
Access to family reunion for people seeking asylum and refugees June 2021

Background

Australia pursues policies towards refugees and people seeking asylum that prolong family separation and exacerbate its negative impacts. Many of these policies are applied selectively, targeting people who attempt to or have successfully arrived in Australia, seeking asylum without a valid visa. These policies apply to both adults and children, including people who arrive in Australia as unaccompanied minors.

A key condition of both the Temporary Protection Visa [TPVs] (subclass 785) and the Safe Haven Enterprise Visa [SHEVs] (subclass 790) is that, unlike holders of Permanent Protection Visas (PPVs), holders of these visas, and any people who have arrived by boat after 13 August 2012, are ineligible to propose relatives for resettlement under the Refugee and Humanitarian program. [i] By virtue of not holding citizenship or a class of permanent residence visa, they are also ineligible to act as sponsors under the Family Stream of Australia's overall Migration Program.

Refugees on TPVs and SHEVs are subject to Condition 8570, which limits travel outside of Australia to particular "compassionate or compelling circumstances." [ii] This restriction, combined with the financial and logistical difficulties of organising travel overseas, makes it challenging for refugees on temporary visas to reunite temporarily with family members in third countries.

Refugees who hold PPVs, including those who have arrived without valid visas before 13 August 2012, are accorded lowest priority for family reunion under Australia's annual humanitarian intake. [iii] Moreover, in December 2018, the Australian Government introduced Direction 80, which mandated that refugees on PPVs who had arrived without valid visas would be accorded lowest priority for family reunion under the Family Stream of the overall Migration Program. [iv]

Given the significant backlog of family reunion visa applications in Australia's Special Humanitarian Program (SHP) and the Family Stream of the overall Migration Program, this lowest priority designation effectively means that refugees in these cohorts remain at the end of the application queue indefinitely.

Australia's offshore processing policies have also created situations of family separation, both by design and in implementation. These include circumstances in which immediate family members arriving before 19 July 2013 have been assessed under the regular or "Fast-Track" refugee status determination (RSD) process onshore and family members arriving after 19 July 2013 have been sent to Nauru or Papua New Guinea (PNG). It also

includes individuals being evacuated or transferred for medical reasons from Nauru or PNG to Australia without immediate family members; and individuals being assessed as eligible or ineligible for resettlement to the United States without immediate family members. [v]

Finally, people seeking asylum in Australia have no access to family reunion whilst their claim for protection is being assessed and determined. In recent years, there have been growing delays and backlogs in both the regular and fast-track RSD processes in Australia, including in the court system. These delays and backlogs have also prolonged the length of time that individuals have been separated from their family members.

Key Statistics

- As of May 2021, there are 18,318 refugees on forms of temporary visas who do not have access to family reunion pathways in Australia. [vi]
- As of May 2021, there are 105,498 people seeking asylum in Australia who do not have access to family reunion pathways in Australia. [vii]
- Of the 4,183 people sent to offshore processing facilities in Nauru and PNG, 2,306 people are either in Australia or remain on Nauru and PNG without access to family reunion pathways. [viii]

Key Issues

Prolonged family separation has significant negative impacts on the physical and mental wellbeing of everyone involved. Prolonged family separation is a predictor of stress, sleeplessness, nightmares, poor concentration, feelings of guilt, depression, headaches, pain, depression, anxiety, and post-traumatic stress disorder (PTSD). A key factor in the onset of these symptoms is the worry about the safety and security of family members who remain in situations where they may be at risk of persecution or harm.

Prolonged family separation also affects an individual's ability to integrate in Australia, whether it be because they are forced to prioritise short-term income-generating activities over education or contributing to the community, or because they are reluctant to put down long term financial roots.

Prolonged family separation also alters relationship dynamics within families. Specifically, Jesuit Refugee Service Australia has worked with many people whose relationships with spouses, parents, children, and siblings overseas have broken down. This can happen for a range of reasons, including because the person living in Australia is unable to provide financially for their family; because family members left behind do not understand the reasons for prolonged separation and lose trust in their kin living in Australia; or because a child left behind at a young age has grown up without a parent. [ix]

Prolonged family separation creates real risks of constructive refoulement. Constructive refoulement may occur when an individual is subject to conditions or circumstances that they find difficult to tolerate, prompting them to consider returning to a situation of persecution or significant harm. [x]

Our Recommendation

The Australian Government should provide access and eligibility to family reunion pathways for all refugees regardless of their mode of arrival or visa status upon arrival. The Australian Government should introduce a new and additional family reunion visa stream within the Special Humanitarian Program (SHP), which should be made available to all refugees in Australia.

Further Resources

[Australian Human Rights Commission \(2019\), Lives On Hold: Refugees and Asylum Seekers in the 'Legacy Caseload'.](#)

[Human Rights Law Centre \(2020\), Together in Safety: A Report on the Australian Government's Separation of Families Seeking Safety.](#)

[Jesuit Refugee Service \(JRS\) Australia \(2020\), Submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry on Family or Partner Reunions.](#)

[Oxfam Australia \(2019\), Stronger Together: The Impact of Family Separation on Refugees and Humanitarian Migrants in Australia.](#)

[i] Andrew & Renata Kaldor Centre for International Refugee Law (2020), Research Brief: Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs).

[ii] The Humanitarian Group (2017), Travelling Outside Australia on a TPV or SHEV.

[iii] Australian Human Rights Commission (AHRC) (2019), Lives on Hold: Refugees and Asylum Seekers in the Legacy Caseload.

[iv] AHRC (2019), Lives on Hold: Refugees and Asylum Seekers in the Legacy Caseload.

[v] Jesuit Refugee Service (JRS) Australia (2021), Submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Efficacy, Fairness, Timeliness, and Costs of the Processing and Granting of Visa Classes which Provide for or Allow for Family or Partner Reunions.

[vi] Australian Government: Department of Home Affairs (2021), IMA Legacy Caseload – Report on Processing Status and Outcomes, May 2021.

[vii] Australian Government: Department of Home Affairs (2021), IMA Legacy Caseload – Report on Processing Status and Outcomes, May 2021.

[viii] Refugee Council of Australia (2021), What We Have Learnt From The Latest Responses to Senate Questions on Notice, June 2021

[ix] Jesuit Refugee Service (JRS) Australia (2021), Submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Efficacy, Fairness, Timeliness, and Costs of the Processing and Granting of Visa Classes which Provide for or Allow for Family or Partner Reunions.

[x] Australian Human Rights Commission (AHRC) (2019), Lives on Hold: Refugees and Asylum Seekers in the Legacy Caseload.