[Ref-Offshore] Offshore humanitarian program - Visa application and related procedures

About this instruction

Contents

This departmental instruction, which covers the Refugee and Humanitarian (Class XB) visa subclasses, comprises:

Related instructions

PAM3: Refugee and Humanitarian:

- Temporary humanitarian stay
- Unaccompanied Humanitarian Minors (UHM) Programme
- Gender Guidelines

and

- PAM3: GenGuideA – All visas – Visa application procedures.

Latest changes

Legislation

This instruction was reissued on 1 July 2017 to

- flag the closure of the Community Proposal Pilot (CPP) and the commencement of the Community Support Programme (CSP) on 1 July 2017 and provide interim advice on the handling of applications - refer to The Community Proposal Pilot and the Community Support Programme;
- adjust the processing priorities for the Special Humanitarian Programme (SHP) to reflect the legislative amendments;
- change references to the Humanitarian Settlement Strategy and HSS to the Humanitarian Settlement Programme and HSP respectively; and
- make other minor changes.

Further guidance on the CSP will be published at a later date.

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s. 47E(d)

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(IOM's) No Interest Travel Loan:

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- website: http://www.iomaustralia.org/projects_nils.htm

Humanitarian Settlement Referrals Section, Department of Social Services:

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Contents summary

Introduction

The humanitarian program

As a member of the international community, Australia shares responsibility for protecting refugees and resolving refugee situations worldwide through the system of international refugee protection. The system of international protection has several elements. These include preventative measures such as temporary protection in a country of first asylum and the durable solutions promoted by the United Nations High Commissioner for Refugees (UNHCR). The three durable solutions to the protection needs of persons displaced by humanitarian crises are:

- voluntary return (repatriation) to their home country once it is safe
- local integration in the country of first asylum and
- resettlement in a third country.

The humanitarian program is one element of the Australian Government's approach to assisting persons affected by international humanitarian crises, which also involves the provision of aid, diplomatic initiatives and peacekeeping. The humanitarian program comprises onshore and offshore components. The onshore component fulfils Australia's obligations under the United Nations 1951 Convention relating to the Status of Refugees (the Refugees Convention) and its 1967 Protocol by granting protection visas (XA-866 visas) to applicants within Australia who are found to be persons to whom Australia has protection obligations under the Refugees Convention. The offshore component offers resettlement to refugees and others in humanitarian need of resettlement for whom the other durable solutions are not feasible.

About this instruction

This instruction provides policy and procedural advice on aspects of application processing in the offshore humanitarian program. This instruction therefore applies to the Refugee and Humanitarian visa class (Class XB) and its subclasses.

For details of visa processing arrangements in the onshore component of the program, refer to the Protection Visa Procedures Advice Manual.

Visa subclasses

Class XB comprises the following visa subclasses - refer to Migration Regulations Schedule 1 item 1402(4):

200 Refugee

201 In-country Special Humanitarian

202 Global Special Humanitarian

203 Emergency Rescue

204 Woman at Risk

Forms

The following five forms are used in the offshore humanitarian program:

842 Application for an offshore humanitarian visa

- Application form for a Class XB visa.

681 Refugee and special humanitarian proposal

- Form to be completed when applicant is proposed for entry to Australia by an Australian citizen, an Australian permanent resident, an eligible New Zealand citizen or a body operating in Australia.

1258 Agreement to undertake care of an unaccompanied humanitarian minor

- Form to be signed by the minor's primary carer (if there is a carer over 21 years of age, and whether or not this person is the primary applicant).

1417 Proposal for refugee and special humanitarian entrants by Approved Proposing Organisation

- Form to be completed by an APO seeking to propose a visa applicant under the Community Support Programme (or the Community Proposal Pilot before 1 July 2017).

About the offshore humanitarian program

Purpose

The humanitarian program offers resettlement to persons in humanitarian need. The program is designed to ensure that the available visa places go to those in greatest need of resettlement and who do not have any other durable solution available to them.

Policy and legislative background

The visa subclasses within Class XB are intended to assist persons who are subject in their home countries to persecution or substantial discrimination amounting to gross violation of human rights. They are also intended to allow immediate family members of persons who entered Australia on refugee or humanitarian grounds, or were granted an XA-866 Protection or CD-851 Resolution of Status visa in Australia, to be considered for entry to Australia. These are colloquially called "split family" cases.

From 28 September 2012 (and, later, from 1 June 2013), certain changes aimed at discouraging illegal maritime travel to Australia apply to Class XB. Briefly, the changes have the following effects:

- processing priorities and primary criteria favour split family of Class XB visa holders over split family of XA-866 and CD-851 visa holders - refer to:
  - Prioritising caseload and
  - Compelling reasons
- persons described in regulation 2.07AM(5) are ineligible to be proposers - refer to Proposal
- persons described in regulation 2.07AM(5) may not apply for a Class XB visa except at the invitation of the Minister - refer to Ineligible applicants.

On 1 June 2013, the Community Proposal Pilot was introduced as a part of the offshore humanitarian program to test the capacity of the Australian community to provide a substantial financial contribution towards the costs

of humanitarian settlement and practical support to assist humanitarian entrants to settle successfully. The Pilot was replaced on 1 July 2017 by the Community Support Programme (CSP) - refer to The Community Proposal Pilot and the Community Support Programme.

Program categories

The offshore humanitarian program comprises two categories:

- refugee
- special humanitarian program (SHP).

Home country

All Class XB Schedule 2 provisions refer, in various contexts, to the applicant's 'home country'. ***Home country*** is defined in regulation 1.03 as a person's country of citizenship or, if the person is not usually resident in that country, the country of which the person is usually a resident.

Refugee

The refugee category provides resettlement opportunities for persons who are subject to persecution in their home country and who are typically outside that country and in need of resettlement. ***Home country*** is defined in regulation 1.03 as a person's country of citizenship or, if they are not resident in that country, their country of usual residence.

The department works closely with UNHCR in selecting for this category persons for whom resettlement in Australia is the most suitable durable solution - refer to Australia's relationship with UNHCR.

The refugee category comprises four visa subclasses:

- 200 Refugee
- 201 In-country Special Humanitarian
- 203 Emergency Rescue
- 204 Woman at Risk.

Special humanitarian program

The SHP is for persons who are outside their home country and subject to substantial discrimination amounting to gross violation of their human rights in their home country. The applicant's entry must be proposed by an Australian citizen or permanent resident, an eligible New Zealand citizen or an organisation that is based in Australia.

This category comprises XB-202 - Global Special Humanitarian.

The offshore humanitarian program - Planning and prioritising

Program formulation

Background

Australia's humanitarian program has an offshore and an onshore component:

- the offshore component provides for the resettlement of refugees and persons proposed under the SHP
- the onshore component fulfils Australia's protection obligations as a signatory to the Refugees Convention.

Size and composition of the program

The Australian Government decides the overall size of the humanitarian program, the regional composition of the offshore component and the approximate number of visas to be granted in each of the SHP and refugee categories. These decisions take into account:

- any minimum total number of visas specified by ministerial determination under s39A of the Act
- advice from UNHCR on global resettlement needs and priorities
- the views of stakeholders in Australia and
- the Australian community's capacity to provide for the permanent settlement of humanitarian entrants.

These factors are determined through a consultation process undertaken by the Minister and the department in the latter part of each program year. The stakeholders consulted include other ministers and government departments, State/Territory leaders and their opposition counterparts, the Refugee Council of Australia, other refugee and humanitarian organisations and UNHCR.

The Minister announces the size of the program and resettlement priorities for the following year as part of the annual budget process. The humanitarian program runs from 1 July to 30 June the following year.

Australia's relationship with UNHCR

UNHCR's mandate to protect refugees makes it a key stakeholder in the humanitarian program. Humanitarian, Family and Citizenship Policy Branch and the Chief Migration Officer Geneva meet regularly with UNHCR's regional office for Australia, New Zealand, Papua New Guinea and the South Pacific in Canberra and headquarters in Geneva to discuss resettlement priorities, progress in the delivery of the current year's humanitarian program (including any issues of concern that need to be followed up with either the relevant field office or the Resettlement Service) and broad priorities for the following year. An effective working relationship between UNHCR and posts is essential to the delivery of the program.

UNHCR contribution to program formulation

Each year, UNHCR makes a written submission to the Australian Government that identifies priority caseloads for resettlement consideration. The submission is based on resettlement needs across regions and also reflects the ongoing discussions with UNHCR's headquarters and regional office about caseloads and priorities. UNHCR's submission, together with advice from posts and regions, provides a basis for planning the priority caseloads for the refugee category for the following year.

Emerging caseloads

In addition to the ongoing resettlement needs of various refugee groups, UNHCR identifies emerging caseloads in its annual documents such as UNHCR Projected Global Resettlement Needs and Global Trends. Given that resettlement of these caseloads needs to be considered holistically and in conjunction with UNHCR, other resettlement countries and settlement providers, any decision to accept new caseloads is determined by Humanitarian, Family and Citizenship Policy Branch. Posts are therefore requested to provide Humanitarian, Family and Citizenship Policy Branch with the details of:

- emerging caseload trends
- caseloads that could be considered for resettlement under the humanitarian program and/or
- requests from the local UNHCR office for consideration of new caseloads.

Program allocations

Program allocations and management

Following the Minister's announcement of the size and composition of the year's program, Humanitarian Programme Management Section consults regional directors and posts on regional allocations and allocates places under the offshore program to posts in each region. Allocations take into account existing pipelines and

posts' advice on any delivery issues identified in planning stages, as well as an estimate of grants under the onshore component, which are counted against the SHP allocation.

Allocations are for places under both the refugee and SHP categories. Within those categories places may be allocated specifically by subclass and caseload nationality or other group. A small number of places may be held in reserve to allow for flexible responses to emerging issues during the year, such as emergency rescue, out of region cases, in-country cases and any adjustments required in relation to the onshore component. A maximum number will be set for visas to be granted under the Community Proposal Project.

Each year a commitment is made to the resettlement of women who are living outside their country of origin and are subject to persecution or are registered with UNHCR as being of concern or at risk. The XB-204 Woman at Risk visa is an important part of the refugee category and Humanitarian Programme Management Section monitors the delivery of places under this subclass to ensure that the announced target is met. For policy and procedure on XB-204 processing, refer to XB-204 - Woman at Risk.

Changes to allocations and movement of places

The regional and post specific allocations of places under the program are the basis of the planning framework for the numbers of visas to be granted in each program year in both the refugee and SHP categories.

Every January, Humanitarian Programme Management Section, together with posts and regions, reviews the delivery of the program and makes any adjustments necessary to post and regional allocations. Adjustments are based on the advice of posts and monitoring of delivery in the first half of the program year and may take into account the need to respond to emerging situations, as well as to trends in onshore visa grants.

