

**To apply for visas for overseas family members
first get legal advice from an experienced migration agent/lawyer**

HUMANITARIAN VISA PROGRAM

- Any Australian citizen or permanent resident can propose an overseas family member under the humanitarian program. The family member must usually be outside their home country and prove they will suffer serious harm if returned. There are some 'in-country visas' but these are rare.
- 'Immediate family' of humanitarian visa holders (Visas 200 to 204) have the best chance of a visa and have the highest priority. 'Immediate family' are the proposer's spouse and dependent children (or parents if proposer is under 18). But to get this top priority:
 - proposer must have told Department of Home Affairs (DHA) or UNHCR of the relationship before they got their humanitarian visa, and
 - the application must be lodged within 5 years of proposer getting their visa, and
 - the immediate family relationship must be continuing.
- Applicants proposed by a relative who genuinely lives in a 'regional location' and does not hold a Protection 866 or an 851 visa, also have the highest priority.
- Close, and then extended, relatives of Australian citizens or permanent residents (except for protection 866 or visa 851 holders) are the next priority. Each year there are far fewer visas available than the number of humanitarian visa applications, so most of these applications will fail.
- Overseas family members of permanent protection visa (Visa 866) or Visa 851 holders have the lowest priority until the proposer gets citizenship.

How to apply

Form 842 application – applicant's family and refugee story. All applicants over 18 sign.

Form 681 proposal – proposer's details and support. Proposer signs.

Form 956A – for correspondence from DHA to be sent to the proposer. The proposer and all applicants over 16 must sign.

Form 80 – History of where lived, education, and employment, for applicants 16 or older

Cost

No application or medical check fees. May have to pay costs for police checks, DNA, travel. Centrelink and refugee settlement support on arrival.

COMMUNITY SUPPORT PROGRAM

The Community Support Program enables families, communities, businesses or individuals, to propose humanitarian visa applicants with employment prospects and give financial and practical support for settlement.

Must apply to an [Approved Proposer Organisation \(APO\)](#) in your State and pay very large fees. The APO helps with the visa application, accommodation, and settling into the community.

Main applicant must: be aged 18-50; have 'functional' English; an offer of employment or skills to be work-ready on arrival; and must be living in a 'resettlement priority country'.

Forms are same as for humanitarian visa (except no Form 681).

FAMILY MIGRATION PROGRAM

An Australian citizen or permanent resident can sponsor the family members listed below but the visas are hard to get and some have very long waiting periods. The law is complex so sponsors and applicants should get advice from experienced migration agents/lawyers before applying.

- Partner
- Fiancée (Prospective partner)
- Dependent child
- Adopted child
- Orphan relative under 18
- Parent
- Contributory Parent
- Temporary Parent visa
- Remaining relative
- Aged dependent relative

Sponsorships by refugees who arrived by boat without a visa will be put as the lowest priority until the sponsor becomes a citizen, unless they can prove there are special compassionate and compelling reasons or there is an unreasonable delay (Minister's Direction 72).

Partner Visa

Who can apply

- Onshore or offshore married or de facto partner of Australian permanent resident or citizen. Can be opposite-sex or same-sex relationships.
- Person on fiancée Visa 300 (prospective marriage) from offshore who marries Australian partner.

How to apply

- Onshore (Visa 820/801); Offshore (Visa 309/100).
- Form 40SP. Form 888 (witnesses), Form 80 (education, employment, travel history for applicants 16 and older).
- Lodge online with an 'immi account'. Need DHA permission to lodge paper application.

Cost

- Fees increase regularly. Currently the application fee is over \$7,000 plus approximately \$2,000 (under 18) to \$4000 (over 18) for each dependent. Also add costs of health and police checks, translations, DNA if needed, travel etc.

Evidence

- Marriage certificate.
- Evidence of doing cultural, social, sporting, or other activities together.
- Proof of any joint travel undertaken since the beginning of the relationship.
- Phone accounts and correspondence, especially during any time the couple were apart.
- Full birth certificates (showing details of parents) if any children of the relationship.

Sponsor limitations for partner visas

- Can't sponsor more than two partner or prospective marriage visa applicants in a lifetime. Sponsorships have to be at least 5 years apart.
- These may be waived in 'compelling circumstances' (for example, children; a new long-term relationship; or previous partner has died or left the relationship, leaving young children).

