



Immigration Advice and Rights Centre Inc.

(ABN: 45 808 320 822)

Level 5, 362 Kent Street Sydney NSW 2000

Ph: +61 2 9279 4300 (Admin Line, 9-5pm)
+61 2 9262 3833 (Advice Line, Tues & Thurs 2-4pm)

Fax: +61 2 9299 8467

Email: iarc@iarc.asn.au Web: www.iarc.asn.au

OFFSHORE REFUGEE & HUMANITARIAN APPLICATIONS¹ (Reflects legislation as at 9 November 2009)

Australia offers a number of types of offshore refugee and humanitarian visas. Each of these is discussed in further detail below, as are the common elements of each.

WHAT ARE THE RELEVANT VISA SUBCLASSES?

Subclass 200 Refugee visa

This is for people outside Australia who are subject to persecution in their home country and are living outside their home country. An applicant must show:

- that there are compelling reasons for the grant of the visa – see below
- that resettlement in Australia is the appropriate course – see below
- if possible, they are registered with the UNHCR or a local refugee organisation – see below
- if possible, they are proposed by a person or organisation in Australia – see below
- if possible, they fit within one of the priority groups referred to below
- they meet health, public interest and special return criteria.

Subclass 201 In-country special humanitarian visa

This is for people outside Australia who are subject to persecution in their home country and are still living in their home country. An applicant must show:

- that there are compelling reasons for the grant of the visa – see below
- that resettlement in Australia is the appropriate course – see below
- if possible, they are registered with a local refugee or human rights organisation (the UNHCR will not register a person if they are in their home country) – see below
- if possible, they are proposed by a person or organisation in Australia – see below
- if possible, they fit within one of the priority groups referred to below
- they meet health, public interest and special return criteria.

Subclass 202 Global special humanitarian visa

This is for people outside Australia who are subject to substantial discrimination amounting to gross violation of human rights in their home country and are living outside their home country. An applicant must show:

- that there are compelling reasons for the grant of the visa – see below
- that resettlement in Australia is the appropriate course – see below
- they are proposed by a person or organisation in Australia – see below
- if possible, they are registered with the UNHCR or local refugee organisation – see below

¹ * IARC does not guarantee the accuracy of any information contained in this information sheet. It contains general information and is not a substitute for legal advice

- if possible, they fit within one of the priority groups referred to below
- they meet health, public interest and special return criteria.

Subclass 203 Emergency rescue visa

This is for people outside Australia who are subject to persecution and there are urgent and compelling reasons for them to travel to Australia. They can be either inside or outside their home country. To be eligible for this visa an applicant must show:

- that they are in an immediately life-threatening situation or facing imprisonment within hours or days, eg because you are going to be forced to return to your country or are facing deportation
- that there are compelling reasons for the grant of the visa – see below
- that resettlement in Australia is the appropriate course – see below
- if possible, they fit within one of the priority groups or have links to Australia as referred to below
- they meet health, public interest and special return criteria – special procedures are established to deal with this on an urgent basis.

These cases are usually referred by the UNHCR or by recognised international organisations. Therefore, an intending applicant should first contact the UNHCR or a similar national refugee or human rights body if possible.

Subclass 204 Woman at risk visa

This is for women outside Australia who are subject to persecution, or registered as being of concern to UNHCR and are living outside their home country without the protection of a male relative and in danger of victimisation, harassment or serious abuse because of their gender. Applicants will usually be assessed as having male protection if they are married. In addition to these criteria an applicant must show:

- that there are compelling reasons for the grant of the visa – see below
- that resettlement in Australia is the appropriate course – see below
- if possible, they fit within one of the priority groups referred to below.
- they meet health, public interest and special return criteria.

The types of circumstance that a woman must be suffering in the country she is living in include violence, sexual abuse, extortion, exploitation, discrimination or unlawful detention. She must be experiencing this because she is a woman.

WHAT FACTORS WILL ASSIST MY APPLICATION?

Do I need to come from a particular country?

Although an applicant does not have to come from any particular country to be eligible for an offshore humanitarian visa, the Australian government limits the number of places available in the Humanitarian Program each year. These places are allocated to overseas posts for their regional programs. The regional programs cover Asia, the Middle East, and Africa.