If a region is considering moving places between posts, Humanitarian Programme Management Section should be consulted.

Posts without allocations and managing allocations for out of region cases

Although regional allocation of places provides the general framework for management of the offshore humanitarian program, it is important to note that Class XB applications can be made and decided at any overseas post, except applications accompanied by a proposal - refer to Special Humanitarian processing centres.

For information on processing applications for humanitarian visas by applicants for whom posts do not have a specific allocation, or who are not of a nationality or from a group normally covered by the post's regional allocation, refer to Out of region cases.

Posts should be aware that there may be a range of issues affecting the processing of cases outside agreed allocations, including the effect on overall availability of places under the program and other issues such as host government relations, particularly with regard to local laws regarding asylum seekers and exit permission for particular groups. A range of issues may need to be examined with Humanitarian Programme Management Section before processing cases or caseloads out of allocation - refer to Emerging caseloads.

UNHCR referrals

Refugee caseloads and numbers of refugee referrals to Australia for resettlement are based primarily on the priorities identified by UNHCR in their submission to the department as part of the annual consultations. Each year program consultations take place between Humanitarian, Family and Citizenship Policy Branch and UNHCR's regional office, and also with UNHCR headquarters.

Within this framework, overseas posts negotiate with local UNHCR hub and regional offices on referral of refugee cases via resettlement registration forms (RRFs) and post requirements in the context of the program parameters set by Humanitarian, Family and Citizenship Policy Branch and Refugee and Humanitarian Programme Branch. Regular engagement by posts with UNHCR is necessary to ensure that referrals are received in the required numbers and caseloads at the right time.

Referrals by UNHCR may be for individuals and families or groups. Groups will consist of individuals who meet a group profile, that is, they have common characteristics such as cause and circumstances of flight, ethnicity, religion and claims. Cases will be referred on the basis of the group profile and although biodata will be provided, individual claims may not be detailed on RRFs. Posts approached directly by UNHCR for group referrals must in the first instance refer details of the proposal to Humanitarian Programme Management Section.

Local or hub UNHCR offices submit RRFs to posts in accordance with agreed allocations. Posts should not accept RRFs that are outside agreed caseloads or profiles and should advise Humanitarian Programme Management Section in the first instance of any negotiations with UNHCR offices on cases that may represent a new caseload.

If possible, posts should consider requesting referral of close family members at the same time, if there would be benefits to simultaneous processing and settlement prospects.

It is important that posts report to Humanitarian Programme Management Section on delays or changes to referral numbers or caseloads that might affect program delivery.

Posts without allocations should notify Humanitarian Programme Management Section if they are asked to accept UNHCR referrals.

Applicants who have a proposer and so would normally be considered in the first instance for an XB-202 visa, if they have been determined by UNHCR to be a refugee, may be granted an XB-200 visa, subject to the availability of places and the agreement of Humanitarian Programme Management Section.

"Self referred" refugee applications (including in-country applications)

In the main, applications for refugee category visas will be those referred by UNHCR. Posts should notify Humanitarian Programme Management Section of “self-referred” applications for refugee category visas.

Caseload management

Purpose

For the offshore humanitarian program to be successfully delivered each year, the caseloads at individual posts must be managed effectively. In doing so, post managers are expected to prioritise and manage cases, having regard to the following considerations.

Prioritising caseload

Overall priorities

Applications under the offshore humanitarian program are to be prioritised and processed according to the urgency of the applicant's need for resettlement in Australia, generally in the following order:

1. 203 Emergency Rescue
2. 204 Woman at Risk
3. 201 In-country Special Humanitarian
4. 200 Refugee
5. 202 Global Special Humanitarian.

SHP priorities

Applications accompanied by a form 681 (proposal), that is, applications nominally for an XB-202 visa, are to be dealt with in the following order:

CSP

Applications accompanied by form 1417, that is, proposed under the Community Proposal Pilot or the Community Support Programme, have highest priority in the SHP.

Priority 1

Applications proposed by an immediate ("split") family member who holds an XB-202 visa

Priority 2

Applications proposed by a close family member who does not hold an XA-866 or CD-851 visa

Priority 3

Applications proposed by an extended family member who does not hold an XA-866 or CD-851 visa

Priority 4

Applications proposed by a friend or distant relative who does not hold an XA-866 or CD-851 visa or by an organisation operating in Australia

Priority 5

Applications proposed by a holder of an XA-866 or CD-851 visa, regardless of the relationship.

Note:

- applications proposed by Australian citizens, including former IMAs, would fall under priority 2, 3 or 4, depending on the closeness of the relationship
- applications proposed by a partner, child or parent where the applicants cannot be considered under the "split family" provisions, or by a sibling (including step relationships) would fall under priority 2 (unless the proposer is a holder of an XA-866 or CD-851 visa)
- in exceptional circumstances, after consultation with Humanitarian Programme Management Section, individual applications may be given a higher priority than indicated above.

Other priorities

Within a subclass, applications accompanied by form 1417, that is, proposed under the Community Proposal Pilot or the Community Support Programme, have higher priority than other applications. Otherwise, within a subclass, applications should be prioritised according to the strength of the applicant's links to Australia. Accordingly, split family applications- refer to Assessing the Class XB subclasses - Split family cases (XB-200, XB-201, XB-202, XB-203 and XB-204) - should be given the highest priority, given these applicants have an immediate family member in Australia. Cases should generally be processed according to the following priorities:

Priority one

The applicant has a partner, child, parent or sibling in Australia (including step relationships).

Priority two

The applicant has a grandparent, grandchild, aunt, uncle, niece, nephew or cousin in Australia (including step relationships).

Priority three

The applicant has a friend or distant relative in Australia, or the applicant has been proposed by a body operating in Australia (usually a cultural, religious or ethnic organisation).

Note:

- although posts should be guided by these priorities when managing their caseloads, it is important that a degree of flexibility be maintained
- at times it may be appropriate to consider urgently cases that do not fall within the priority categories according to the applicant's circumstances or other features of the case.

Syrian-Iraqi caseload

In September 2015, the government announced Australia would resettle an additional 12,000 people displaced by the conflicts in Syria and Iraq, with a focus on persecuted minorities and vulnerable people.

All places for Syrians and Iraqis are prioritised for the most vulnerable applicants. Women, family groups and unaccompanied minors who are members of persecuted minorities may prima facie be regarded as priority applicants. Adult children and one or both of their parents living together may be considered to be a family group for this purpose.

In exceptional circumstances, after consultation with Humanitarian Programme Management Section, other vulnerable applicants may also be given priority processing.

Pro-rata processing

Posts should aim to deliver their allocation of visa places evenly through the program year. To do so, they may find it useful to calculate the average number of cases needing to be assessed as satisfying criteria (other than health and character requirements) in a given period of time (for example, per month). This will assist posts to estimate the number of cases to be interviewed and to achieve a smooth flow of assessments and visa grants throughout the program year.

In setting these targets, posts will need to take into account:

- recent application rates
- the usual percentage of applicants who proceed to interview stage
- the usual percentage of applicants who fail health and character criteria and
- the average number of persons per application.

Other factors

Posts should observe the following general principles when managing their caseloads:

- Applications that prima facie do not meet requirements should be finalised as quickly as possible; this will allow more time and resources to be allocated to cases with merit and will help prevent the development of backlogs
- Although all applications must be assessed individually, in some situations applications should be processed as groups; for example:
  - cases representing a particular ethnic or religious group with similar claims should be considered together
  - applications from family groups should usually be assessed together
- New applications are to be registered on IRIS as soon as possible after they are lodged, and must (under the department's Client Service Charter) be acknowledged in writing within seven working days

- IRIS records are to be updated at every stage of processing, and case notes made to record any significant developments in applications
- Although posts will have their own local arrangements for dealing with enquiries from applicants, proposers and other interested parties, all enquiries should, as a rule, be answered as quickly as possible. In many cases, a standard response can be emailed or posted setting out average processing times, and post mailboxes can be used to generate automatic email responses. In other cases a more detailed written or oral response will be required. It is important that all enquiries be answered within a reasonable period otherwise further enquiries and/or complaints are likely to be generated, adding to the post's workload.
  In dealing with enquiries from third parties about specific applications, officers should be mindful of the requirements of the Privacy Act 1988.

Out of region cases

Out of region cases

Out of region cases are applications that fall within either of the following categories:

- applications that are made at a post with an allocation of places under the program, but the applicant is not of a nationality or from a group normally covered by the post's regional allocation
- applications made at a post that has no allocation of places under the program.

Processing arrangements.

Out of region cases are to be decided by the post at which the applications are made. If officers consider there are compelling reasons to grant a visa, they should seek the advice of the post or SHPC with expertise in processing applications from the applicant's home country. A case summary that includes the claims, links to Australia and the compelling reasons should be sent to the post or SHPC for their views as to whether the case is a compelling one in the context of the caseload. If that other post or SHPC considers the case compelling, a request for places and a brief summary of the case should be emailed to the Humanitarian Helpdesk.

Unaccompanied minors

'Unaccompanied minor' is a broad term that describes a person under 18 years of age who arrives in Australia without being in the charge of, or for the purpose of being cared for by, a parent or legal guardian as recognised under Australian law.

There has often been confusion about whether a minor is unaccompanied because:

- they do not necessarily arrive alone. For example, they may be in a family group, but relatives in the group may not be recognised as legal guardians of the minor under Australian law
- they may be identified as 'adopted', in which case UHM and Guardianship Section would need to ascertain if the adoption is recognised under Australian law
- there is no definition of 'unaccompanied minor' in migration related legislation.

When assessing the visa application of a family that includes a minor who does not appear to be the biological child of any applicant, officers should consider that the child is likely to be an unaccompanied minor. If not sure if a minor on an application is unaccompanied, s. 47E(d) for advice.

As unaccompanied minors are vulnerable to exploitation for the purposes of chain migration, people smuggling and people trafficking, their resettlement has programme management implications.

Posts should email the Humanitarian Helpdesk before accepting the referral of an unlinked unaccompanied minor. The UHM team (email: uhm) must be informed before visa grant of any case that is proceeding that involves an unaccompanied minor, so that the minor's status under the Immigration (Guardianship of Children) Act 1946 (IGOC Act) can be ascertained and support services arranged as needed.

For policy and procedure on assessing UHMs, refer to PAM3: Refugee and Humanitarian - Unaccompanied Humanitarian Minors (UHM) Programme.

For guidance on interviewing minors, refer to Interviewing minors.

