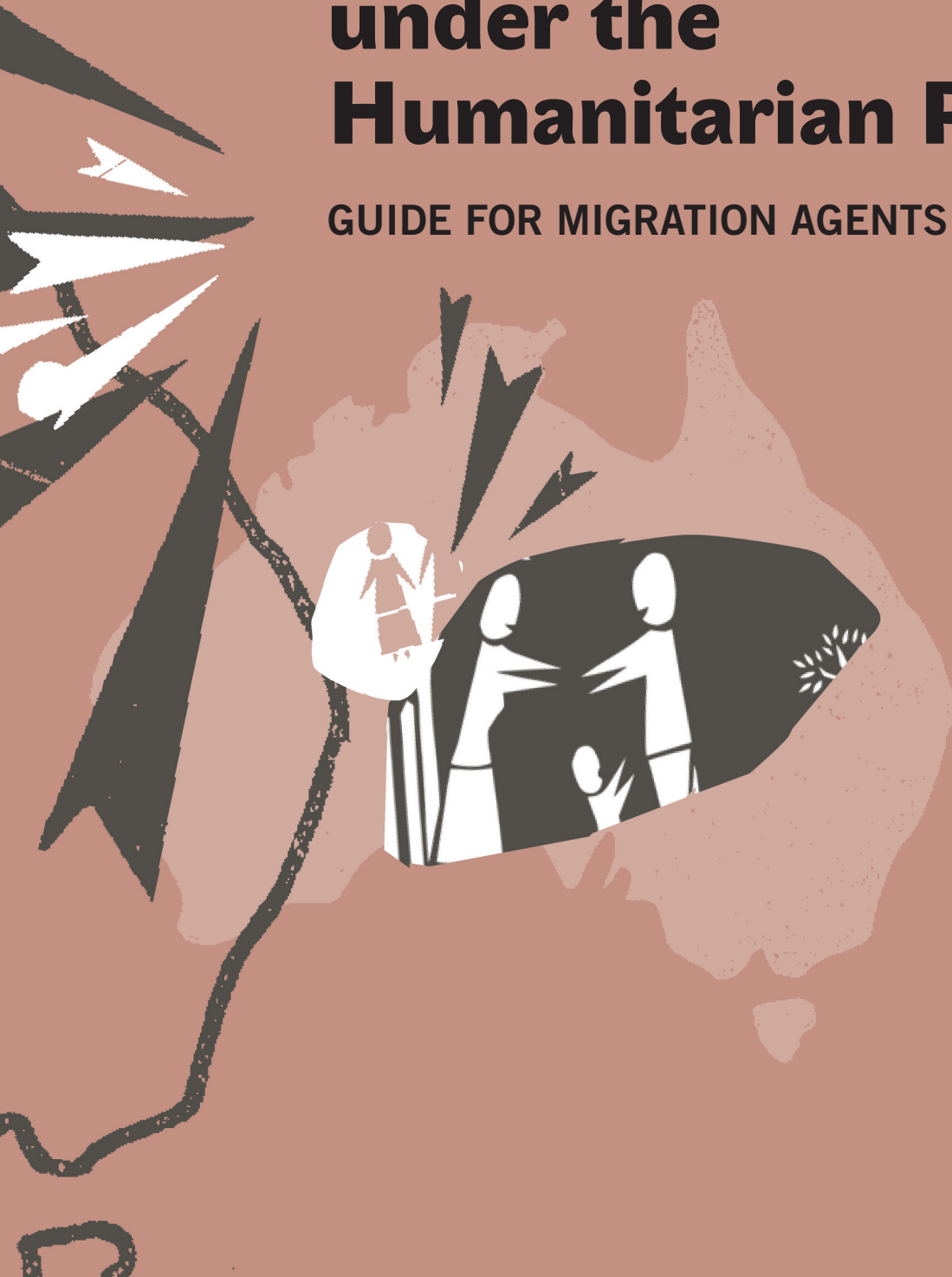


# Family Reunion

## under the Humanitarian Program

GUIDE FOR MIGRATION AGENTS AND VOLUNTEERS



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Assistance with content and editing was kindly provided by the Immigration Advice and Rights Centre, Migrant Resource Centre of South Australia, Office of the Migration Agents Registration Authority Advisory Board, Refugee Advice & Casework Service and Salvos Legal.

# Using this Guide

This guide is for volunteers assisting people who are applying to bring family members to Australia under the offshore Humanitarian Program, and particularly as 'immediate family' members (also known as 'split family' applications). Family reunion is a vital part of the resettlement process.

The guide can be used: by registered migration agents giving individual advice and group information sessions; community volunteers assisting in form-filling; and as a 'self-help' kit for those able to prepare their own applications.

The first part of the guide gives a quick overview of Australia's Humanitarian Program and its visa options against the broader migration program. The next part outlines in more detail 'immediate family' and 'non-immediate family' applications and chances of success. The final part includes an outline of what a registered migration agent's advice should cover and key questions to ask clients; a 'To Do' list for proposers and applicants, and information for volunteers filling in Forms 842 and 681.

The guide is written in plain English as much as possible.

## **MODELS OF SUPPORT**

There are various ways to assist humanitarian family reunion. For example, migration agents can provide assistance either by: giving initial advice; helping to prepare an application for lodgment without becoming the authorised recipient; taking on the entire case; working pro bono or for a reduced price; or working collaboratively with community legal centres or other support groups. Agencies that develop and implement models to assist humanitarian family reunion should share information with other agencies about the details and effectiveness of their models. This will help to further improve this valuable community service in the future.

## **ASSISTING HUMANITARIAN ENTRANTS**

Special care is needed in this area when working with humanitarian entrants. People from refugee backgrounds can experience strong fear reactions which may compromise their ability to communicate. Trauma and stress can cause fear, avoidance, sensitivity, irritability, insomnia, panic attacks, physical pains, preoccupation with the events and reliving the trauma. This condition can continue for years. Refugees may initially find it difficult to trust people, particularly those in authority.

It is important to also be aware of cultural issues and assumptions, and have some knowledge of the conflict situations humanitarian entrants have come from.