It is possible to apply for a refugee or humanitarian visa anywhere in the world by applying at the nearest overseas post (ie Australian embassy). For countries listed refer to Schedules A and B in this information sheet applications must be lodged at specified places (see p8).

Do I need to have a particular connection to Australia?

In addition to the criteria for each visa, the Department of Immigration has a list of priorities which it uses when processing these applications. If your application fits within one of the priority categories then this will assist your application. Priorities are as follows:

- **Top priority** - Cases in urgent need of resettlement in Australia – usually these are UNHCR referrals, in particular Emergency Rescue visas
- **Priority One** – applicants with family ties in Australia, ie a spouse, child, , parent, or sibling in Australia.
- **Priority Two** – applicants with a grandparent, grandchild, aunt, uncle, niece, nephew or cousin in Australia.

- **Priority Three** – applicants with friends or distant relatives in Australia, or who have been proposed by a body legislature or a cultural, religious or ethnic organisation in Australia.

WHAT EVIDENCE TO PROVIDE

United Nations High Commissioner for Refugees (“UNHCR”) & refugee organisations

Many countries around the world have signed and ratified the Refugees Convention. This means that these countries agree to give temporary or permanent protection to people in their country who meet the UN definition of a refugee.

Countries **which are signatories** to the Refugees Convention will generally have a refugee assessing authority. You should apply to those authorities for refugee status before applying to migrate to Australia as a refugee. If you are in a country which can or will give you protection then you are unlikely to succeed in an application to migrate to Australia.

If you are in a country **which is not a signatory** to the Refugees Convention then you need to apply directly to the nearest office of the UNHCR for registration. The UNHCR may register you either as a refugee (in which case they will assist to resettle you) or as a person “of concern” to the UNHCR (in which case they will provide some limited assistance). Registration with the UNHCR does not guarantee that your application for a refugee visa will be successful but it does significantly strengthen your case.

If you cannot register with the UNHCR then you should, if possible, register with an appropriate refugee or human rights group such as the Red Cross.

Contact details for the UNHCR and Red Cross in NSW are on page 9 of this Information Sheet.

Proposal

For certain refugee and humanitarian visas, you must have an Australian citizen or permanent resident (over 18 years of age) or community organisation in Australia who is willing to support your application (“proposer”). The proposer must complete a valid form 681 *Refugee and Special Humanitarian Proposal* to submit with your application.

Although not legally required to do so, the proposer will be expected to meet the costs incurred for medical examinations and travel and related costs for the applicant and their dependants. If the proposer is willing to provide additional support (such as accommodation or financial assistance) this may also assist your application.

Compelling reasons

You must show that there are “compelling reasons” for the grant of a refugee or humanitarian visa. The Department of Immigration will consider four factors in assessing whether there are compelling reasons:

- the level or degree of persecution or discrimination
- your connection with Australia
- whether there is any other country which can provide resettlement – eg if you are a citizen of, or have a valid visa for, another country, and
- the capacity of the Australian community to provide permanent settlement.

Appropriate course

Your case officer will need to be satisfied that resettlement in Australia is the “appropriate course” for you and “not contrary to the interests of Australia”. In assessing this they will look at whether you:

- can return to your country safely
- have been accepted for settlement in another country
- have close family in, or other ties with, another country, and
- are under pressure to leave the country you are presently in.

Subject to persecution or substantial discrimination

You will generally need to show that you are subject to persecution or substantial discrimination amounting to a gross violation of human rights in your home country. Although not always the case, generally the reasons for the persecution should be linked to race, religion, nationality, membership of a particular social group or political opinion.

You need to establish that you have personally experienced persecution or discrimination or have a well-founded fear that this will happen to you in the future. It is not sufficient that you belong to a group that suffers from persecution or discrimination. You must show that you have been singled out or have personally suffered persecution or substantial discrimination. This should either be inflicted by the government or the government in your home country must tolerate it or be unwilling or unable to protect you. Some examples of evidence which may show this include:

Generally

Evidence;

- of having a high public profile
- of having family members who have political or other associations
- of acts or opinions that have been attributed to the applicant by the authorities
- which shows friends, relatives of others have been persecuted or discriminated against for the same reasons

What is Persecution?