Special Humanitarian processing centres

Special Humanitarian processing centres (SHPCs) have been established in Sydney and Melbourne to contribute to the delivery of the offshore humanitarian program and to support the operations of posts.

The SHPC in Melbourne processes Class XB applications accompanied by a form 681 or a form 1417 for people living in certain Middle Eastern countries.

The SHPC in Sydney processes Class XB applications accompanied by a form 681 or a form 1417 for people living in all other countries.

While it is no longer a legal requirement to lodge applications at a particular SHPC according to the country the applicant is living in, clients are encouraged to lodge their application at the SHPC that will process it.

The SHPCs receive all applications which involve a proposer, that is, where the applicant claims to meet:

- "split family" criteria in any of the subclasses
- the criteria for applications under the Community Proposal Pilot or the Community Support Programme
- the criteria for XB-202.

The SHPCs register and acknowledge all applications and make a preliminary assessment against Schedule 1 and 2 requirements. Applications that do not satisfy criteria are refused, and the applicant and proposer or APO are notified of the decision. Applications that appear to have claims requiring further assessment are transferred to the relevant overseas post for consideration against all criteria and for decision.

For applications accompanied by a form 681, the SHPCs also liaise with proposers and proposer organisations and respond to enquiries if appropriate. SHPCs contact proposers to verify their links to applicants and other details in the proposal and to confirm that proposers understand their obligations and are willing to fulfil them. SHPCs undertake integrity checks in relation to proposers, including telephone interviews if appropriate.

The SHPCs also investigate "multiple" proposers (that is, individuals or organisations that submit large numbers of concurrent proposals) and cases if there are doubts as to the bona fides of a proposer organisation. Both SHPCs have an integrity role in examining and reporting on document and other fraud.

For applications accompanied by a form 1417, the SHPCs:

- acknowledge and make a preliminary assessment against Schedule 1 and 2 requirements
- determine whether the application has been made on behalf of a person described in regulation 2.07AM(5).

The SHPCs, in the context of making a preliminary assessment against Schedule 1 and 2 requirements, also investigate any previous proposals by the APO, their status and capacity to assist with the settlement needs of various applicants.

Class XB visa applications – Application validity

Regulations Schedule 1 item 1402

Under s47 of the Migration Act, a visa application that has not been validly made cannot be considered. (Also, a finding that an application is invalid is not a decision to refuse to grant a visa and is not merits reviewable.)

Regulations Schedule 1 item 1402 sets out the specific ways in which a person makes a valid application for a Class XB visa. Policy and procedure on the requirements for making a valid application for **any** visa class are in

PAM3: GenGuideA - All visas - Visa application procedures; the following summarises these requirements as they relate to Class XB applications.

Application forms

Refer first to the legislative instrument made for item 1402(1) purposes.
Briefly, for a Class XB application to be validly made:

- form 842 (Application for offshore humanitarian visa) must be completed by the applicant and in accordance with any directions on the form (s46 of the Act) and
- the applicant must provide their residential address in the form or in a separate document accompanying the form (regulation 2.07(4))

- if applying under the Community Proposal Pilot or the Community Support Programme, form 1417 (Proposal for refugee and special humanitarian entrants by Approved Proposing Organisation) must be completed by an approved proposing organisation and accompany the form 842.

Visa application charge

Schedule 1 item 1402(2) refers. There is no visa application charge (VAC) for a Class XB visa, except for applications accompanied by a form 1417 (refer immediately below).

Applicants under the Community Proposal Pilot or the Community Support Programme

As part of the Pilot, applications accompanied by a form 1417 are subject to a **two-stage VAC** refer to item 1402(2). Applicants are required to pay the VAC in two instalments - one at time of application and one prior to a decision on the application.

At the time the application is made, a first-stage VAC payment is required from the primary applicant only. Payment of the second instalment is a prerequisite for the grant of certain visas following formal notification (under s64 of the Act) of the amount that must be paid.

The second instalment is payable:

- only for certain visa applications
- only after the application has been considered and
- only if the applicant has satisfied regulatory criteria for visa grant.

Section 65(1)(a)(iv) of the Act precludes a visa from being granted until the second instalment assessed as payable has been paid.

VACs are paid and receipted at the SHPCs.

For more information about visa application charges, refer to PAM3: Div2.2A - Visa application charge.

Where the application must be made

The legislative instrument made under Schedule 1 item 1402(3)(a) states that:

- persons whose entry to Australia is proposed in accordance with form 681 must post the application (or have it couriered) to the SHPC in Melbourne or Sydney
- persons whose entry to Australia is proposed in accordance with form 1417 must post the application (or have it couriered) to an SHPC
- all other Class XB applications must be made outside Australia.

From 22 March 2017, applications proposed in accordance with form 681 may be made online via a webform (not ImmiAccount).

Where the applicant must be

Under item 1402(3)(b), Class XB visa applicants must be outside Australia when they make their application.

Ineligible applicants

Under item 1402(3)(ba) – that is, this is a valid application requirement - a Class XB applicant must not be a person described in regulation 2.07AM(5), that is, they must **not** be a person who:

- between 13 August 2012 and 31 May 2013, entered Australia at an excised offshore place and became an unlawful non-citizen or
- on or after 13 August 2012, was taken to a place outside Australia under s245F(9)(b) of the Act or
- on or after 1 June 2013, is an illegal maritime arrival (IMA) (in the Act, referred to as an ***unauthorised maritime arrival***).

Regulation 2.07AM prescribes the only circumstances in which these persons may be taken to have made a valid Class XB application - namely, that the Minister (personally) invites the person to make an application, the person accepts the invitation and an officer endorses in writing the person's acceptance of the invitation. The application process is the same as for Class UJ (Temporary Safe Haven) - refer to PAM3: Refugee and Humanitarian - Temporary humanitarian stay.

Combined applications

Item 1402(3)(c) allows individuals who claim to be members of the family unit of a person who is an applicant for a Class XB visa to make an application at the same time and place as, and combined with, the application by that person.

Partly-completed applications

Section 5A of the Act defines ***personal identifiers*** as including photographs and signatures.

Note: There is currently no legislative provision making it mandatory for an applicant to provide personal identifiers. An application is therefore not invalid merely because the applicant fails to sign the form 842 and/or provide photographs. Only if an officer expressly asks an applicant to provide a signature and/or photographs, and the applicant fails to do so, does the application become invalid. For policy and procedure, refer to PAM3: Act - Identity, biometrics and immigration status:

- Biometrics for offshore visa processing
- Collecting personal identifiers onshore.

If an application form is not signed or does not contain the applicant's residential address or photograph, the applicant should first be given the opportunity to provide the information. If the applicant provides the requested information the application is valid, but if the applicant does not provide the requested information the application is invalid and should be finalised accordingly - refer to Dealing with invalid applications. A flexible approach to the need for, and the timing of, requests for personal identifiers may be appropriate depending on the individual circumstances of the applicant.

If an applicant is required to provide a signature but is unable to do so (for example, they are illiterate or have an injury or physical condition that prevents them from signing their name), officers may accept the applicant's "mark" (for example, a cross or a thumbprint), if the applicant uses one of these as their signature.

If the application form is otherwise not fully completed (for example, questions are left unanswered), the missing information should be obtained during the processing of the application (for example, at interview or by letter).

Proposal forms

Refer to Where the application must be made.

Applications that are accompanied by:

- a proposal (form 681) from persons in certain countries or
- by a (form 1417) proposal from an APO

must be made by posting or couriering the application to a specified address. In these cases the relevant proposal form must be submitted with the form 842 for a valid application to be made. In all other cases, a Class XB application can be validly made without an accompanying proposal form (although persons applying elsewhere under split family provisions should be advised of the time of application requirement in 202.211(2)(a) that a form 681 proposal has been provided).

Dealing with invalid applications

The procedures for dealing with invalid applications are set out in PAM3: GenGuideA - All visas - Visa application procedures - Valid/invalid applications - Consequences for decision making.

Class XB application decision making – The legal framework

Background

Officers must familiarise themselves with PAM3: GenGuideA - All visas - Visa application procedures, which provides detailed policy and procedure on the legal requirements for deciding visa applications in all visa classes. Some key principles particularly relevant to officers considering Class XB applications in the offshore humanitarian program are set out below.

A Class XB application is an application for all Class XB subclasses

Under s45 of the Act, a person who applies for a visa must apply for a visa of a particular visa class. This means that:

- a Class XB visa application is an application for all visa subclasses within Class XB
- a decision to refuse a visa cannot be made unless the visa applicant has been considered against the requirements of each subclass within that class.

How an application must be decided

Under s47 of the Act, an application must be considered until either a visa is granted or refused or the application is withdrawn. Procedures for dealing with withdrawn applications are in PAM3: GenGuideA - All visas - Visa application procedures. There is no legislative provision for an application to be "lapsed".

Although s51(1) and s63(1) of the Act enable officers to defer consideration of an application, this should be done in exceptional circumstances only. Officers are not compelled to defer consideration of an application if the applicant requests deferral.

Refusing applications

As a Class XB visa application is an application for all visa subclasses within Class XB, officers must ensure that they have assessed the application against the requirements of all XB subclasses before refusing to grant a Class XB visa.

Under s66 of the Act, if a visa is refused, the applicant must be given written notice of, among other things, the criterion they failed to satisfy. Although s65 delegates are not legally obliged to give reasons why a criterion was not satisfied, they should nonetheless ensure that they document their assessment in a decision record. Decision records should clearly and logically summarise the officer's assessment of relevant factors based on the information available, and be consistent with legislation and policy, in such a way as to stand up to scrutiny by the public or an Australian court. Decision support tools to assist officers are available by emailing Humanitarian Programme Management Section via the Humanitarian Helpdesk.

A decision to refuse a Class XB visa is neither Part 5- nor Part 7-reviewable by the AAT. A decision to refuse a Class XB visa is, however, judicially reviewable by Australian federal courts on questions of law.

Note: Separate provisions apply to cases where an applicant fails the s501 character test - refer to Public interest and related criteria.

Procedural fairness provisions

Subdivision AB of the Act sets out the code of procedure for dealing fairly, efficiently and quickly with visa applications. It contains the procedural fairness (natural justice) requirements for communicating with applicants, requesting information from applicants, putting adverse information to applicants and considering and deciding applications.

Officers must ensure that these procedures are followed in assessing and deciding Class XB applications. For policy and procedure on the procedural fairness provisions, refer to PAM3: GenGuideA - All visas - Visa application procedures.

Changes in circumstances

Under s104 of the Act, visa applicants are required to notify an officer in writing if there has been any change in their circumstances such that any answer in the application form would no longer be correct. For example, if the applicant was unmarried at the time the application was made and later marries, the applicant is required to notify an officer in writing as soon as practicable.