At the same time it is important to acknowledge, and utilize where possible, the resilience and skills of people who have survived trauma and conflict.

# Overview

## Australia's Humanitarian Program

The Humanitarian Program is part of Australia's contribution to the international protection of refugees. It consists of:

### **ONSHORE – PROTECTION VISAS (CLASS XA)**

People who are in Australia seeking refugee status can apply for a Class XA subclass 866 Protection visa.

### **OFFSHORE - REFUGEE AND HUMANITARIAN VISAS (CLASS XB)**

For people outside Australia in need of humanitarian assistance applications can be made for a Refugee and Humanitarian (Class XB) visa. Applications are assessed against the criteria of all of the five subclasses below:

#### **REFUGEE VISA (SUBCLASS 200)**

For people subject to persecution in their home country and in need of resettlement. Most applicants here are referred to the Australian Government by the United Nations High Commissioner for Refugees (UNHCR).

#### **IN-COUNTRY SPECIAL HUMANITARIAN PROGRAM VISA (SUBCLASS 201)**

For people living in their home country and subject to persecution in their home country.

#### **GLOBAL SPECIAL HUMANITARIAN PROGRAM VISA (SUBCLASS 202)**

For people who, while not being refugees, are subject to substantial discrimination and human rights abuses in their home country. They must be proposed for entry by an Australian citizen, permanent resident, eligible New Zealand citizen, or an organisation operating in Australia.

#### **EMERGENCY RESCUE VISA (SUBCLASS 203)**

Accelerated processing for people subject to persecution in their home country and where delays could put their life or freedom in danger.

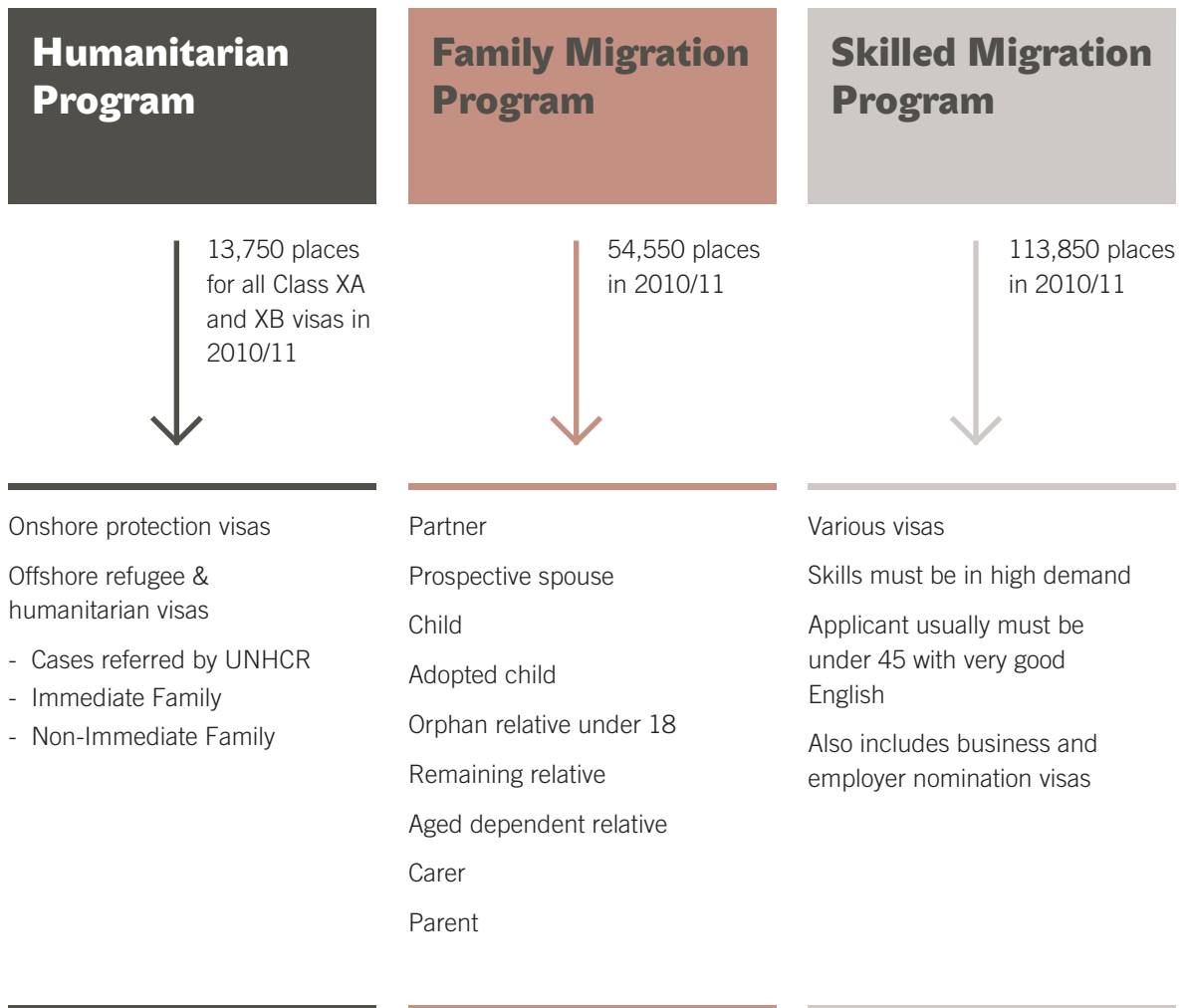
#### **WOMAN AT RISK VISA (SUBCLASS 204)**

For female applicants, and their dependents, who are subject to persecution or are of concern to UNHCR, are outside their home country without protection of a male relative and in danger of victimisation, harassment or serious abuse because of their gender. Most applicants considered are those who are referred to the Australian Government by UNHCR.

In most Class XB cases applicants must be outside their home country when they apply. However for immediate family members (see below), applicants do not have to be outside their home country.