Persecution includes;

- threats to life, liberty or security
- continued or periodic harassment, detention or arrest
- forced exile or relocation to a remote area
- arbitrary arrest or detention
- torture or cruel or inhuman treatment
- slavery
- confiscation of property, or
- forced indoctrination or re-education

What is Substantial discrimination

Substantial discrimination includes:

- arbitrary interference with your privacy, family, home or correspondence
- deprivation of all means of making a livelihood, being paid unreasonably low wages or not being able to work at an appropriate job
- being forced to live in substandard dwellings
- being excluded from education
- being forced to give up social or civil activities
- being constantly watched or pressured to become an informer
- removal of citizenship rights, or
- being denied a passport.

Seeking economic betterment is not persecution or substantial discrimination.

HEALTH AND CHARACTER

All applicants must satisfy relevant health and character criteria. This will involve undergoing appropriate medical examinations, providing appropriate criminal record checks and passing general character requirements. Detailed discussion of these criteria and how to satisfy them is set out in IARC information sheets #19 *Health* and #20 *Character*.

Applicants should be aware that all members of their family unit (ie spouse, dependent children and some dependent relatives) will also need to satisfy the health and character criteria **even if they are not applying to migrate to Australia**. If any member of the family unit fails the health test the visa application may be refused. In some circumstances the health criteria may be waived (at the Minister's discretion). For more detail about this please see IARC's information sheet #19 Health.

MAKING AN APPLICATION

You can download the forms listed below from the Department of Immigration's website (www.immi.gov.au) or visit the Department and ask for the specific forms listed below, provided without charge.

Application form and fee

- Form 842 *Application for an offshore humanitarian visa* is the application form to be completed by the applicant
- A proposer **must** complete form 681 *Refugee Special Humanitarian Proposal* for a subclass 202 visa, and **may** complete that form for a subclass 200, 201 or 204 visa (see pages 1 and 2 of this information sheets for more information on those subclasses).
- There is no application fee for offshore refugee or humanitarian visas.
- It is recommended that you read the Department's information sheet 964i *Entry to Australia Offshore Humanitarian Program* prior to making an application.

For assistance with filling out forms, contact your nearest Migrant Resource Centre. A list of those centres is available on the Department's website at: <http://www.immi.gov.au/>.

Documentary evidence to attach

The following should be included with the application:

- four passport photographs of each person included in the application with the name of the person written on the back, and
- certified copies of your passport, identity or travel documents.

Also attach to the application all evidence in support of the application. This could include:

- a statutory declaration or statement setting out clearly and concisely the basis for belief that there is a real risk of persecution or discrimination – this should include details such as dates, incidents or events which show that persecution or human rights abuses have been experienced in the past, or would be possible if forced to return to one's home country
- a statement as to why you did not seek refugee status immediately after leaving your home country where you have travelled through several countries
- evidence of any links you have to Australia – the overseas post may doubt the genuineness or closeness of any links to Australia which aren't mentioned in the initial application
- statutory declarations or letters from individuals or organisations who can support your claims
- newspaper clippings which give details of incidents or events in which you were involved
- any objective evidence of your claim such as reports by international organisations (eg Amnesty International or the Red Cross) about treatment of people in your situation
- any medical or psychological evidence of your claims
- any documentary proof such as official documents (eg court orders, warrants), letters, photographs or emails relevant to your claim, and
- evidence of registration with the UNHCR or any other recognised human rights organisation or refugee group, such as the International Red Cross.

THE “SPLIT FAMILY PROVISIONS” - IF YOU ARE IN AUSTRALIA AND YOUR FAMILY IS OVERSEAS

When can I sponsor my family under the split family provisions?

If you hold or held a refugee or humanitarian visa and are separated from your immediate family (ie your husband, wife, de facto partner or dependent children) then you may be able to bring your family to Australia under the Humanitarian Program without them having to prove any persecution, discrimination or human rights abuses. To qualify for the visa:

- you must have told the Department of Immigration about the family member before the date you were granted your refugee or humanitarian visa
- the applicant continues to be a member of your immediate family, and
- the applicant must apply within **five years** of the date of grant of your visa.

What type of visa will my family be eligible for?

You may propose your family member for the same type of visa you hold if you hold or held a:

- refugee (subclass 200)
- in-country special humanitarian (subclass 201)
- global special humanitarian (subclass 202)
- emergency rescue (subclass 203), or
- woman at risk (subclass 204) – although this not possible where you and your spouse were divorced or separated or you did not declare your spouse to the Department of Immigration when applying for your own visa.