For a person outside Australia who is granted a visa, this obligation to notify continues until the person is immigration cleared in Australia. If a visa holder fails to notify a change in their circumstances, there may be grounds for cancelling the visa - refer to PAM3: Act - Visa cancellation - General visa cancellation powers (s109, s116, s128, s134B and s140).

Interviewing

When is an interview required

It is policy that all Class XB applicants (including split family applicants) be interviewed by an A-based officer before a visa is granted.

There is no requirement to interview applicants who prima facie do not meet visa requirements before a decision is taken to refuse the visa.

The purpose of the interview

The interview is an important part of the process of assessing a humanitarian visa application and is an essential integrity tool.

Interviewing is particularly important in the offshore humanitarian program as many applicants do not have adequate or reliable documentation in order to establish their identity, to verify family relationships or to substantiate their claims of persecution or substantial discrimination.

Interviewing gives officers the opportunity to:

- establish the applicant's identity and family composition, including assessing whether any additional applicants meet ***member of the family unit*** or ***member of the immediate family*** definitions - refer to Family relationships
- obtain further information about the applicant's claims of being subject to persecution or substantial discrimination and assess the credibility - refer to:
  - Persecution
  - Substantial discrimination

- establish whether "compelling reasons" exist, particularly with regard to the degree of persecution or discrimination - refer to Compelling reasons
    - assess the nature and extent of the applicant's links to Australia and the applicant's settlement needs - refer to Settlement as the appropriate course for the applicant
- investigate public interest considerations such as child custody criteria, criminal convictions, involvement in war crimes, crimes against humanity, or proliferation of weapons of mass destruction - refer to Public interest and related criteria
- put adverse information to applicants and give them the opportunity to comment - refer to PAM3: Act - Code of procedure - Notification requirements - Notifications at assessment stage
- for applications under the Community Proposal Pilot or the Community Support Programme, assess the post-arrival needs of the applicant and the capacity of the APO to provide for the applicant's permanent settlement in Australia.

Conducting interviews

Preferably in person

It is policy that all applicants are interviewed by an A-based officer prior to visa grant and, wherever possible, the interview should be conducted face to face. There may be circumstances, however, in which a face to face interview is not possible. If an A-based officer considers it unreasonable for the applicant to travel, and it is not safe or practical for the A-based officer to travel to the applicant, the interview may be conducted by telephone.

In a telephone interview, it is important that the interviewing officer is satisfied as to the identity of the interviewee. This can be done by asking the interviewee to provide unique biographical data, details of family members or other key information provided in the application that only the interviewee is likely to know.

In some circumstances it may be appropriate to seek the assistance of local offices of UNHCR, the International Organization for Migration (IOM) or the panel doctor network to find a venue for a telephone interview and to help establish the identity of the applicant and other family members.

Some examples of circumstances in which a telephone interview may be considered include straightforward split family applications or other high-priority applications for which there are no identity, integrity or bona fides concerns.

Sensitivity to cultural and similar issues

It is important that interviewing officers be aware of and sensitive to ethnic, cultural, religious, gender, social or age issues that could limit an applicant's ability to respond freely to the interviewer, either directly or via an interpreter. Officers should also be mindful that applicants may have suffered torture or trauma and that this may affect the way they respond to questions.

Officers should be particularly sensitive to these issues when interviewing minors or female applicants. Female applicants should, where possible, be interviewed by female officers and interpreters, particularly if gender-related claims or claims of torture and trauma (including sexual violence) have been made. Officers should familiarise themselves with PAM3: Refugee and Humanitarian - Gender Guidelines.

If it is necessary to interview a minor, an adult relative or carer should be present during the interview - refer to Interviewing minors.

When conducting an interview, officers should:

- identify themselves to interviewees
- explain the purpose of the interview and
- if an interpreter is present, explain the role of the interpreter.

It is important to stress to the interviewee that the interview is an opportunity for them to confirm information already submitted, and to provide additional information to support their claims. Officers should advise

interviewees that the information they provide must be truthful and will be treated confidentially by both the interviewing officer and the interpreter.

Interpreters and others at interview

Interviewees may ask that a relative or friend be present during the interview. This should be permitted, however, it should be made clear that the relative or friend may not take any part in the interview.

In many cases an interpreter will be required for the interview, in which case an independent interpreter should always be used. Interviewees' friends or relatives or other visa applicants should not be used as interpreters as this may compromise the integrity of the interview.

When using the service of an interpreter, it is important to remember that the interpreter is an impartial professional, whose job is to facilitate communication between the officer and the applicant, by accurately transferring what is said from one language to another in an unbiased and non-judgmental manner. This is the only role of the interpreter.

Some applicants may claim they do not need an interpreter. If, during the interview, an officer concludes that an interpreter would assist them to conduct the interview, it is acceptable for them to insist an interpreter be used.

Note: It is important that, wherever possible, officers try to match female applicants with a female interpreter.

Settlement needs

The interviewer should explore any possible post-arrival settlement needs the applicant and family members may have to ensure that these are included in a Humanitarian Entrants Management System (HEMS) referral if the visa is granted - refer to The role of posts in providing humanitarian settlement information.

The interviewer should also consider whether any minor being interviewed may be an unaccompanied minor, including where the minor is in a family group that does not include a parent or legal guardian as recognised under Australian law, as there are additional settlement considerations for unaccompanied humanitarian minors (UHMs). For further information refer to The role of posts in providing settlement information regarding UHMs.

It is not necessary to use the interview as an opportunity to provide settlement counselling (that is, advice on post-arrival settlement services, employment prospects, housing in Australia and so on). General settlement information is provided under the Australian Cultural Orientation (AUSCO) program for most offshore humanitarian posts - refer to Australian Cultural Orientation (AUSCO) program. Where the AUSCO program is unavailable, visa applicants should be given a copy of the settlement information booklet, “Beginning a Life in Australia”, which can be downloaded from its Department of Social Services’ webpage.

Settlement needs of CPP and CSP applicants

The interviewer should advise the applicant and family members that they are participating in the Community Proposal Pilot or the Community Support Programme and that, should their visas be granted, their settlement in Australia will be supported by their Approved Proposing Organisation. Refer to APO obligations under the deed.

It is vital that the interviewer explore any possible post-arrival settlement needs that the applicants , and family members, may have, in order to assess the capacity of the APO to provide for their permanent settlement in Australia - refer to APO's capacity. Any settlement-related concerns should be raised with the Approved Proposing Organisation and, if necessary, Humanitarian Programme Management Section.

Documenting the interview

All interviews with humanitarian visa applicants must be carefully documented electronically, preferably during the interview. A record of the interview must be printed and put on the applicant's file and a text version of the interview record should be copied into IRIS notes.

Interviewing minors

Minors as additional applicants

Conducting a detailed interview with a minor under 16 should be avoided, unless there are reasons of direct relevance to assessing Class XB criteria. These reasons should be clearly documented in the interview report.

In general, minors who are members of the family unit (or members of the immediate family) should only be interviewed in the presence of a responsible adult (for example, a parent, guardian or carer). This applies whether or not the responsible adult is included in the visa application.

As a general rule, interviewing of minors under 16 should be limited to basic questioning to confirm identity, age and immediate family relationships, including determining whether the provisions of the *Immigration (Guardianship of Children) Act 1946* (the IGOC Act) apply to them, in which case the Minister for Immigration and Border Protection would be their legal guardian.

Unaccompanied humanitarian minors (UHMs)

Interviewing officers should be mindful that UHMs are highly vulnerable and should be interviewed sensitively in the presence of a responsible adult (for example, a guardian, carer or UNHCR officer if UNHCR referred) wherever possible.

For policy and procedure on assessing UHMs, refer to PAM3: Refugee and Humanitarian - Unaccompanied Humanitarian Minors (UHM) Programme.

Family relationships

Members of the family unit and combined applications

Schedule 1 item 1402(3)(c) allows individuals who claim to be ***members of the family unit*** of a Class XB visa applicant to make a combined application with that person - refer to Combined applications. This means that a Class XB application may include the "main" applicant and one or more claimed family unit members.

Schedule 2 criteria for each of the Class XB subclasses have:

- primary criteria that must be satisfied by at least one person in the application
- secondary criteria that must be satisfied by any other applicants included in the application.

Normally, the "main applicant" would be the applicant assessed against primary criteria (for example, the requirement that the applicant is subject to persecution or substantial discrimination in their home country), while any family unit members would be assessed against the secondary criteria. If a family member included in an application has more compelling claims than the main applicant, it is open to officers to assess that person instead against primary criteria and the remaining applicants against secondary criteria.

Family definitions

Background

The Act and Regulations define various “family” terms for which Family Migration Programme Management Section has policy responsibility. Some of the terms include definitions that are unique to Class XB. Others are

defined in such a way as to give a broader interpretation for Class XB applicants than for other applicants. Officers must apply these definitions when assessing Class XB visa applications.

For some of the most commonly used terms relating to family relationships used in assessing Class XB applications, refer to:

- Spouse
- De facto partners
- Polygamy
- 'Dependent child' and related terms
- Relative
- Member of the immediate family
- Member of the family unit.

Spouse

Section 5F of the Act defines a person as the ***spouse*** of another person if the two are in a married relationship. A ***married relationship*** (refer to s5F(2)) exists if:

- the two persons are married to each other under a marriage that is valid for the purposes of the Migration Act (note: not the Marriage Act) - refer to s12 of the Migration Act)
- they have a mutual commitment to a shared life as husband and wife to the exclusion of all others
- the relationship between them is genuine and continuing and
- they live together (or do not live separately and apart on a permanent basis).

Regulation 1.15A outlines the circumstances that may be considered in determining whether a married relationship exists.

In some instances, Class XB applicants may be unable to provide documentary evidence of their married relationship, for example, because they have never been lawfully married or have never had a marriage certificate. In these situations, officers should satisfy themselves as to the nature of the relationship and may consider the relationship against the requirements for de facto partners. For further information about the spouse definition, refer to PAM3: Act - Act-defined terms - s5F - Spouse.

Although the two terms are defined separately in the Act and Regulations, the term "partner" may be used to cover both 'spouse' and 'de facto partner'.

De facto partners

Section 5CB of the Act defines a person as being the ***de facto partner*** of another person (whether of the same sex or a different sex) if the person is in a de facto relationship with the other person. A ***de facto relationship*** exists if:

- the two persons are not in a married relationship (as defined) with each other but they have a mutual commitment to a shared life to the exclusion of all others
- the relationship between them is genuine and continuing and
- they live together (or do not live separately and apart on a permanent basis) and they are not related by family.

Although the two terms are defined separately in the Act and Regulations, the term "partner" may be used to cover both 'spouse' and 'de facto partner'.