**The number of applications received for resettlement from offshore is far greater than the visas available each program year.**

# Permanent Visa Pathways For All Applicants



# Refugee Family Reunion Options \*

## 'Immediate Family'

Proposer's married or de facto partner and dependent children; or if proposer under 18, their parents and parent's dependent children



Proposer holds a Protection or Refugee and Humanitarian permanent visa (subclass 866, 851, 200, 201, 202, 203, 204 (note subclass 204 has limitations))



Relationship declared before proposer's visa granted  
Apply within 5 years of visa grant  
Family can be inside or outside of home country



'Immediate family' application under Humanitarian Program.  
Prove relationship existed at time of proposer's visa grant (or application for visa 866) and continues till time of decision.



No application fee  
Forms 681,842  
Maybe Forms 956, 956A, 424A



Good chance of success if fit criteria.

## Non – Immediate Family

OR Immediate Family but either:

- Proposer didn't declare relationship before visa grant
- Relationship started after proposer's visa was granted (or applied for - 866 proposer)
- It's over 5 years since visa grant
- Proposer turns 18 before decision



Family Migration Program options  
Can be inside or outside home country



### Possible Options

- Partner
- Prospective spouse
- Dependent & adopted child
- Orphan relative < 18
- Remaining relative
- Aged dependent relative
- Carer
- Parent
- Contributory parent



Application fee  
'Assurance of support' and 'settled' criteria can apply



Good chance of success if fit criteria.  
Review rights



Humanitarian Program proposal  
Must be outside home country  
Must prove will suffer serious harm in home country



No application fee  
Forms 681,842  
Maybe Forms 956, 956A, 424A



Only small chance of success.  
Often doesn't fit government quota and priorities

Proposer – citizen or permanent resident in Australia proposing family members under the Humanitarian program.

Applicant – the person/s applying for the visa.

\* Note: This Table does not include skilled, business or temporary visa options.

# Applications

**Even if family members are genuine refugees, a family reunion application under the humanitarian program for someone who does not fit within the 'immediate family' provisions has a high chance of failing as the number of applications received is far greater than the visa places available.**

## **IMMEDIATE FAMILY – SPOUSE AND DEPENDENT CHILDREN**

A citizen or permanent resident who is, or has been, the holder of an onshore Protection (subclasses 866) visa or offshore Refugee and Humanitarian (subclasses 200 – 204) visa can propose their 'immediate family' for a permanent visa under the Humanitarian Program<sup>1</sup>.

Immediate family<sup>2</sup> are a person's spouse and dependent children. 'Spouse' can be married or living together as a married couple (de facto). Australian law only accepts marriage or de facto relationships between two partners. You must not have any other spouses or de facto relationships. The law also accepts same sex relationships between two people.

'**Dependent children**' are children (natural, adopted or step children) under 18. Children 18 and over who normally live with you, are not married, and have to rely on you for support, or children over 18 who have a serious disability and cannot work, may also be immediate family<sup>3</sup>.

### **'Woman At Risk' Visa Limitations**

**A woman on a 'Woman at Risk' (subclass 204) visa cannot bring her current or former spouse or de facto under the 'immediate family' regulations (Reg 204.212) if at the date she got her visa she was either:**

- divorced or permanently separated from him; or
- still married or de facto and did not tell Immigration.

**Further, a spouse or prospective spouse (fiancée) visa application under the Family Migration Program cannot be made within 5 years of the grant of the 204 visa in relation to that applicant.**

**The reason for this is that the basis of a 204 visa is that the woman is at risk because she does not have the protection of a male relative and is in danger of serious abuse because of her sex.**

1 Applies to offshore Refugee and Humanitarian subclass 200, 201, 203, 204 visas, onshore Protection subclass 866 visas, subclass 851 Resolution of Status visas. See generally Regs. 200.211(2); 201.211(2); 202.211(2); 203.211(2); 204.211(2).

2 'Immediate family' is defined in Regulation 1.03 and reg 1.12AA Migration Regulations 1994

3 Customary adoption may be considered where formal adoption is not available.

'Dependence' for over 18's has a broader definition in the refugee and humanitarian program. It includes economic OR physical OR psychological dependence. Psychological dependence should be more than close family bonds, according to Departmental policy.

## IMMEDIATE FAMILY OF MINORS

If the proposer is under 18, the applicant's parent/s and the parent's dependent children are considered 'immediate family'. The proposer must be under 18 at the time the parent/s apply AND still be under 18 at the time of the decision.

**Timing is critical because if a minor turns 18 before the decision, the application will be treated as a non-immediate family one. Detailed information should therefore be included in the application about the risks of harm if the family had to return to their country of origin.**

**The Department accepts forms that are signed by minors who have arrived without a parent or guardian.**

## CAN THE WHOLE FAMILY GROUP BE INCLUDED?

Often the family group overseas will consist of more than just 'immediate family'.

These other family members, who may live with the main applicant and be dependent, might be considered by Immigration as 'members of the family unit' rather than as 'immediate family'. If so, the law treats them differently to 'immediate family'. They have to be outside their home country and show they will suffer harm if they had to return to their home country<sup>4</sup>. 'Immediate family' do not have to be outside their home country. They just have to prove the immediate family relationship (as well as the other criteria in the Regulation).

Sometimes it may be unclear if someone is 'immediate family'. For example, it could be argued that a niece or nephew who came to live with the family after his/her parents died could be adopted (formally or by custom) and therefore be a dependent child.

Where there are family members who live together but are clearly not 'immediate family' (e.g. parents of an over 18 year old proposer, or a married child of the proposer whose partner is alive and living with the family) then it may be best to put a separate application in for them and include detailed information about the risks of harm feared (i.e. in Part G 'of Form 842 'Humanitarian Claims'). It would also need to be made clear in the separate applications that the family are linked.

If non-immediate family members are put on the application form as immediate family<sup>5</sup> then Immigration may remove them and treat them as a separate application.

## KEY CRITERIA FOR AN 'IMMEDIATE FAMILY' VISA

- the family members must have been 'immediate family' on the date the proposer was granted their visa (for subclass 200, 201, 202, 203 and 204 visa holders), or on the date the proposer applied for their visa (for subclass 866, 851 or special assistance visa holders)
- the proposer must have told the Department of Immigration about the family members before the date the proposer was granted a refugee or humanitarian visa
- the applicant must continue to be a member of the proposer's immediate family,
- the applicant must apply within five years of the date of grant of the proposer's visa.
- See Regulations 200-204 for other criteria.

