizen or unauthorised maritime arrival (legal terms for people who arrived after 13 August 2012 via boat without a visa).

Who are the approved sponsoring organisations?

If sponsored by an approved proposing organisation you will need to be proposed by a community, business owner, family or individual with a commitment to your employment prospects and support in your settlement journey in Australia. To be considered for the program the Australian proposer must demonstrate their ability to adequately support the new arrivals to achieve financial self-sufficiency within their first year of settlement in Australia. If you have a potential sponsor, they should contact the one of the approved proposing organisations:

APO		Email	Phone
AMES	https://www.ames.net.au/csp/		13 26 37
Diversitat	https://diversitat.org.au/services/settlement-services/case-support-program/	info@diversitat.org.au	(03) 5260 6000
Eastern Christian Welfare Australia	https://ecw.org.au/community-support-program/		+61 407 006 010
International Organization for Migration (IOM)	https://australia.iom.int/community-support-programme	IOMCanberra@iom.int	+612 6267 6600
Assyrian Australian Association	https://assyrianaustralian.org.au/community-support-program/	info@assyrianaustralian.org.au	(02) 9728 2594
Illawarra Multicultural Services (IMS)	https://www.ims.org.au/our-programs/community-support-program-csp/	info@ims.org.au	02 4229 6855

Settlement Services International (SSI)	https://www.ssi.org.au/services/community-engagement/community-support-program	csp@ssi.org.au	1800 916 857
Brotherhood of St Laurence (BSL)	https://www.bsl.org.au/services/family-support/community-support-program/	info@bsl.org.au	(03) 9483 1183
Spectrum Migrant Resource Centre	https://spectrumvic.org.au/service/community-support-program/	communications@spectrumvic.org.au	1300 735 653
Multicultural Australia Ltd	https://www.multiculturalaustralia.org.au/community_support_program	welcome@multiculturalaustralia.org.au	07 3337 5400
Australian Migrant Resource Centre (AMRC)	https://amrc.org.au/community-support-program	admin@amrc.org.au	(08) 8217 9500
Australian Refugee Association (ARA)	https://www.australianrefugee.org/services/migration/	reception@ausref.net	08 8354 2951

What is the cost?

If the application includes a proposal by an approved proposing organisation is \$3,005 (plus a further \$16,444 payable at second instalment).

For other applications, Nil.

How to apply?

Application can be made online with the following documentation:

- Form 842 - Application for an Offshore Humanitarian visa¹⁴
- Form 681 - Refugee and special humanitarian proposal¹⁵

Subclass 203 - Emergency Rescue

What is it?

The Subclass 203 visa is intended to provide emergency resettlement to persons who are subject to persecution and also face an immediate threat to their life or personal security (other than for medical reasons). Under policy, subclass 203 is used primarily for emergency cases referred for resettlement to Australia by UNHCR.

What are the eligibility requirements?

The applicant must be subject to persecution in the applicant's home country (whether the applicant is living in the applicant's home country or in another country) or be proposed in accordance with approved form 681 by an Australian citizen or an Australian permanent resident who is, or has been, the holder of a Subclass 203 visa (split family).

Who can actually get this visa?

In practice, UNHCR is responsible for referrals of these case and undertakes to refer only those cases:

- in which the need for evacuation is so urgent that priority refugee processing would be inadequate
- where the reason for emergency evacuation is not medical
- that do not have a clear connection to another country offering emergency resettlement and
- that prima facie would not fail character or security requirements.

Organisations other than UNHCR or from individuals who wish to be considered under emergency rescue provisions should still contact the local UNHCR office in the first instance.

¹⁴ <https://immi.homeaffairs.gov.au/form-listing/forms/842.pdf>

¹⁵ <https://immi.homeaffairs.gov.au/form-listing/forms/681.pdf>

What are the government fees?

Nil.

How do you apply?

Applying using this form: <https://immi.homeaffairs.gov.au/form-listing/forms/842.pdf>

Applicants wishing to be considered for a visa in the above category must lodge their form at an Australian overseas mission.

Subclass 204 - Woman at Risk

What is it?

A significant part of the refugee category allocation is set aside for vulnerable women and children in recognition of the priority given by UNHCR to vulnerable women and children. The woman at risk visa subclass is a significant part of this caseload and these cases are to be given the second highest priority after subclass 203 Emergency rescue cases.

What are the eligibility requirements?

The primary criteria provide for the grant of a visa to an applicant in two circumstances:

- a female person living outside her home country and subject to persecution or registered as of concern to UNHCR, and the Minister is satisfied that the applicant does not have the protection of a male relative and is in danger of victimisation, harassment or serious abuse because of her sex; or
- a person's entry to Australia has been proposed in accordance with an approved form by an Australian permanent resident or citizen who holds or has held a subclass 204 visa and the person is a member of the immediate family of the proposer (split family).

What does it mean to not have the protection of a male relative?

Applicants may be:

- unmarried, divorced or widowed and have no male relative who can provide protection or

- separated from their partners or male relatives due to conflict or other circumstances.

Applicants may be living with their partner or another male relative and satisfy the above if the partner or other relative is unwilling or unable, for example, due to illness or disability, to protect them.

Who can actually get this visa?

In practice, applicants will satisfy the requirements if they are registered as of concern with UNHCR. Woman at Risk cases are usually referred to posts by UNHCR, although posts may identify them within the general offshore humanitarian caseload.

What are the government fees?

Nil.

How do you apply?

Applying using this form: <https://immi.homeaffairs.gov.au/form-listing/forms/842.pdf>

Applicants wishing to be considered for a visa in the above category must lodge their form at an Australian overseas mission.

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