Regulation 1.09A outlines the circumstances that may be considered in determining whether a de facto relationship exists. (Also note that regulation 2.03A(2) requires both parties to be at least 18 years old.) For further information about de facto partners, refer to PAM3: Act - Act-defined terms - s5CB - De facto partner.

Officers should familiarise themselves with the legal or cultural norms pertaining to de facto relationships in the home countries and countries of residence of their Class XB applicants.

Polygamy

Many Class XB applicants come from countries where polygamous marriages are legal or accepted under local cultural norms. Although polygamy is not defined under migration legislation, Australian migration law reflects the broader provisions of the Marriage Act, which does not cater for polygamous marriages. In order for migration requirements to be met, there can be only one ongoing married or de facto relationship.

If **either** party to a married or de facto relationship **is involved in** another married or de facto relationship, **neither** party can satisfy the migration definition of spouse or de facto partner. This is because s5F and s5CB require that the parties to spouse and de facto relationships -have a mutual commitment to a shared life to the exclusion of all others'.

'Dependent child' and related terms

Dependent child is defined in regulation 1.03 as being a natural, adopted or step-child other than a child who is engaged to be married or who has a spouse or de facto partner. Officers should bring to the attention of Humanitarian Programme Management Section cases where a minor is subject to a customary engagement. A dependent child can be over 18, but only if they are dependent on the main applicant or unable to work due to mental or physical incapacity - refer to PAM3: Div1.2/reg1.03 - Dependent child.

Child is defined in s5CA of the Act and regulation 1.14A and includes:

- adopted children
- children conceived through artificial conception procedures, such as in vitro fertilisation and
- children born under certain surrogacy agreements recognised under a prescribed State/Territory law as per the Family Law Act 1975.

Adoption is defined in regulation 1.04. Customary, as opposed to formal, adoptions are permitted under regulation 1.04(2) if formal adoption is not available under the law of the place where the arrangements were made or is not reasonably practicable. The arrangements must have been made in accordance with the usual practice or a recognised custom in the culture or cultures of the adoptee and the adopter and not been contrived to circumvent Australian migration requirements. Further, the relationship between the adoptee and the adopter must be significantly closer than any such relationship between the adoptee and any other person or persons.

The circumstances of some Class XB applicants may require a flexible interpretation of adoption regulations. For example, it may be that there are no mechanisms for formal adoption available to applicants residing in refugee camps, making it necessary for officers to decide whether the arrangements can be considered as customary adoption. For policy and procedure on adoption, including customary adoption, refer to PAM3: Div1.2/reg1.04 - Adoption.

Step-child is defined in regulation 1.03 and can include a person who is not the child of the parent but who is the child of the parent's current partner. In some circumstances a step-child can include a person who is the child of the parent's former partner.

Dependent is defined in regulation 1.05A. For Class XB purposes, a person is 'dependent' on the main applicant if they are wholly or substantially reliant on the main applicant for financial, psychological or physical support (regulation 1.05A(2)).

Note:

- This definition provides for a broader interpretation of dependency for Class XB visas in order to avoid splitting up genuine family units.
- Children who have not turned 18 years, and older children with a disability that prevents them from working, do not have to demonstrate dependency - refer to PAM3: Div1.2/reg1.05A - Dependent.

Relative

Relative and ***close relative*** are defined in regulation 1.03.

For Class XB applications being considered under XB-200, a relative of the main applicant can be a partner, child, parent, sibling, grandparent, grandchild, aunt, uncle, niece, nephew (including step-relationships), first cousin or second cousin.

For Class XB applications being considered under a subclass other than XB-200, a relative can be any of the above other than a first or second cousin.

Member of the immediate family

For all split family cases primary criteria require that the main applicant must be a ***member of the immediate family*** of the proposer.

For all split family cases, secondary criteria require that any additional applicant must be a ***member of the immediate family*** of the main applicant.

'Member of the immediate family' is defined in regulation 1.12AA, and includes:

- a spouse or de facto partner
- a dependent child
- a ***parent*** (but **only** if their child who is the proposer or main applicant is under 18).

For policy and procedure on split families, refer to Split family cases (XB-200, XB-201, XB-202, XB-203 and XB-204).

Member of the family unit

For applications other than split family cases, secondary criteria require that the additional applicant must be a member of the family unit of the main applicant. Member of the family unit is defined in regulation 1.12, and includes:

- a spouse or de facto partner
- a ***dependent child*** (of the main applicant and/or their partner)
- a dependent child of a dependent child
- a ***relative*** of the main applicant (or their partner) who does not have a spouse or de facto partner, is usually resident in the household and is dependent on the main applicant.

A relative may meet secondary criteria as a ***member of the family unit*** if they are ***dependent*** - refer to 'Dependent child' and related terms. Note that 'dependent' here includes the broader definition which includes dependency based on financial, psychological or physical support.

If a claimed family member does not meet the definition of ***member of the family unit*** or ***member of the immediate family***, that applicant should be separated administratively from the original application, given their own file and considered against primary criteria in their own right. However, persons should be considered against dependency based on financial, psychological or physical support, including requesting further information where appropriate, prior to any administrative separation. In many circumstances, an interview may need to be conducted to assess this. Refer also to Additional applicants who are not members of the immediate family.

Applicants under the Community Proposal Pilot or the Community Support Programme who are separated from a combined application are not charged a separate first stage Visa Application Charge (VAC), but they must pay the second stage VAC at the primary applicant rate. The Approved Proposing Organisation should, at the time of separation of the applications, be asked if they are prepared to continue to support the case and pay the higher VAC charges if the applications are successful.

For policy and procedure on primary and secondary criteria, refer to PAM3: GenGuideA - All visas - Visa application procedures - Applications for visas - Applicants, Schedule 2 subclasses and visa criteria.

Adding family members to an application

Under regulation 2.08, if a Class XB applicant gives birth to a child after the application is made but before it is decided, by law the child is taken to have also applied for a Class XB visa.

This provision:

- applies even if the department is not notified of the birth until after the application is decided or even evidenced but
- does **not** apply to adopted children.

Under regulation 2.08A, a Class XB applicant may include a dependent child (including an adopted child) or a partner after the application is lodged but before it is decided, if the applicant requests this in writing. The dependent child or partner is taken to have applied for the same visa class as the main applicant, as of the date the written request is received.

There is no provision for other family unit members to be "added" to an existing application.

For further guidance on the above matters, refer to PAM3: GenGuideA - All visas - Visa application procedures - Adding family unit members to an application.

Assessment of family relationships

Evidentiary requirements

If an applicant's eligibility for a visa depends on their relationship to the main applicant as a member of the family unit or a member of the immediate family, officers must be satisfied that:

- the family relationship meets the relevant regulatory definition (for example, partner, relative, dependent child) and
- the family relationship has not been misrepresented or contrived for migration purposes.

The Class XB visa application form asks visa applicants to provide documentary evidence of their own identity and the identity of any family members included in the application. Applicants should also provide evidence of their family composition and their relationship to other family members included in the application.

This evidence would normally be documents such as passports, identity cards, birth certificates, marriage certificates, family registers and so on. If such official evidence is unavailable or insufficient, applicants may submit other documents such as hospital, school or church records. For policy and procedure, refer to PAM3: Div1.2/reg1.12 - Member of the family unit.

Some Class XB visa applicants might be unable to produce satisfactory documentary evidence of their identity and family relationships. If Class XB applicants have fled persecution or conflict and are living in places where it is difficult or impossible to obtain official documentation, they might be unable to present the types of identity documents listed above. Applicants might also present identity documents of doubtful origin that cannot easily be verified.

If official documentary evidence of identity is lacking, officers should consider whatever other evidence is available. This may take the form of camp registration records, ration cards or documentation issued by UNHCR and other bodies. Officers should examine all documents closely, sight the original or a certified copy of each document, and place on the applicant's case file a copy of all documents sighted.

Officers should also use the interview to verify the identity of applicants, to confirm family relationships and to assess claims of dependency. Interviewing officers should satisfy themselves that the number of applicants attending the interview, and their identities, match the details on the application form and that the ages and

relationships are as claimed. In cases where family members have become separated and are missing or living separately, officers should document the circumstances of the separation and the biographical details of each family member. For policy and procedure on interviewing, refer to Interviewing.

DNA testing

Under policy, DNA testing can be used to verify claimed biological relationships if visa eligibility depends on the claimed biological relationship and there are doubts about that relationship that cannot be resolved by documents or interview. DNA analysis can be carried out for parentage, paternity or maternity, sibling and grandparent testing. DNA test results are usually definitive in parent-child cases. DNA testing of sibling and extended family relationships is not conclusive.

DNA testing is to be used only as a last resort once officers are satisfied that all other options to establish a biological relationship have been exhausted. This is because the financial and potential emotional cost to the applicant and the department are considerable. It should not be used in cases where officers would normally, by extending the benefit of the doubt, accept a claimed family relationship on the available evidence. It also should not be used if doubts about a family relationship are substantial and a decision on an applicant's claims can be made on the available evidence.

Officers should bear in mind that, even if there is no direct biological relationship between a child and the main applicant, the child might nevertheless meet the definition of ***member of the family unit*** - refer to:

- Member of the immediate family
- Member of the family unit

Family Migration Programme Management Section is responsible for policy relating to DNA testing. For policy and procedure on DNA testing, refer to PAM3: Div1.2/reg1.12 - Member of the family unit - DNA testing. Officers must have regard to that instruction before proceeding with DNA testing. Any policy questions about DNA testing of Class XB applicants should be:

- emailed to Family Programme Management and
- copied/emailed to Humanitarian Programme Management Section via the Humanitarian Helpdesk.

Child custody issues

Refer to Public interest and related criteria.

Sensitive cases

It is policy that posts bring any sensitive or potentially controversial cases to the attention of Humanitarian Programme Management Section, which will monitor and advise on these cases if appropriate.

Officers should email details of the application and an outline of any issues of concern to Humanitarian Programme Management Section via the Humanitarian Helpdesk.

Sensitive or potentially controversial cases may include, but are not limited to:

- Split family applications in circumstances where health or character requirements have not been met.
- Cases involving war crimes or issues relating to proliferation of weapons of mass destruction or PIC 4002.
- Cases where Australia's relations with another country could be affected.
- Cases involving high profile individuals such as political leaders or senior government officials.
- Applications involving a threat of self-harm.
- Applications that have attracted media or significant community interest.
- Applications under the Community Proposal Pilot or the Community Support Programme in circumstances where officers may not be satisfied about the APO's capacity to provide for the permanent settlement of the applicant.