**Applications are assessed against criteria for all the Class XB visas.**

<sup>4</sup> See generally Regs. 200.211(1)(a); 201.211(1) (a); 202.211(1) (a)

<sup>5</sup> Reg. 202.311 allows a family unit member to be included into applications where humanitarian claims are proved and the person is outside their home country.

## NON 'IMMEDIATE FAMILY' APPLICATIONS

Any Australian citizen, permanent resident or eligible New Zealand citizen, or any community group or organisation can propose people for a Refugee and Humanitarian visa. This includes:

- family members who do not fit the definition of 'immediate family' (parents, brothers, sisters, aunts, uncles, nephews, nieces and non-dependent children);
- immediate family members who do not qualify for an immediate family application. For example, if it is more than 5 years since the grant of the proposer's visa, or if the proposer did not tell Immigration about the relationship before the grant of visa, or if the relationship commenced after proposer's visa was granted (or in subclass 866 cases, applied for).

These are different to 'immediate family' as the applicant must usually be outside their home country<sup>6</sup> and must have strong humanitarian claims (i.e. show that they will suffer serious harm if they have to return. Examples are threats to life, torture, detention, interference in home and family, not being allowed to work or get education. Having to live in economic poverty is not considered persecution.

Applicants should tell their own personal story of why they left their home country. They should say what happened to them specifically and not just give a general account of what has gone on in their country. Give as much detail as possible – when things happened, where they happened, the names of people involved, why these things happened to the applicant, and any other details that will help the person making a decision on the application to understand the story better. Extra pages can be added to the application. These should be signed and dated by the applicant with a reference to what question the information refers to.

**Compelling Reasons** Information should be given about what family or other connections the applicants have to Australia, what skills and employment prospects they have which would help them settle and integrate, and that there is no other third country where they can settle and be secure.

## Chances Of Success

**Decisions are made on what are the most 'compelling' cases based on the applicants' connection to Australia, the threat of harm in the home country, whether there is another safe country to go to and whether it is in Australia's interests and global priorities.**

Huge numbers of non-immediate family proposals are lodged each year under the Humanitarian Program. It is most likely that only 'immediate family' members will get visas. Even where family members all live together as one extended family they may not all get visas. Proposers and applicants should be clearly advised about this.

**Most non-immediate family applications fail because there are only a small number of places each year in Australia's refugee program. These applications are given lower priority than immediate family applications.**

Even in 'immediate family' cases, advice should be given about whether there are other options under the family, or skilled, migration programs. These applications may be processed quicker by overseas posts. However there are many advantages in applying under the Humanitarian Program.

<sup>6</sup> See generally Regs. 200.211(1)(a); 202.211(1)(a); 204.211(1)(a). 'In-country' (Reg. 201) and 'Emergency rescue' (Reg. 203) visas can be granted in-country but are very rare.

# Advantages of Humanitarian Program Visas

## Humanitarian Program



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No application fees

No medical fees

Travel costs paid for visas 200,201, 203, 204

202 visa – you must pay travel costs. International Organization for Migration (IOM) or other schemes can help with no-interest loan schemes. These usually need a deposit first.

No waiting period for Centrelink

Access to Humanitarian Settlement Services

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## Family Migration Program



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Large application fees

May need 'Assurance of support'

Usually need to be 'settled'

Must pay for medical checks and travel

May not get Centrelink immediately

Pay airfares

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# Application Process

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**Step 1** Proposer in Australia completes Form 681 Refugee and Special Humanitarian Proposal.

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**Step 2** Form 842 Application for an offshore humanitarian visa should be completed and signed by all applicants over 18. If someone else is filling it in for the applicant, make sure the answers are those of the applicant.

Form 956 or 956A completed and signed by all applicants over 16 if appointing a migration agent or an 'authorised representative'.

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**Step 3** Attach all the identity documents and evidence, including:

- 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 proposer's passport, identity or travel documents showing permanent residence or Australian citizenship and the date first granted permanent residence in Australia,
- a statement from proposer with evidence which helps prove there is an 'immediate family' relationship and what support proposer will give.
- for 'non-immediate' family members a statement should include details of the risks they face now and if they have to return to their home country.

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**Step 4** Attach a cover letter to the application form with:

- name and birth date of proposer and main applicant;
- proposer's current address;
- list of documents attached to application (if there is more information to come say that it will be provided to the Department of Immigration as soon as it is received).

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**Step 5** Keep a copy of all documents sent.

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**Step 6** Lodge these forms at the right place<sup>7</sup>.

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**Step 7** Keep a receipt of postage as it is proof the application was lodged.

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<sup>7</sup> Check the DIAC website for correct lodgement address and means of lodgement. Some applications are lodged at the Offshore Humanitarian Processing Centres in the Sydney or Melbourne offices of DIAC, depending on where the applicant is now living. In other cases the application is lodged at the Australian Overseas Mission nearest to where the applicant is living.

## AFTER APPLICATION IS LODGED

If a migration agent takes on the case, the agent will follow up the processing after lodging. However in many cases an agent may not take the whole case on and follow up after lodgement is the proposer's and applicant's responsibility.

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### Step 8

An acknowledgement letter and file number will be sent by Immigration. An application lodged in Australia will be assessed to see if it should go to the next stage of being sent to the overseas Immigration office.

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### Step 9

Applicants and authorised recipients can check with the Immigration office in Australia or overseas about the progress of the case. The Department must be advised throughout the whole process of any change in circumstances, for example, if there are any changes of address, changes in any of the family relationships, the birth of a child or a marriage occurs.

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### Step 10

If the application is sent to the overseas Immigration office for further processing, the family overseas may be interviewed by officers from the Australian overseas mission to check the identity and family relationship of each applicant and, if required, the humanitarian claims. DNA tests may be requested.

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### Step 11

Family members may then be asked to do medical and police checks.