You may propose your family member for a global special humanitarian visa if you hold or held a:

- special assistance category visa – Burmese from Burma; Burmese in Thailand; Cambodian; Citizens from the Former Yugoslavia; East Timorese in Portugal, Macau or Mozambique; Minorities of the Former USSR; Sudanese; Sri Lankan; Ahmadi and Vietnamese
- permanent protection visa (subclass 866), or
- resolution of status visa (subclass 851) granted on or after 9/08/08.

What are the advantages and disadvantages of the split family provisions?

There are a number of advantages to bringing your family under the split family provisions rather than another type of visa (eg spouse, child, aged dependent relative), namely:

- there is no application fee
- the Australian government will pay for the expenses associated with their medical assessments
- on arrival in Australia they will have access to greater support (eg social security payments), and
- the Australian Embassy processing the application cannot request that the applicant provide an assurance of support.

However, applicants should be aware that there is no review right in relation to any decision to refuse the application. If you are unsure of which visa you should apply for you should obtain migration advice from a registered migration agent about your specific circumstances.

How do I apply for my family under the split family provisions?

An application to bring your family under the split family provisions is dealt with in the same way as any other offshore humanitarian application:

- the applicant (ie your family) must complete Form 842 *Application for an offshore humanitarian visa*
- the proposer (ie you) must complete Form 681 *Refugee Special Humanitarian Proposal*, and
- you must attach:
 - 8 passport photographs of each person included in the application with the name of the person written on the back
 - certified copies of their passport, identity or travel documents

- certified copies of your passport, identity or travel documents showing your permanent residence or Australian citizen and the date that you were first granted permanent residence in Australia, and
- evidence of your relationship with the applicants (eg birth certificates, marriage certificates).

When completing Form 842 *Application for an offshore humanitarian visa* the applicant does **not** have to give details of any persecution, discrimination, human rights abuses or fears about returning to their homeland. Where the form asks for this information (eg if it asks why the applicant left their home country, why they fear returning, why they do not believe the authorities can protect them or what harm or mistreatment they believe they will suffer) the applicant should write “APPLICATION UNDER SPLIT FAMILY PROVISIONS”.

IF YOU AND YOUR FAMILY ARE OVERSEAS

If your family members are with you overseas then you can include members of your immediate family (ie spouse, children and some dependent relatives) on your application and bring them to Australia with you. Your family members will have to meet health, public interest and special return criteria.

VISA APPLICATION PROCESS

- Step 1** Proposers should complete Form 681 *Refugee and Special Humanitarian Proposal*. Although the proposer does not have to know all the details of the applicant’s claim, if they can confirm some or all of the applicant’s claim they may also attach separate statutory declarations or statements giving any relevant information. The completed form and any attachments should be sent to the applicant overseas to be submitted with the application.
- Step 2** The Applicant should complete Form 842 *Application for an offshore humanitarian visa*.
- Step 3** Attach the evidence and documents mentioned above.
- Step 4** Attach a cover letter to the application form with
- your name;
 - current address;
 - reasons for applications; and
 - list of documents attached to application (if you are waiting for information to be included with the application say that it will be provided to the Department as soon as it is received).
- Also offer to provide any further information required by the Department of Immigration.
- Step 5** Keep a photocopy of all the documents you submitted to the Department of Immigration
- Step 6** Lodge these forms at the appropriate place of lodgment (see next page for details of where to lodge your forms). **Remember to keep your receipt as it is proof that you lodged the application.**

Note: Where to Lodge your application:

(a) applications for Offshore Refugee and Humanitarian (Class XB) visa which:

- are made by applicants **present in** countries listed in **Schedule A** (see page 11) and
- include a Proposer form (681)

must be lodged at the Offshore Humanitarian Processing Centre in the NSW DIMA office:

By Post: NSW Offshore Humanitarian Processing Centre

DIAC

GPO Box 9984

SYDNEY NSW 2001 or

By Courier (No hand deliveries)

NSW Offshore Humanitarian Processing Centre

DIAC

Level 3

26 Lee St

SYDNEY NSW 2000

(b) applications for Offshore Refugee and Humanitarian (Class XB) visa which:

- are made by **applicants present in** countries listed in **Schedule B** (see page 11) and
- include a Proposer form (681)

must be lodged at the Offshore Humanitarian Processing Centre in the Victoria DIMA office:

By Post: VIC Offshore Humanitarian Processing Centre

DIAC

GPO Box 241

MELBOURNE VIC 3001 or

By Courier (No hand deliveries)

VIC Offshore Humanitarian Processing Centre

DIAC

2 Lonsdale St

MELBOURNE VIC 3000

All other applications should continue to be lodged at the nearest Australian mission

If you are unsure about where to lodge your application, please seek advice from a registered migration agent.