Assessing the Class XB subclasses

For category-specific policy and procedure on assessing applications under each of the visa subclasses within Class XB, refer to:

- XB-200 - Refugee
- XB-201 - In-country Special Humanitarian
- XB-202 - Global Special Humanitarian
- XB-203 - Emergency Rescue
- XB-204 - Woman at Risk
- Split family cases (XB-200, XB-201, XB-202, XB-203 and XB-204)

and, if applicable:

- Locally engaged employee (LEE) visa policy
- The Community Proposal Pilot and the Community Support Programme.

XB-200 - Refugee

About XB-200

XB-200 forms part of the Refugee category of the humanitarian program. The primary criteria provide for grant of a visa to an applicant in three circumstances:

- A person living outside their home country and who is subject to persecution in that country (200.211(1)).
- A person who has been certified by a relevant Minister as being part of a class of persons, and at risk of harm for this reason (200.211(1A)(a)). For policy and procedure on assessing these cases, refer to Locally engaged employee (LEE) visa policy.
- A member of the immediate family of a proposer who holds or held an XB-200 visa (200.211(2)). For policy and procedure on assessing these cases, refer to Split family cases (XB-200, XB-201, XB-202, XB-203 and XB-204).

Registration with UNHCR or national authority

There is no Schedule 2 criterion requiring the applicant to be registered with UNHCR or the government authorities in the country of refuge. In practice, however, most XB-200 applicants have been mandated as refugees by UNHCR and have been referred to the department for resettlement.

Although registration is not a requirement for XB-200, applicants should be asked to provide evidence of registration with UNHCR and the local authorities in the country of first refuge. This is to ensure that:

- the person is afforded necessary protection and care
- coordinated approaches to various resettlement countries occur, by emphasising the need for international burden sharing in regard to resettlement and
- all persons receive counselling as to the possibilities for their future, including possible return to their home country, local integration or resettlement in other countries.

Notwithstanding the above, failure to register with UNHCR or government authorities of the host country is not grounds for refusing the applicant an XB-200 (or any other Class XB subclass) visa. An applicant may present strong claims against XB-200 criteria and be eligible to be granted the visa even though they have not registered with UNHCR or the local authorities.

XB-200 requirements

Persecution and outside home country

200.211(1)

Under 200.211(1)(a), to be granted an XB-200 visa, the applicant must be living outside their home country and must be subject to persecution in the home country.

For policy and procedure on assessing claims of persecution, refer to Persecution.

Compelling reasons

200.222

In addition to the criteria relating to persecution, the main applicant must also satisfy the "compelling reasons" criterion which is common to all Class XB subclasses.

For policy and procedure on assessment of this criterion, refer to Compelling reasons.

Other XB-200 requirements

In addition to the above requirements, there are other Schedule 2 criteria that the applicant must satisfy. For policy and procedure on these requirements, refer to:

- Class XB-specific criteria
- Generic criteria.

XB-201 - In-country Special Humanitarian

About XB-201

XB-201 forms part of the Refugee category of the humanitarian program. The primary criteria provide for grant of a visa to an applicant in three circumstances:

- a person living in their home country and who is subject to persecution in that country (201.211(1))
- a person who has been certified by a relevant Minister as being part of a class of persons, and at risk of harm for this reason (201.211(1A)(a)). For policy and procedure on assessing these cases, refer to Locally engaged employee (LEE) visa policy
- a member of the immediate family of a proposer who holds or held an XB-201 visa (201.211(2)). For policy and procedure on assessing these cases, refer to Split family cases (XB-200, XB-201, XB-202, XB-203 and XB-204).

About “in-country” issues

There are many persons living in their home countries who are subject to persecution because of their race, religion, ethnicity, political beliefs and other reasons. The government of their country may be powerless to protect them or may be the source of the persecution.

UNHCR provides protection and assistance to refugees who have left their home countries. It has no mandate to refer for resettlement persons subject to persecution who remain in their home country, even if UNHCR has a presence in that country.

Australia's capacity to assist persons in these circumstances is also extremely limited. There may be significant bilateral sensitivities around assessing applicants in their home country as subject to persecution and assisting their departure from that country.

The Government's priority in the refugee category is to resettle persons who have been assessed as refugees by UNHCR and referred to Australia for resettlement. XB-201 was established to enable Australia to assist in exceptional cases and for these reasons there is no regular allocation of places.

XB-201 requirements

For policy and procedure on assessing persecution, refer to Persecution. Note: A finding that an applicant is subject to persecution is not of itself sufficient to satisfy the criteria for grant of an XB-201 visa. Applicants must also meet the "compelling reasons" criterion in 201.222 and satisfy officers that grant of the visa is not against Australia's interests - refer to Australia's interests.

On identifying an exceptional case which appears to have merit against these core criteria, before the assessment is finalised officers should email a case summary to Humanitarian Programme Management Section via the Humanitarian Helpdesk.

Other "in-country" processing issues

Other than split family applicants, applicants who are living in their home country cannot meet requirements under the SHP for an XB-202 visa and can only be further considered against XB-201 and XB-203.

From time to time applications from applicants living in their home country are validly made at an SHPC because the application is accompanied by a (redundant) proposal.

XB-202 - Global Special Humanitarian

About XB-202

XB-202 is the subclass used for the special humanitarian program (SHP) category of the humanitarian program. XB-202 is intended to assist persons with links to Australia who may not be refugees but who are subject to serious human rights violations and for whom resettlement in Australia is the appropriate solution.

XB-202 primary criteria provide for grant of a visa to an applicant in two circumstances.

- a person living outside their home country who is subject to "substantial discrimination" and is proposed by a person or organisation in Australia (202.211(1))
- a member of the immediate family of a proposer who holds or held a Global Special Humanitarian (XB-202) (or who holds or held a Resolution of Status (CD-851) visa or Protection (XA-866) visa and is not a person described in regulation 2.07AM(5)). For policy and procedure on assessing these cases, refer to Split family cases (XB-200, XB-201, XB-202, XB-203 and XB-204).

XB-202 primary criteria

Substantial discrimination and outside home country

202.211(1)

Except in split family cases, an applicant seeking to meet XB-202 primary criteria must be outside their home country and satisfy officers that they are subject to substantial discrimination in their home country amounting to a gross violation of their human rights.

- Refer to Substantial discrimination.

Form 681 (Refugee and Special Humanitarian proposal)

202.225 and 202.211(2)

The applicant's entry to Australia is to be proposed in accordance with form 681 (Refugee and Special Humanitarian proposal) by an Australian citizen, Australian permanent resident, eligible New Zealand citizen or a body operating in Australia. Under policy, a body operating in Australia would normally be a recognised community, ethnic or religious organisation.

To satisfy this criterion, the applicant must submit a form 681 completed by an eligible proposer:

- split family applicants must submit form 681 at time of application (202.211(2))
- all other applicants are required to have submitted form 681 by the time of decision (202.225).

For applications made at an SHPC, the application can be validly made only if a form 681 proposal is submitted **with** the visa application (form 842) - refer to:

- Schedule 1 item 1402(3)(a) and its associated legislative instrument
- Class XB visa applications – Application validity.

If the proposer is a minor

If the applicant's proposer is a minor, the form 681 should be completed and lodged in the minor's name, as it is the minor who is the proposer for the purposes of 202.225 or 202.211(2).

A responsible adult may assist the proposer to complete and lodge form 681. The adult would be expected to meet all proposer obligations on the minor's behalf - refer to The proposer's responsibilities.

Compelling reasons

202.222

In addition to the criteria relating to substantial discrimination, the main applicant must also satisfy the "compelling reasons" criterion which is common to all Class XB subclasses.

Note that there are several variations to the original form of the “compelling reasons” criterion and decision makers should be careful to apply the correct one in each case.

For advice on assessment of this criterion, refer to Compelling reasons.

Other XB-202 requirements

In addition to the above requirements, there are other Schedule 2 criteria that the applicant must satisfy. For policy and procedure on these requirements, refer to:

- Class XB-specific criteria
- Generic criteria.

The proposer's responsibilities

The proposer must complete form 681 and should provide evidence of their status as an Australian permanent resident, Australian citizen or eligible New Zealand citizen (for example, certified copy of passport, permanent visa or citizenship certificate). If the proposer is an organisation it is important that all details required under part C of the form be provided, and that an individual from the proposer organisation complete part D of the form on behalf of the organisation.

Proposers are expected to provide SHP entrants with assistance including:

- payment of costs associated with the entrant's travel to Australia - refer to Travel arrangements for SHP visa holders
- meeting the entrant at their first point of arrival in Australia
- arranging initial accommodation
- assisting the entrant to find and establish permanent accommodation and
- providing information and orientation assistance.

Proposers may be eligible for some assistance in meeting these obligations under the No Interest Travel Loan Scheme and the HSP program.

For applications under the Community Proposal Pilot or the Community Support Programme, refer to The Community Proposal Pilot and the Community Support Programme.

XB-203 - Emergency Rescue

About XB-203

XB-203 forms part of the Refugee category of the humanitarian program. The primary criteria provide for grant of a visa to applicants in two circumstances:

- a person who is subject to persecution in their home country, and has an urgent and compelling need to travel to Australia (203.211(1)) or
- a member of the immediate family of a proposer who holds or held an XB-203 visa (203.211(2)).

For information about assessing these cases, refer to Split family cases (XB-200, XB-201, XB-202, XB-203 and XB-204).

XB-203 is intended to provide emergency resettlement to persons who are subject to persecution and also face an immediate threat to their life or personal security (other than for medical reasons). Under policy, XB-203 is used primarily for emergency cases referred for resettlement to Australia by UNHCR - refer to Processing arrangements.

There is no allocation of places for XB-203 within the offshore humanitarian program. Rather, places are made available when required. Cases which have been accepted for processing as Emergency Rescue are to be given priority over all others - refer to Prioritising caseload. Only a few XB-203 visas are granted each year. They can be granted at any post to applicants of any nationality.

XB-203 processing arrangements

Referral by UNHCR

XB-203 is used primarily for cases referred to the department by UNHCR. In June 2003 the department and UNHCR signed an arrangement setting out the procedures for managing Emergency Rescue cases. Under this arrangement, UNHCR undertakes to refer only those cases:

- in which the need for evacuation is so urgent that priority refugee processing would be inadequate and
- where the reason for emergency evacuation is not medical and
- that do not have a clear connection to another country offering emergency resettlement and
- that prima facie would not fail character or security requirements.

The agreement further states that UNHCR refers cases by submitting an RRF to Humanitarian Programme Management Section via its Canberra regional office and to the post. Humanitarian Programme Management Section will consult the post and, depending on the individual case, may also seek advice from the Country Of Origin Information Services Section, DFAT, the Minister's office and areas of the department involved in public interest checks and settlement. Humanitarian Programme Management Section will make an in-principle decision to accept or decline the referral and advise UNHCR accordingly within two working days of receipt of the RRF.