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### Step 12

If the application is accepted then the process of finalising visas and travel arrangements begins.

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### Step 13

If the application is refused, the decision cannot be appealed in Australia. However another application can be lodged but there would need to be very important new information for it to succeed. Examples of new information include improved links to Australia and claims that have not previously been declared to Immigration.

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## How Long Does It Take?

Applications take usually between 1 and 2 years depending on how busy the overseas Australian office is; length of security checks needed and whether there are health issues. If an application is refused at the Sydney or Melbourne processing offices, then a decision may be made sooner, possibly within 12 months.

## Who Pays Travel Costs?

If proposing applicants as 'immediate family' and they are granted a subclass 200,201,203 or 204 visa, the travel costs will be paid by the Australian Government.

If a subclass 202 (Global Special Humanitarian) visa is granted the Australian Government is not responsible for the applicant's travel to Australia, including airfares. The International Organization for Migration (IOM) helps with no-interest loan schemes. These usually need a deposit first.

# Other Visa Options

## PERMANENT VISAS UNDER 'FAMILY MIGRATION PROGRAM

If grant of a visa for family members under the Humanitarian Program is not an option or is problematic, then there may be options for permanent visas under the Family Migration Program. It is important to obtain full migration advice from a Registered Migration Agent.

Partner	Remaining relative
Prospective spouse	Aged dependent relative
Dependent & adopted child	Carer
Orphan relative under 18	Parent / Contributory parent

Registered Migration Agents need to advise carefully about: application fees, visa caps and length of queues, limitations on social security and settlement support, the need for the sponsor to be 'settled', Assurances of Support and review rights.

**'Orphan relative under 18' applications are quite common for people from conflict zones. Advice and action will need to be undertaken quickly when the relative is approaching 18.**

**Requirements for an Assurance of Support and for the sponsor to be 'settled' can cause difficulties for recent refugee and humanitarian arrivals.**

## PERMANENT VISA UNDER SKILLED MIGRATION PROGRAM

Skilled visa options should be considered, though refugees from war ravaged countries often have little opportunity to get the formal education or required experience for a skilled visa.

## TEMPORARY VISAS

Migration Agents need to advise that there may be difficulties in a person from a refugee or conflict situation obtaining a temporary visa, as the Department may suspect that the intention is not for genuine temporary stay, but rather to come to Australia to apply for refugee status onshore. However an application is worth submitting where there is strong evidence that return is planned.

# Giving Assistance

## Who Can Give Assistance?

Under the Australian Migration Act 1958 there are strict rules as to who can give assistance to visa applicants, review applicants and sponsors/proposers.

### **ANYONE CAN PROVIDE 'ADMINISTRATIVE ASSISTANCE'**

It is lawful to provide “administrative assistance” without being registered as a Migration Agent. The Act defines the following as “administrative assistance”:

1. clerical work in the preparation of an application or other document;
2. translation or interpreting services to help prepare an application or other document;
3. advising someone that they must apply for a visa;
4. passing on to another person information produced by a third person, without giving substantial comment on or explanation of the information.

**'Clerical work'** is not defined in the Migration Act, but the Immigration Department view, outlined in their procedures manual, is that the type of activities would include, but not be limited to, the following:

1. typing or writing answers into an application/document
2. photocopying or collating documents
3. indicating where certain information should go in an application form
4. paying the visa application charge and physically lodging an application

### **ONLY A REGISTERED MIGRATION AGENT CAN PROVIDE 'IMMIGRATION ASSISTANCE'**

It is a criminal offence to provide “immigration assistance” if you are not a registered Migration Agent. A list of registered migration agents can be found at

[www.mara.gov.au](http://www.mara.gov.au) or by contacting the Office of the MARA on 1300 226 272

'Immigration Assistance' is defined in the Migration Act as assistance provided by a person who uses or purports to use knowledge of, or experience in, migration procedure, to assist a visa applicant, or cancellation review applicant, by:

1. preparing or helping to prepare the application; or
2. advising the applicant about the application; or
3. preparing for proceedings before a court or review authority in relation to the application;  
or
4. representing the applicant in proceedings before a court or review authority in relation to the application.

'Immigration Assistance' also includes providing such advice and assistance to sponsors and nominators of visa applicants.

Immigration Department policy states that in some instances there may be a fine line between what is or is not immigration assistance and officers must be satisfied, as well as be able to demonstrate, that a person has in fact used their knowledge of migration law and procedures to give assistance.

**THESE PEOPLE CAN GIVE 'IMMIGRATION ASSISTANCE' WITHOUT BEING REGISTERED AS A MIGRATION AGENT - PROVIDED THERE IS NO FEE, REWARD OR GIFT:**

- A close family member (i.e. spouse, child, parent, brother or sister) of the visa applicant;
- The sponsor or nominator of the visa applicant;
- Any person helping prepare a request for ministerial intervention.
- State or Federal parliamentarians;
- Members of diplomatic missions in their capacity as members of a diplomatic mission;
- Commonwealth or State/Territory Government officials (including members of staff of a parliamentarian) in the course of their duties as an official;
- Members of a consular post in their capacity as members of a consular post;
- Members of an office of an international organisation in their capacity as members of an international organisation.

**ANYONE CAN MAKE 'IMMIGRATION REPRESENTATIONS' - PROVIDED THERE IS NO FEE, REWARD OR GIFT:**

"Immigration representations" are communications with the Department or Ministerial staff on behalf of an applicant, nominator or sponsor, about their application. This also includes representations about Ministerial intervention requests.

Anyone may lawfully make "immigration representations" on behalf of a visa applicant or cancellation review applicant so long as there is no payment of fee, reward or gift.

**ONLY LAWYERS CAN PROVIDE 'IMMIGRATION LEGAL ASSISTANCE'**

Lawyers can provide "immigration legal assistance" without being registered Migration Agents and can charge fees for doing so. 'Immigration legal assistance' means advising, preparing for proceedings or representing an applicant before a Court in relation to the application.