Warning: If your application is lodged in the wrong place, it will not be valid, and will not be processed.

Remember to tell the Department of any change in your circumstances, for example if you change your address or any of your family relationships end.

Once you have lodged your application it will be assessed by the overseas post where you lodged that application. Applications may be referred to the UNHCR or another national or international human rights organisation to check the claims made by you. You and your family members will have to undergo a medical examination and police clearance certificates will need to be obtained for every country where you have lived for more than 12 months over the past four years.

You will usually then be interviewed to check whether your claims are genuine, to get any additional information required and to assess whether settlement is the most appropriate solution. Following the interview your application will then be accepted or denied. If your application is denied, you will not be able to have the decision reviewed or appealed in Australia.

CONTACT INFORMATION

UNHCR Regional Office in Canberra (for Australia, New Zealand, Papua New Guinea and the South Pacific)

3 Lyons Place
Lyons, ACT 2606
Australia

Telephone: (02) 6260 3411
Fax: (02) 6260 3477

International Committee of the Red Cross

Suite 104a
Level 1
55 Grafton St
Woollahra NSW 2025
Phone: (02) 9388 9039
Fax (02) 9388 9042
Internet www.icrc.org

Australian Red Cross NSW State Office

159 Clarence St
Sydney NSW 2000
Phone: 61 (02) 9229 4111
Freecall: 1800 246 850
Fax: 61 (02) 9229 4244
Internet www.redcross.org.au
Email info@nsw.redcross.org.au

Department of Immigration and Citizenship (DIAC)

Counter service all NSW offices

9am–4pm Monday to Friday

Sydney CBD 26 Lee Street, Sydney 2000
GPO Box 9984, Sydney, NSW 2001

Parramatta 9 Wentworth St
Parramatta NSW 2150
GPO Box 9984, Sydney, NSW 2001

Family Visitors Network: 131 881
National Telephone Inquiry Line: 131 881
Website: www.immi.gov.au

IMMIGRATION ADVICE AND RIGHTS CENTRE INC (IARC)

Administration line: (02) 9279 4300 (between 9am and 5pm)
Website: www.iarc.asn.au

Telephone Advice	Face-to-face advice (by appointment only)
(02) 9262 3833 Tuesday and Thursday 2.00pm–4.00pm	Contact us to make an appointment at: Immigration Advice and Rights Centre Inc. Level 5, 362 Kent Street Sydney NSW 2000 Ph: +61 2 9279 4300 (Admin Line, 9-5pm)

For information regarding support services for proposers and/ or entrants, contact:

- **ANGLICARE:** (02) 9755 0233
Or
- **Settlement Services International (SSI):** (02) 9799 5455

Schedule A

Algeria	Madagascar
Angola	Malawi
Benin	Mali
Botswana	Mauritania
Burkina Faso	Mauritius
Burundi	Morocco
Cameroon	Mozambique
Cape Verde	Namibia
Central African Republic	Niger
Chad	Nigeria
Comoros	Republic of Congo
Côte d'Ivoire	Rwanda
Democratic Republic of Congo (formerly Zaire)	São Tomé and Príncipe
Djibouti	Senegal
Egypt	Seychelles
Equatorial Guinea	Sierra Leone
Eritrea	Somalia
Ethiopia	South Africa
Gabon	Sudan
The Gambia	Swaziland
Ghana	Tanzania
Guinea	Togo
Guinea-Bissau	Tunisia
Kenya	Uganda
Lesotho	Western Sahara
Liberia	Zambia
Libya	Zimbabwe

Schedule B

Afghanistan	Pakistan
Bahrain	Qatar
Iran	Saudi Arabia
Iraq	Syria
Jordan	Turkey
Kuwait	United Arab Emirates
Lebanon	Yemen
Oman	