If the referral is accepted, UNHCR assists the applicant to complete and lodge an application form at the post. If possible, the application should be processed and finalised to enable the applicant to travel within three working days of the date UNHCR is notified that the referral has been accepted.

If the referral is declined and it is appropriate to do so, the post may invite a Class XB application for consideration under another subclass.

Persons not referred by UNHCR

Posts may receive approaches from organisations other than UNHCR or from individuals who wish to be considered under emergency rescue provisions. In such cases the organisation or individual should be advised to contact the local UNHCR office in the first instance. If the case appears to meet Class XB criteria and warrants emergency processing the post should also contact Humanitarian Programme Management Section for further advice. In such cases it may also be appropriate to consult with the local office of UNHCR.

Assessment procedures

Emergency rescue cases are assessed by the relevant post in close consultation with Humanitarian Programme Management Section. The local UNHCR and IOM offices will also assist the post if required. The assessment procedures to be followed largely depend on the individual circumstances of each case and officers may be required to make decisions on the basis of minimal documentation. In all cases, however, the applicant must submit a completed and signed form 842 with photographs (full details of the applicant's claims will be set out in the RRF). Wherever possible the post should interview the applicant before granting a visa.

Although the Assistant Secretary, Refugee and Humanitarian Programme Branch, decides whether to accept a UNHCR referral for processing as an emergency rescue case, once a Class XB application is lodged the decision to refuse or grant the visa rests with the s65 delegate at the post. Humanitarian Programme Management Section is responsible for policy advice and overall coordination of the areas of the department and the agencies involved in emergency resettlement. Refugee and Humanitarian Assistance Section liaises with IOM as necessary to expedite travel.

Public interest criteria checks

Humanitarian Programme Management Section liaises with the post and relevant areas of the department to facilitate health, character and security checking (if required).

Wherever possible, posts should arrange for the applicant to undergo normal health checks with a panel doctor and radiologist. IOM may be able to assist with health checks for applicants in remote areas. Due to the urgency of XB-203 applications, a flexible approach to health checks may be required and the procedures will vary according to the circumstances of each case. In all cases, a finding must be made that PIC 4007 (the health requirement) is satisfied before a visa can be granted. Under regulation 2.25A, the opinion of a Medical Officer of the Commonwealth must be sought before a finding can be made in relation to PIC 4007, unless the application is made from a country specified by legislative instrument under regulation 2.25A(1)(b).

The post should also attempt to obtain penal clearances in the usual manner, but if this is not possible or would delay visa grant to the point of endangering the applicant, a character statutory declaration by the applicant can be considered in accordance with procedures outlined in PAM3: Act – Character and security - Penal checking handbook. This document should be scanned and emailed to Humanitarian Programme Management Section via the Humanitarian Helpdesk to seek waiver of the penal certificate requirement.

If a security check is required (refer to PAM3: Act – Character and security - Security Checking Handbook) posts should initiate it in the Security Referral System (SRS). Humanitarian Programme Management Section will liaise with National Security, Assessment and Counter Proliferation Operations Section to expedite the checking process.

If a war crimes check is necessary, advice may need to be sought by emailing War Crimes Screening.

If there is no Australian Government presence in the country where the applicant is living, UNHCR will endeavour, within its guidelines, to assist with character and security checking by interviewing the applicant with questions provided by the post.

For further details on assessing public interest criteria, refer to Public interest and related criteria.

XB-203 primary criteria

Persecution

203.211(1)

Under 203.211(1)(a), to be granted an XB-203 visa, the applicant must be living in their home country or another country apart from Australia and be subject to persecution in the home country.

For policy and procedure on assessing claims of persecution, refer to Persecution.

Urgent and compelling reasons for travel

203.224(a)

Under 203.224(a), an XB-203 visa may be granted only if there are urgent and compelling reasons for the applicant to travel to Australia.

To satisfy this criterion the applicant must, under policy, be in exceptional circumstances whereby there is an immediate threat to their life or personal security that can only be avoided by emergency travel. For example, the applicant may be in a country of first asylum and facing an immediate threat of arrest and refoulement to their home country. XB-203 is used for cases only if the need for the applicant's evacuation and resettlement is so urgent that priority processing under other subclasses would be inadequate.

Humanitarian Programme Management Section will advise Humanitarian Settlement Referrals Section of the prospective visa grant as soon as possible, particularly if the applicant requires special services soon after arrival.

Other XB-203 requirements

In addition to the above requirements, there are other Schedule 2 criteria that the applicant must satisfy - for policy and procedure, refer to:

- Class XB-specific criteria
- Generic criteria

XB-204 - Woman at Risk

About XB-204

XB-204 forms part of the refugee category of the humanitarian program. The primary criteria provide for the grant of a visa to an applicant in two circumstances:

- a female person living outside her home country and subject to persecution or registered as of concern to UNHCR (204.211(1))
- a member of the immediate family of a proposer who holds or held an XB-204 visa (204.211(2)).

For policy and procedure on assessing these cases refer to Split family cases (XB-200, XB-201, XB-202, XB-203 and XB-204).

A significant part of the refugee category allocation is set aside for women at risk in recognition of the priority given by UNHCR to vulnerable women and children. These cases are to be given the second highest priority after XB-203 Emergency rescue cases - refer to Prioritising caseload.

XB-204 split family cases are subject to a limitation not applicable to the other Class XB subclasses - refer to Woman at risk split family proposer limitation. Applicants should be counselled about this limitation at interview. In some cases consideration should be given to granting an XB-200 visa if applicants satisfy the criteria.

XB-204 primary criteria

Persecution and registration with UNHCR

204.211(1)(a)

For policy and procedure on assessing claims of persecution, refer to Persecution.

Alternatively, applicants will satisfy 204.211(1)(a) if they are registered as of concern with UNHCR. Woman at Risk cases are usually referred to posts by UNHCR, although posts may identify them within the general offshore humanitarian caseload.

No protection of a male relative

204.222

Under 204.222, applicants must not have the protection of a male relative. Applicants may be:

- unmarried, divorced or widowed and have no male relative who can provide protection or
- separated from their partners or male relatives due to conflict or other circumstances.

If applicants claim their partner is missing or presumed dead, officers should obtain as much information as possible as to the circumstances that led to the disappearance and any attempts that have been made to locate him.

Applicants may be living with their partner or another male relative and satisfy 204.222 if the partner or other relative is unwilling or unable, due, for example, to illness or disability, to protect them. Officers should explore the circumstances behind such claims during interview.

To satisfy 204.222, applicants must also be in danger of victimisation, harassment or serious abuse because of their sex. This requirement will not be met if applicants do not have the protection of a male relative but can rely on the protection of state authorities.

In assessing this criterion officers should consider whether applicants have suffered or are likely to suffer from treatment such as the following because they are female and do not have the protection of a male relative:

- violence
- sexual abuse
- extortion
- exploitation
- discrimination
- harassment or
- unlawful detention.

For policy and procedure on gender issues, refer to PAM3: Refugee and Humanitarian - Gender Guidelines.

Other XB-204 requirements

In addition to the above requirements, there are other Schedule 2 criteria that the applicant must satisfy - for policy and procedure on these requirements, refer to:

- Class XB-specific criteria
- Generic criteria.

Split family cases (XB-200, XB-201, XB-202, XB-203 and XB-204)

About split family cases

200.211(2), 201.211(2), 202.211(2), 203.211(2), 204.211(2)

For each of the Class XB subclasses, Schedule 2 primary criteria provide for a visa to be granted to an applicant who is a member of the immediate family of a proposer in certain circumstances. "Split family" is the colloquial term for these applications.

The split family provisions reflect the policy intention that persons who have been granted a permanent visa under the humanitarian program and entered Australia in a regular manner may propose immediate family members for entry to Australia under the humanitarian program, rather than under the family stream of the migration program.

To meet split family requirements, the applicant seeking to satisfy primary criteria must be a member of the immediate family of a person who holds or held a permanent Class XB visa, an XA-866 Protection visa or a CD-851 Resolution of Status visa.

The applicant must also be proposed in accordance with form 681 by that person (the proposer), and the application must be made within five years of the grant of the visa to the proposer.

Split family applicants are not required to satisfy the time of application criteria relating to persecution or substantial discrimination, and may be living in their home country or elsewhere (other than Australia).

For split family cases, Schedule 2 secondary criteria allows for the grant of a visa to a ***member of the immediate family*** of the main applicant.

Member of the immediate family may include a partner or dependent child and, in limited circumstances, a parent. A parent can be a member of the immediate family only if their child (that is the child who is the proposer or main applicant) has not turned 18.

Note: This definition is more restrictive than 'member of the family unit', which applies to non-split family cases. Refer to Family relationships.

Split family applications are not given a separate allocation under the offshore humanitarian program, but are included in the general regional allocations for each category. Refer to The offshore humanitarian program - Planning and prioritising.

Split family provisions - primary criteria

Assessment subclass

In most cases split family applications must be considered under the same visa subclass as the subclass of visa held by the proposer at time of entry to Australia - for example:

- if the proposer holds or held an XB-200 visa, the split family application must be considered under XB-200
- if the proposer holds or held an XA-866 (Protection) or CD-851 (Resolution of Status) visa, the split family application must be considered under XB-202.

Proposal

200.211(2)(a), 201.211(2)(a), 202.211(2)(a), 203.211(2)(a), 204.211(2)(a)

To meet split family requirements, applicants must be proposed by an Australian citizen or permanent resident who:

- holds or held (as applicable):
- a Class XB visa or
- an XA-866 or CD-851 visa

and

- (for other than XB-201) is not a person described in regulation 2.07AM(5).

A proposal form (form 681) must be submitted at the time the application is made and should be accompanied by evidence of the proposer's permanent visa.

If the proposer is a minor, it is preferable (but not obligatory) that the proposal form be completed and signed on the minor's behalf by a responsible adult.

Time limit for application to be made

200.211(2)(aa), 201.211(2)(aa), 202.211(2)(ba), 203.211(2)(aa), 204.211(2)(aa)

A "split family" application must be made within five years of the grant of the proposer's visa - that is, as applicable, their Class XB, XA-866 or CD-851 visa.

Family relationship

200.211(2)(b), 201.211(2)(b), 202.211(2)(b), 203.211(2)(b), 204.211(2)(b)

The applicant seeking to satisfy primary criteria must be a member of the immediate family of the proposer - refer to Member of the immediate family.

