

WLW. MIGRATION LAWYERS

Founded in 2015

- Current Australian commitment to Afghan nationals
- Refugee and Humanitarian visa
- Australia proposer
- Priority
- Application forms
- Application evidence
- Application lodgment

- The Australian Government announced 3,000 humanitarian visas will be allocated to Afghan nationals within Australia's humanitarian program (currently 13,750 visas each year)
- Unfortunately there are far more Afghan nationals who need a humanitarian visa than this
- The process can also take a long time
- Many are asking the Australian Government to **significantly increase** the number of visas available for Afghan nationals
- You can speak to your local Member of Parliament:
https://www.aph.gov.au/Senators_and_Members
- Australian government updates published here:
<https://www.homeaffairs.gov.au/help-and-support/afghanistan-update>

There are five different types of offshore humanitarian visas:

- Subclass 200 Refugee visa
- Subclass 201 In-country Special Humanitarian visa
- Subclass 202 Global Special Humanitarian visa
- Subclass 203 Emergency Rescue visa
- Subclass 204 Woman at Risk visa

Who can be a proposer

- Australian citizens
- Australian permanent residents*
- Eligible New Zealand citizen

**If the visa applicant(s) is a member of the immediate family applying under split family provisions, the visa applicant(s) must have been disclosed in the proposer's visa application.*

Who cannot be a proposer

- People who are applicants or holders of temporary visas, including Safe Haven Enterprise (subclass 790) visas or Temporary Protection (subclass 785) visas

Financial responsibilities

- Payment of costs associated with the visa applicant(s) travel to Australia
- Arranging initial accommodation

Other responsibilities

- Meeting applicant(s) at the airport
- Assisting the visa applicant(s) to find permanent accommodation
- Providing information and orientation assistance

- Applications are to be prioritised and processed according to the urgency of the applicant's need for resettlement in Australia
- Applications with proposers are prioritized in 5 categories
- Important: There is no 'fast track' process or fee

Priority 1

- Split family - Applicants proposed by **immediate family** members who were granted a Class XB visa in the last 5 years (partner, dependent child or parent if the proposer or main applicant is under 18)

OR

- Applicants proposed by a **relative** (partner, parent, child, grandparent, grandchild, aunt, uncle, niece, nephew or cousin) who genuinely resides in a **regional location** and does **not** hold a Protection (subclass 866) visa or a Resolution of Status (subclass 851) visa

Priority 2

- Applicant is proposed by a **close family member** who does **not** hold a Protection (subclass 866) visa or a Resolution of Status (subclass 851) visa (including partners, children, parents and siblings who do not meet the split family definition)

Priority 3

- Applicant is proposed by an **extended family member** who does **not** hold a Protection (subclass 866) visa or Resolution of Status visa (subclass 851) (grandparents, grandchildren, cousins, aunts, uncles, nieces and nephews)

Priority 4

- Applicant is proposed by a **friend or distant relative** who does **not** hold a Protection (subclass 866) visa or a Resolution of Status (subclass 851) visa or by a community organisation

Priority 5

- Applicants proposed by a person who holds a Protection (subclass 866) visa or a Resolution of Status (subclass 851) visa. Note – if these proposers become Australian citizens, then applications they propose become priority 1, 2, 3 or 4 according to their relationship.

Form 842 - Application for an Offshore Humanitarian (class XB) visa

- Completed by the visa applicant(s)
- When you apply for an offshore humanitarian visa, you are considered against all 5 visa subclasses. This means that you do not need to nominate which visa you are applying for
- Completed by the main visa applicant and any dependents
- A dependent applicant must be a **member of the family unit** of the main visa applicant, which includes a spouse or de facto partner, a dependent child or dependent step-child and any other single relative/s who are dependent on of the main applicant and is usually resident in their household – DNA testing can be required
- The visa applicant(s) **must** provide a current residential address. If you move e.g. leave Afghanistan you must update the Department
- **Important:** information should be consistent with past visa applications of people in Australia

Form 681 – Refugee and Special Humanitarian Proposal

- To be completed by the Australian proposer
- By signing you are agreeing to the responsibilities above

- **Identity documents** of the visa applicant(s), such as family records, passport or *Taskera* (noting that these must be genuinely issued)
- **Statement of claims** explaining why the visa applicant(s) face harm
- **Evidence supporting claims** e.g. employment evidence if the visa applicant(s) fear harm because they were employed by an NGO
- **Evidence of links to Australia**
- **Letter from Australian proposer** explaining what type of support (financial, housing, settlement etc) they can provide to the visa applicant(s)
- **Financial evidence from Australian proposer** such as bank statements or property ownership documents, to confirm that they are financially able to assist with settlement
- **Evidence of UNHCR registration** (if safe and possible to obtain)

- Health and character requirements must be satisfied (health waiver can be requested)
- Changes of circumstances must be told to the Department of Home Affairs
 - E.g. they have left Afghanistan or a child has been born, it is important the Department of Home Affairs is updated

Application lodgement

	WITH Australian Proposer
Forms	Form 842 (visa applicant(s)) Form 681 (proposer)
Fees	Free
How to lodge	<p>Post: Special Humanitarian Processing Centre Department of Home Affairs GPO Box 9984 SYDNEY NSW 2001</p> <p>Courier: Special Humanitarian Processing Centre Department of Home Affairs Level 3 26 Lee Street SYDNEY NSW 2001</p> <p>Online lodgement portal: https://www.homeaffairs.gov.au/humvisaapplication</p>

Application lodgement

	NO Proposer
Forms	Form 842 (visa applicant(s))
Fees	Free
How to lodge	<p>Forms to be sent by post or courier to a diplomatic, consular, or migration office outside Australia.</p> <p>Full list of offices can be searched here: https://immi.homeaffairs.gov.au/help-support/contact-us/offices-and-locations/offices-outside-australia</p> <p>Australian Government reviewing this given how difficult this lodgment process is</p>

Humanitarian Visa Options for Afghan Citizens

Sanmati Verma

Accredited Specialist in Immigration Law

Clothier Anderson Immigration Lawyers, Carlton



Disclaimer – the information in this presentation is intended to be of a general nature and not specific legal advice about any particular circumstances. For specific advice, please seek the assistance of a qualified immigration lawyer.