Sponsor checks for partner visa

- Sponsor must give DHA a police record check.
- Sponsor must allow DHA to give applicant details of any convictions for violence offences.
- Minister must refuse sponsorship if sponsor has history of violence (including breach of Domestic Violence order, stalking, harassment) and has significant criminal record (sentence of 12 months or more).
- Minister may approve if offences were long time ago, if children, or a long-term relationship.

Two stage process

Partner visa applications are usually in two stages. A temporary partner visa is first granted if DHA believes the spouse/de facto relationship is genuine. Then, after at least 2 years DHA check again and if they believe a genuine relationship is ongoing, then a permanent resident visa is granted if health and character checks are passed.

If the relationship ends before permanent residence is granted, the applicant may still be able to get permanent residence if the applicant suffered family violence during the relationship, or there was a child of the relationship where both parents have ongoing responsibilities for child, or if the sponsoring partner dies.

Dependent Child

A citizen or permanent resident parent can sponsor their natural, adopted or step child:

- a) if the child is under 18 years of age, or
- b) if the child is between 18–25 and is a full time student and financially dependent, or
- c) if the child is over 18 with a serious disability which stops the child from working.

If one parent is overseas, need their consent, or the law of the overseas country must allow the child to come permanently to Australia. If a formal adoption is not possible a customary adoption might be acceptable.

Orphan Relative

An orphan under 18 and not married at time of application, can be sponsored by an Australian sibling, grandparent, aunt or uncle. Must prove the parents are dead, permanently incapacitated or missing.

EVIDENCE

A lot of information will be needed to prove relationships and stories. Some important points are:

- All documents must be genuine. One false or incorrect document can lead to a visa refusal. It could also lead to a sponsor having their visa cancelled.
- It may be hard to get official documents such as birth, marriage, death certificates. Seek other things, such as medical or school records, DNA etc.
- Get statutory declarations from family and others, plus evidence of events that happened and country information that supports the story.
- Evidence of all steps taken to try to find information should be put in with the application.

SKILLED VISA PROGRAM

Skilled, business and employment visas are very difficult to get. The applicant usually must be under 45 with very good English and qualifications/work experience in jobs that are in high demand.

CHARACTER CHECKS

Applicants must give DHA, a police clearance certificate, or other evidence, to pass the character requirements.

If the applicant spent 12 months or more in any country in the last 10 years after turning 16, they may be asked to provide a police certificate from that country.

For immigration purposes a police certificate is valid for 12 months from the issue date.

FALSE INFORMATION

A visa application may be refused if the applicant provides false information or if the Minister is not satisfied of an applicant's identity (this is called 'Public Interest Criteria' 4020).

The bans on lodging another visa application are:

- 3 year bar on visa grant if applicant refused for false information,
- 10 year bar if it relates to identity.

The ban for giving false information can be waived if there are very compelling/compassionate circumstances relating to an Australian citizen or permanent resident. There's no ban waiver for a refusal because of identity.

Further, if a sponsor puts information in a family member's visa application which shows:

- false documents were used which led to the sponsor getting their visa,
- and DHA can clearly prove this,

then this could lead to sponsor's visa being cancelled.

WHERE TO APPLY

The Department of Home Affairs website has information about applying for visas www.homeaffairs.gov.au. It is wise to get legal advice before applying.

GETTING LEGAL HELP

Community Legal Centres can give free advice to people who can't afford to pay.

If you can't get legal help from a free legal service then check for private migration agents through the Office of the Migration Agents Registration Authority (MARA). Talk to a few agents about their service and fees before you choose one and sign a contract.

Once an agent has agreed to help you, they will give you a written agreement with details of their services (contract) and how much they will charge (fees). The contract will list the fees you will be charged, for each service or each hour worked.

Agent fees vary and depend on:

- the visa application type, how complex it is and the level of service you need,
- the length of time it will take to prepare your application,
- the experience and qualifications of your agent.

If your agent's fees seem too high, discuss this with them before signing a contract. MARA has [fees information](#) on their website (www.mara.gov.au).

If you have a problem with your registered migration agent try to resolve it with them first. You can also get information from, or make a complaint to, MARA.

Always check the MARA website to make sure you are using a registered migration agent.

THIS IS NOT LEGAL ADVICE
SEE A MIGRATION AGENT/LAWYER FOR ADVICE