**STRICT PENALTIES**

The offence of giving immigration assistance without registration is a 'strict liability' offence. This means the prosecution does not have to prove the person intended to commit the offence – doing the act is itself enough for a conviction. There are also other associated offences for advertising the provision of immigration assistance and charging fees for immigration assistance, by people who are not registered Migration Agents. High fines and imprisonment terms are imposed for the various offences.

**SEEK LEGAL ADVICE**

If you are considering providing some kind of assistance to a visa applicant or sponsor/proposer, always seek legal advice if you are unsure whether it is lawful to do so.

## Registered Migration Agent Advice

The advice given by a registered migration agent should cover:

- Visa categories available
- Is a family migration program visa possible and quicker?
- Who goes on the applications (If not 'immediate family' then a separate application may need to be lodged. Evidence of persecution is needed and applicants usually must be outside their home country)
- Evidence required
- Forms: Proposal 681 (mandatory for 202 applicants, and optional for 200, 201, 204 or other applicants); Application 842; Authority to receive communication 956A or 956.
- Application fees - nil for offshore humanitarian visas.
- Travel, medical costs
- Public interest criteria
- Proposer's obligations (for on-arrival support, accommodation and initial settlement)
- Where to send application and where is it processed
- Review rights if any
- Risks such as:
  - Processing times.
  - If proposer turns 18 during processing then it's no longer an 'immediate family' application
  - Refusal possible if significant incorrect information given in onshore client's own application
  - Changes in level of risk in home country.

# Key Questions

## APPLICATIONS UNDER HUMANITARIAN PROGRAM

### THRESHOLD QUESTIONS

What type of visa does the proposer have and when was it granted?

Who does proposer want to bring to Australia? (names, family relationship, age, marital status)

What is the overseas applicant/s home country? Where are applicants now?

Are any of the applicants 'immediate family'?

Proposer's spouse or dependent children

If proposer under 18 – proposer's parents and their dependent children

### IF ANY APPLICANTS ARE 'IMMEDIATE FAMILY'

Were all the immediate family 'declared' to Immigration prior to proposer's visa being granted? Were they included in proposer's application forms or advised to Immigration at interview, or to UNHCR and will be on proposer's file? It is useful to get the proposer's previous visa application from their previous RMA or under FOI to make sure the information is consistent.

Will the application be made within 5 years of the proposer gaining a visa?

Why didn't the immediate family go with the proposer to Australia?

### What evidence is there of family relationship?

#### a) Proving 'immediate family' relationship – Spouse and children

- Evidence of marriage (marriage certificate, marriage photos, statements)
- When, where and how did the proposer meet their spouse? When and how did they decide to get married? Details of any engagement. When, where and how were they married? Describe the ceremony and who attended. Is there a marriage certificate? If not, why?
- Describe married life: Where did the family live? Who else lived there? How were household tasks and responsibilities divided?
- Details of children. Birth certificates or other identity documents that mention the children. Evidence of dependency of children, particularly when they are over 18 (re financial, physical, psychological support, decision-making etc).
- If there is a legal or customary adoption, what proof is there?

#### b) Proving 'immediate family' relationship – Parents (for proposer's under 18)

- Were the family included on proposer's visa application form?
- Are there birth certificates? If not, why?
- Are there identity documents that show proposer as a child of the parent/s?
- Are there medical, school or other reports about proposer that mention the parents.
- Are there family photos showing proposer with the family?
- Statements of neighbours and others detailing family relationship
- Are there significant things about the family that only the proposer might know (eg nick names, special events etc)?
- Who supports the applicants – economically, physically, emotionally?

### **c) Proving immediate family relationship is ongoing**

- After proposer left the family, when and how was contact resumed?
- How and how often has there been communication?
- Include evidence of ongoing communication.
- How do the applicants continue to be supported – economically, physically, emotionally?
- Does proposer send money to the spouse/children? How and how often? Include evidence of sending the money.
- How will the family be supported on their arrival in Australia? Where will they live? What are your future hopes for your family?

### **HUMANITARIAN CLAIMS**

- Are the applicants outside their home country?
- Are they registered as mandated refugees with UNHCR or equivalent?
- Have they been in refugee camps? Which ones?
- What countries did they pass through to get where they are now?
- Are there any close relatives in a safe country that can sponsor you?
- When did the applicant leave the home country, and how?
- What happened to the applicant) and family in their home country. Why?
- What ethnic groups, religion or political group do they belong to?

**To prove strong humanitarian claims it has to be shown that the applicant will suffer serious harm. Examples are threats to life, torture, detention, interference in home and family, not being allowed to work or get education. Having to live in economic poverty is not considered persecution.**

- What harm will the applicants suffer if they have to return home
- Why will the applicants be harmed? (This should if possible relate to one or more of the grounds under the 1951 Refugee Convention - their race, religion, nationality or politics or because of the particular social group they belong to)
- Who will harm the applicants if they had to return?
- Why won't or can't the government in the home country protect the applicants?
- What evidence is there of persecution or substantial discrimination?
- What problems do the applicants face in the country they are staying in now?
- Have the applicants, or any relatives, tried to return to the home country? If so, what happened and does this support the story about their fears of return?

### **Compelling Reasons**

- What family or other connections do the applicants have to Australia?
- What skills and employment prospects do the applicants have which would help them settle and integrate in Australia?
- Is there any other third country to which the applicants can go? Why would they not be able to settle and be secure there?.

# Applicants 'To Do' List

## DETAILS NEEDED FOR EACH APPLICANT

1. 8 passport size photo's (with full name on back of each)
2. Full names, date (or year) of birth, where born, marriage status, how related
3. Any UNHCR registration or mandate cards
4. Applicant's physical address (not a post box) of where living now. How long been there. What countries went through to get there
5. Identity documents (passport, identity document, birth certificates or a written statement explaining why you don't have them)
6. Marriage evidence (marriage documents, wedding photos or statements)
7. Family relationship evidence (e.g. identity documents showing parents, family photo's, written statements)
8. Addresses in the last 10 years
9. Jobs held in past 15 years (where, when, type of job and name of employer)
10. Education (when did primary, secondary, post secondary)
11. Languages spoken (and how well each speaks English)
12. Any serious medical conditions
13. If convicted of any crimes or been deported from a country
14. Details of parents and brothers/sisters of main applicant and their spouse --: names (plus mother's name before marriage), when born, whether married by law or religion, where born, where now, visa status in country they now live.