Department of Foreign Affairs and Trade (DFAT)

- DFAT has been coordinating evacuations – with Department of Home Affairs
- Unclear if DHA will continue to do that after 31 August 2021
- Possible that some commercial flights will be permitted after 31 August
- Once applications are lodged – attempt to notify DFAT of lodgement using following details:

foreign.minister@dfat.gov.au

afghanistanvisaenquiries@dfat.gov.au

afghan.eoi@dfat.gov.au

Consular Operations Section (Afghanistan)

Department of Foreign Affairs and Trade

24-hour Consular Emergency Centre

+61 2 6261 3305 or 1 300 555135 (option 4)

Visa Cancellation

- When preparing a Humanitarian visa application – please be sure that the information provided is consistent with information given by members of the person’s family in Australia
- This is something to be particularly mindful of as an Australian citizen/permanent resident proposer who is not the family member of the applicant (ie if you are proposing friends or contacts overseas, and they have other family members in Australia)
- Be aware that the Department of Home Affairs will carefully match information provided in applications with that provided by family members – they will use biometric matching (ie records of photos, eye and fingerprint scans) to identify if the applicant has ever applied for a visa before
- If inconsistent information is provided – this risks both the refusal of the Humanitarian visa application and possible cancellation of the family member’s visa in Australia – under one of the following provisions

	Section 109	Section 116
When does it apply?	Onshore	Onshore (and offshore, through s 128)
What type of visa can be cancelled?	Temporary and Permanent	Temporary (onshore) and Permanent (offshore)
Cancellation Grounds	<p>Breach of any of the following sections of the Migration Act 1958:</p> <ul style="list-style-type: none"> • s.101 – <u>Incorrect Information</u> - Answers in visa application must be correct (NB s. 101 – an answer may be incorrect even if the person does not know it is incorrect); • s. 104 – <u>Failure to Update</u> – if visa applicant’s circumstances change so that an answer in form becomes incorrect, they must update • s. 103 – <u>Bogus Documents</u> – non-citizen must not give an officer, Department, Tribunal etc 	<p>On any of the following grounds:</p> <ul style="list-style-type: none"> • s. 116(1)(a)/(aa) – <u>Facts or Circumstances</u> – Grant of the visa was based on facts or circumstances and did not exist/never existed • s. 116(1AA) – <u>Identity</u> – the Minister is not satisfied as to the visa holders identity

Australian Citizenship

- Providing false or inconsistent information in a Humanitarian visa application might also jeopardise the pending application for Australian Citizenship made by a family member of the applicant
- Australian Citizenship is extremely important as it:
 - Provides certainty – Citizens obviously avoid the risk of visa cancellation; and
 - Assists family sponsorship – as Family Stream visa applicants made by the family members of Australian citizens are not subject to the lowest priority (pursuant to Ministerial *Direction 80*)
- Providing inconsistent or incorrect information in a Humanitarian visa application may lead to the refusal of a Citizenship application made by a relative of the applicant in Australia, on one of the following grounds:

'Identity'	'Character'
<p data-bbox="78 748 708 796"><i>Citizenship Act 2007, s. 24(3)</i></p> <p data-bbox="173 862 1251 1025">(3) The Minister must not approve the person becoming an <u>Australian citizen</u> unless the Minister is satisfied of the identity of the person.</p>	<p data-bbox="1286 748 1982 796"><i>Citizenship Act 2007, s. 21(2)(h)</i></p> <p data-bbox="1378 862 2379 968">(2) A person is eligible to become an <u>Australian citizen</u> if the Minister is satisfied that the person:</p> <p data-bbox="1378 1033 1454 1082">[...]</p> <p data-bbox="1480 1090 2321 1196">(h) is of good character at the time of the Minister's decision on the application.</p>

Take Home Points

1. Limited Numbers of Humanitarian Visas will be available to people from Afghanistan (until the government decides to expand the numbers, there are only currently 3000 places) – competition will be very, very high
2. Explore Other Visa Options if a member of your immediate family (partner/spouse, fiancé, child, parents, orphan relatives) needs a visa, there may be other options available – seek advice in relation to those;
3. Prepare carefully if you lodge a Humanitarian visa application on behalf of another person, make sure that no incorrect information is provided and that none of the information given is inconsistent with information provided by family members of that person in Australia in their own visa applications
4. Seek Legal Advice – there will shortly be free legal help available to prepare and lodge Humanitarian visa applications through the ASRC – we will provide those details, and names of other lawyers who might assist

Follow Up and Advice

- Recording will be available online
- Obtain advice from a migration lawyer – and if from an agent, then be sure they are registered to provide that advice (<https://portal.mara.gov.au/>)
- SMLS will have a list of specialist migration lawyers and CLCs who might be able to assist to review and lodge applications