## HUMANITARIAN CLAIMS

Applicants should tell their own personal story of why they left their home country, what they will suffer if returned, and why. Who will harm them and why can't government protect them. Why can't they return to another part of the home country where it might be safe? Do not just give a general account of problems in their country. Write about what happened to them with as much detail as possible.

## FORMS TO COMPLETE

- Form 681 - proposal signed by proposer
- Form 842 – visa application signed by all applicants 18 or over
- Form 956A – signed by all applicants 16 or over and the proposer (if applicants want the proposer to receive correspondence about the application. If applicants have appointed a migration agent, use Form 956.)

Answer all questions honestly. False answers may make the application fail. If there is a difference with any information previously given to the Department then put reasons for the difference in a statement.

Information that cannot fit on the forms should be on a separate signed page

Documents need to be translated into English. Certified copies means documents are stamped as true copies by a Justice of the Peace or Solicitor, or if outside Australia, someone in a similar position. Advise Immigration of change of address after the application has been lodged.

### **Never Put In False Documents**

**It can harm the application, and there may be criminal penalties or visa cancellation. If there is no document, just explain why.**

## Filling In Form 842

**Form 842 is for the person who is applying overseas (the applicant). If someone else is filling it in for the applicant, make sure the answers are those of the applicant.**

Read the instructions on the front of the form carefully. Answer all questions honestly. Wrong answers in the form or at an interview may make the application fail. The application should match with any information given to the Department before. Check it against the proposer's previous visa application. If there is a difference then put reasons for the difference in a statement.

Put in certified copies, that is documents that are stamped as true copies by a Justice of the Peace or a Solicitor, or if outside Australia, someone who is similar or has an official position. If an applicant is using a registered migration agent, the agent can certify copies for them. If you don't have any documents explain why there are none. Do not put in fraudulent documents. This may make the application fail because the decision-maker may not be satisfied the applicant meets the criteria.

Other evidence is best given by a statutory declaration properly witnessed.

### **PART A – SUMMARY OF PEOPLE INCLUDED IN THE APPLICATION**

For each person included who is not the main applicant's partner or child under 18 years explain why this person is dependent on the main applicant. 'Dependence' can be financial or psychological or physical. This can be financial support for basic needs like food and shelter; making important decisions about school and medical matters; and living together for a very long time. Psychological dependence is more serious than normal emotional ties between family members. It relates more to things like serious mental or medical conditions which stops the person living independently.

If children are married or are independent or have their own income then they are 'non-dependent family members' and they should complete their own application form. However they should still be listed in Part D.

Any other relatives should fill in separate forms for their own family unit. A 'family unit' includes all members of someone's family who usually live with them and are dependent on them.

If a family member is missing still include their details and explain in Part D where, when and how they went missing and what steps have been taken to try to find them. Write in the 'cover letter' to the Department of Immigration that if they can't be found by decision time then they can be taken off the application.

If there are no identity documents explain why not. All names and dates of birth should be accurate. If the exact birth date is unknown put the year.

### **PART B – MANDATED OR REGISTERED APPLICANTS**

Registration with the UNHCR or similar organisation will help the case.

### **PART C – CONTACT DETAILS**

A physical residential address must be given or the application won't be accepted. A post office box address will not do. You must also advise if you change your residential address after the application has been lodged.

### **PART D – FAMILY BACKGROUND**

Copies of documents (e.g. birth certificates, marriage certificates) that prove the relationships should be included and certified. A statement from the proposer with evidence which helps prove the family relationship is essential. Statements from others who know of the relationship can also be helpful. It's important to declare all the relatives of the main applicant and their spouse, even those that may be missing, as this could assist sponsorship in the future.

## **PART E – LINKS TO AUSTRALIA**

This shows what family ties you have in Australia. The details of any proposer go here and the proposer must also complete a Form 681. If the applicant has other links such as employment, business, education or friends, these details are put here.

## **PART F – BACKGROUND INFORMATION**

Give details of applicant's identity documents and where they have lived before.

## **PART G – HUMANITARIAN CLAIMS**

Applicants should tell their own specific personal story of why they left their home country. Give as much detail as possible – when things happened, where they happened, the names of people involved, why these things happened to the applicant, and any other details that will help the person making a decision on the application to understand the story better. Extra pages can be added. These should be signed and dated with a reference to what question the information refers to. For 'immediate family' cases, proving the relationship is most important; however, it is also useful to add any humanitarian claims.

## **PART H – EMPLOYMENT HISTORY**

List all applicants jobs and unemployment they have had in the last 15 years

## **PART I – LANGUAGE AND EDUCATION**

For each person in the application, give details of their language and education

## **PART J – HEALTH AND CHARACTER**

Police clearances are required for every country in which an applicant over 16 has spent 12 months or more over the last ten years. Australian security agencies do checks on applications.

## **PART K – ASSISTANCE WITH THIS FORM**

Put down who helped fill in the form.

## **PART L - OPTIONS FOR RECEIVING WRITTEN COMMUNICATIONS**

If a migration agent is not being used then it's usually best to have the proposer as the contact. A Form 956A should be included.

## **PART M – DECLARATION**

The applicant and those over 18 must sign declaring the information is true, that Immigration will be advised of any changes in circumstances before coming to Australia and that Immigration can use their personal information.

# Filling In Form 681

Form 681 should be completed by people or organisations wanting to propose applicants under the Humanitarian Program. The role of the proposer is to assist in the settlement of the people proposed. This includes: meeting the entrant at the airport; providing accommodation on arrival; and assistance with settling in and finding permanent accommodation.

To be eligible as an individual to propose, you must be an Australian citizen or permanent resident or an eligible New Zealand citizen.

## **PART A – DETAILS OF THE PERSONS BEING PROPOSED FOR ENTRY**

Put in details of all people you are proposing in the Form 842.

## **PART B – PROPOSER'S DETAILS – INDIVIDUALS**

To be completed if a person who is proposing visa applicants is proposing as an individual, and not as the representative of any organisation.

## **PART C – PROPOSER'S DETAILS – ORGANISATIONS**

Where the proposer is an organisation. To be completed by a person with authority to represent an organisation.

## **PART D – YOUR ABILITY TO PROVIDE SETTLEMENT ASSISTANCE**

Give details about whether the proposer is willing and able to assist in the settlement of the people proposed.

## **PART E – ASSISTANCE WITH THIS FORM**

Proposers should ensure the person assisting is an agent registered with the Office of the Migration Agents Registration Authority (OMARA), or fits into one of the exceptions. A close family member, sponsor or nominator can give 'immigration assistance' provided there is no fee, reward or gift, and anyone can give administrative and clerical assistance (see "Who Can Give Assistance" Info sheet).

## **PART F – OPTIONS FOR RECEIVING WRITTEN COMMUNICATIONS**

It is usually best if the proposer receives all written correspondence on behalf of the visa applicants. To do this the main applicant will need to complete a form 956A (Appointment or Withdrawal of authorized recipient) authorising the proposer to receive all communications from the Department in respect of the visa application.

If a migration agent is appointed, the Department will assume the migration agent will be the authorised recipient, unless it is indicated otherwise. The migration agent will need to complete Form 956 or advise the Department in writing.

## **PART G – ACKNOWLEDGEMENT**

The proposer acknowledges that; they are responsible for the settlement of the entrants to the extent they have indicated, that information in the form can go to Immigration and to settlement service providers, and that government is not responsible for subclass 202 travel costs.

## Useful Contacts

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**CASE for Refugees**

245 Stirling Street Perth, WA, 6000  
Ph: (08) 9227 7311  
Email: [admin@caseforrefugees.org.au](mailto:admin@caseforrefugees.org.au) [www.caseforrefugees.org.au](http://www.caseforrefugees.org.au)

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**Department of Immigration  
and Citizenship**

[www.immi.gov.au](http://www.immi.gov.au)

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**Immigration Advice and Rights Centre  
(IARC)**

Level 5, 362 Kent Street Sydney NSW 2000,  
Ph: (02) 9262 3833  
[www.iarc.asn.au](http://www.iarc.asn.au)

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**Migrant Resource Centre of SA**

59 King William St, Adelaide SA 5000  
Ph: (08) 8217 9510  
e-mail: [admin@mrcsa.com.au](mailto:admin@mrcsa.com.au) [www.mrcsa.com.au](http://www.mrcsa.com.au)

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**National Legal Aid**

[www.nla.aust.net.au](http://www.nla.aust.net.au)

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**Office of Migration Agents  
Registration Authority**

Level 8, 22 Market Street, Sydney NSW  
Ph: 61 2 9078 3552 or 1300 226 272, Fax: +61 2 9078 3591  
[www.mara.gov.au](http://www.mara.gov.au)

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**Offshore Humanitarian  
Processing Centre Melbourne**

Casselden Place, 2 Lonsdale Street, GPO Box 241 Melbourne VIC 3001  
Ph: 1300 658 095 (within Australia), +61 3 9235 3850 (outside Australia)  
Fax: +61 3 9235 3851

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**Offshore Humanitarian  
Processing Centre Sydney**

Level 3 / 26 Lee Street, GPO Box 9984 Sydney NSW 2001  
Ph: 1300 658 731 (within Australia), +61 2 8666 5652 (outside Australia)  
Fax: +61 2 02 8666 5909

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**Refugee Advice and Casework Service  
(RACS)**

Level 12, 173-175 Phillip St, Sydney, NSW 2000  
Ph: (02) 9114-1600, Fax: (02) 9114-1794  
Email: [admin@racs.org.au](mailto:admin@racs.org.au) [www.racs.org.au](http://www.racs.org.au)

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**Refugee and Immigration Legal Centre  
(RILC)**

Level 1, 121-123 Brunswick Street, Fitzroy VIC 3065  
Ph: (03) 9413 0101, Fax: (03) 9413 0144  
Email: [rilc@rilc.org.au](mailto:riloc@rilc.org.au) [www.rilc.org.au](http://www.rilc.org.au)

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**Refugee and Immigration Legal Service  
(RAILS)**

Level 1, 170 Boundary Street, West End QLD 4101  
Phone: 07 3846 3189, Fax: 07 3844 3073  
Email: [admin@rails.org.au](mailto:admin@rails.org.au), [www.rails.org.au](http://www.rails.org.au)

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**Salvos Legal**

85 Campbell Street, Surry Hills NSW 2010  
Tel: 02 9213 3910, Fax: 02 9213 3920  
Email: [salvoslegal@aue.salvationarmy.org](mailto:salvoslegal@aue.salvationarmy.org) [www.salvoslegal.org.au](http://www.salvoslegal.org.au)

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## Useful Resources

The 'Agents Gateway' website is designed to keep migration agents up to date on the department's policy changes, as well as providing useful visa related information, links and resources. It is available to anyone to access.

**See:** <http://www.immi.gov.au/gateways/agents/>

The Department has developed a one page guide titled "Improving the integrity of Australian visa applications - A guide for migration agents

**See:** <http://www.immi.gov.au/gateways/agents/pdf/visa-integrity-strategies.pdf>

ImmiTV Video "Are you giving migration advice?" explains what someone can and cannot do as an unregistered person giving migration advice, and related penalties.

**See:** <http://www.youtube.com/user/ImmiTV?feature=mhum#p/c/F4EFEE1C3DD40C2/1/>

#### **Acknowledgement**

This guide was produced by the Refugee and Immigration Legal Service (RAILS) with funding from the Department of Immigration and Citizenship. It was an initiative of the Office of the Migration Agents Registration Authority.

#### **Disclaimer**

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THE GUIDE REFLECTS THE LAW AS AT 1 MARCH 2011  
ALWAYS CHECK FOR LEGISLATIVE CHANGES

**THIS GUIDE IS NOT LEGAL ADVICE**

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