If the proposer holds or held a Class XB visa, the applicant seeking to satisfy primary criteria must have been a member of the immediate family of the proposer on the date the proposer's visa was granted. If the proposer holds or held an XA-866 or CD-851 visa, the person seeking to satisfy primary criteria must have been a member of the immediate family of the proposer on the date the proposer made their visa application.

Applicant must continue to be a member of immediate family of proposer

200.211(2)(c), 201.211(2)(c), 202.211(2)(c), 203.211(2)(c), 204.211(2)(c)

The applicant seeking to satisfy primary criteria must, at the time of application, continue to be a member of the immediate family of the proposer.

Primary applicants are not required to satisfy any of the requirements in 20X.211(2) at the time of decision. Among other things, this means that applicants are not required to continue to be a member of the immediate family of the proposer (as per 20X.211(2)(c)) at the time of decision. Refer to Continued eligibility.

For policy and procedure on assessing family relationships refer to Family relationships. Particularly note that a child who is in a de facto relationship or is married or engaged cannot meet the definition of dependent child and therefore cannot be a member of the immediate family. If a child of marriageable age is included in a split family application every effort should be made to confirm the child's relationship status.

Family relationship must have been declared

200.211(2)(d), 201.211(2)(d), 202.211(2)(d), 203.211(2)(d), 204.211(2)(d)

In all cases, the relationship between the applicant who is seeking to satisfy primary criteria and the proposer must have been declared to the department before the proposer's visa was granted. In assessing this requirement officers should check the proposer's file or other departmental records (for example, IRIS or ICSE). Officers should be flexible as to the type of evidence required to demonstrate that a relationship was declared, for example, a file note can be sufficient evidence. Also, as the Regulations do not specify that the relationship must have been declared by the proposer, this means that if the relationship was declared to the department by another person or an organisation (for example, UNHCR), this requirement would be met.

Other split family case requirements

As for other Class XB applicants

Split family applicants may be living in or outside their home country.

In all cases, split family applicants must satisfy the same Schedule 2 criteria as other Class XB applicants (other than criteria relating to persecution or substantial discrimination) - refer to:

- Class XB-specific criteria
- Generic criteria.

but also note the following in relation to split family cases.

Compelling reasons

Before 28 September 2012, it was policy that in most split family cases, s65 delegates could regard the 'compelling reasons' criterion as satisfied on the basis of the applicant's connection to Australia alone. On 28 September 2012 this policy was codified in the Regulations as an alternative, abbreviated form of the original criterion.

The abbreviated form of the criterion applies to XB-200, XB-202, XB-203 and XB-204 applications made by split family of XB-200, XB-202, XB-203 and XB-204 visa holders.

The original form of the 'compelling reasons' criterion, with its 4 factors, is to be applied in full to:

- non-split family applications
- split family applications proposed by XA-866 or CD-851 visa holders and
- split family applications proposed by XB-201 visa holders.

Note: From 28 September 2012 to 21 March 2014, the abbreviated form of the 'compelling reasons' criterion applied also to applications made by split family of XA-866 or CD-851 visa holders who were under 18 at the time the application under consideration was made. Applications assessed on or after 22 March 2014, regardless of when they were made, must be assessed against the four-factor form of the criterion.

Refer also to Compelling reasons.

Interviewing

All split family applicants who prima facie meet requirements are to be interviewed. This is primarily so that the applicant's identity and family ties to the proposer can be established - refer to:

- Interviewing
- Family relationships.

Split family provisions - secondary criteria

200.311(b), 201.311(b), 202.311(b), 203.311(b), 204.311(b)

Eligibility

An applicant seeking to meet the secondary criteria must be a member of the immediate family of the applicant who meets primary criteria (the main applicant). Applicants who are not "members of the immediate family" of the main applicant, but are "members of the family unit" of the main applicant, cannot meet the secondary criteria under the split family provisions. This means that only a partner or dependent child of the main

applicant, or a parent of a main applicant who has not turned 18, can meet secondary criteria in a split family case.

Note: An applicant seeking to meet the secondary criteria under the split family provisions does not have to satisfy the primary criteria described above. For example, it is not a requirement that the secondary applicant is a member of the immediate family of the proposer or that the relationship was declared to the department.

In cases where an immediate family relationship was not declared, officers should investigate the reasons and satisfy themselves that the relationship is genuine.

Note: Secondary applicants do not need to be residing in the same country as the main applicant.

Additional applicants who are not members of the immediate family

Occasionally combined applications are made that include split family members and other family members who do not meet the definition of member of the immediate family of the proposer or main applicant.

Under policy, applications which include "split family members" and adult applicants who do not meet the definition of member of the immediate family should be administratively separated and assessed as two separate applications, that is:

- a split family application and
- a standard (non-split family) application.

In such a case, the non-split family applicant must be assessed in their own right against the primary criteria in all subclasses. That is, they will need to be separately assessed on the basis of their claims to be subject to persecution or substantial discrimination.

Before administratively separating applicants not meeting the "member of the immediate family" definition, officers should ascertain whether they are financially, psychologically or physically dependent on the main applicant (refer regulation 1.05A). If further information is required to make this assessment, it must be requested before administrative separation. In many circumstances, the case will need to be referred to post for interview.

Applications lodged at an SHPC that include:

- split family members **and**
- applicants under 18 years old who are **not** members of the immediate family

- in particular where the applicants live as a family group and there are no other adults responsible for the care of the children - should continue to be processed by the SHPC as one application and referred to post, where a full assessment of the relationship and dependency can be made.

Woman at risk split family proposer limitation

204.212(1)

When considering split family provisions, officers should note that if the proposer holds or held an XB-204 visa, the application must be considered under XB-204. This means that in some cases a male applicant will be granted an XB-204 visa.

Clause 204.212(1) requires XB-204 split family applicants to also satisfy an additional criterion not prescribed for other Class XB-subclasses. Under this provision, a partner cannot be proposed for entry to Australia if:

- the proposer is a woman who was granted an XB-204 visa in the past 5 years and
- on the date the proposer was granted an XB-204 visa
  - the applicant and partner were divorced or permanently separated or
  - the applicant and partner were in a partner relationship but this had not been declared to the department.

This provision is intended to prevent abuse of the XB-204 provisions by persons who divorce or claim permanent separation from a partner to meet visa requirements, and then seek to propose the partner's entry to Australia. The provision is not intended to exclude a partner who is temporarily separated from an XB-204 visa holder due to civil conflict or other circumstances outside their control, whose whereabouts later become known to her and whom she seeks to propose for entry to Australia. The applicant is subject to this bar only if the proposer had claimed her relationship with the applicant had ended permanently, or if the relationship was not declared.

Officers should carefully investigate all XB-204 split family cases in which applicants are proposed by partners who previously claimed the applicants were missing or dead and now seek to propose them for entry. The background to the partner relationship and the circumstances of the claimed separation should be explored at interview, and records of the proposer's application should be checked. In some cases it may be necessary to obtain further information from the proposer.

The sponsorship limitations for partners of XB-204 visa holders also apply to UK-820 - refer to PAM3: Sch2Visa820 - Partner - Preclusion if the Australian partner is a Woman at risk visa holder.

Locally engaged employee (LEE) visa policy

About the LEE visa policy

The LEE visa policy was introduced in April 2008 to offer resettlement to persons who had been employed by or worked collaboratively with the Australian Defence Force (ADF) in Iraq and were at risk of harm because of this association. The policy was designed to accommodate future circumstances in other countries where local employees may be at risk of harm because they have assisted Australian Government agencies such as the ADF, DFAT, AusAID and the Australian Federal Police.

This policy is implemented through XB-200 and XB-201. Schedule 2 provides for the Minister to specify by instrument a 'class of persons' eligible for resettlement under this policy. The Minister is required to consult with the Prime Minister, the Minister for Finance and Deregulation and other relevant government ministers before making such an instrument. On 1 January 2013 certain Afghan local employees were added by instrument as a 'class of persons'.

To be granted a visa under this provision, an applicant must be certified at the time of application by a relevant government minister as a member of the class of persons and at risk of harm for that reason.

Processing arrangements

Special visa processing arrangements may exist for applications being considered for an XB-200 or XB-201 visa on the basis of their falling within the LEE visa provision. Officers who receive an application from a person claiming to fall within these provisions should email Humanitarian Programme Management Section via the Humanitarian Helpdesk for advice.

Eligibility

Schedule 2 requirements

LEE applicants are not required to meet the time of application criteria in 200.211(1)(a) or 201.211(1)(a) relating to persecution, and may be resident in their home country or another country other than Australia.

Under policy, LEE applicants who are in their home country, which is generally the country in which they provided assistance to the Australian Government, should normally be considered for an XB-201 visa before an XB-200 visa and other subclasses of Class XB. LEE applicants who are outside their home country should be considered for an XB-200 visa before an XB-201 visa or other Class XB visa.

Relevant Minister

200.111, 201.111

A ***relevant Minister*** is any of the following: the Attorney-General, the Minister for Defence, the Minister for Foreign Affairs, the Minister for Home Affairs and the Minister for Immigration and Citizenship. (These are not necessarily current portfolio names, however, refer to PAM3: Div1.2 – Interpretation - References to ministers, departments and secretaries.)

The relevant Minister in each circumstance will vary depending on the description of the class of persons specified in writing by this department's minister. The 'relevant Minister' will be the minister responsible for the department or agency that has engaged the applicant or the applicant assisted.

Class of persons

200.211(1A)(a), 201.211(1A)(a)

The Minister may specify in an instrument in writing one or more classes of persons eligible for resettlement under this provision.

An instrument may, for example, specify as a characteristic of a class of persons that the person is employed by or works collaboratively with the Australian Government.

200.211(1B), 201.211(1B)

Before making an instrument in writing, the Minister must consult with the Prime Minister, the Minister for Finance and Deregulation, and any other minister who has an interest in the specification of that class of persons or that is affected by the specification. In practice, the consultation process will take place through an exchange of letters between ministers.

Applicant must be certified

200.211(1A)(b), 201.211(1A)(b)

The applicant must have been certified by the relevant Minister as falling within one of the classes of persons specified in the instrument. The certification must also state that the applicant is at risk of harm because they fall within this class of persons.

In practice, the relevant minister will write to the Minister for Immigration and Citizenship to advise of an applicant's certification.

Humanitarian Programme Management Section should be contacted to provide formal advice as to whether an applicant has been certified by the relevant Minister.

Other LEE case requirements

The applicant must continue to be certified

200.221, 201.221

At time of decision the applicant must continue to be identified by the relevant minister as falling into a specified class of persons and at risk of harm for that reason. Provided the instrument has not been withdrawn and information has not been received that the ***relevant Minister*** no longer certifies a particular applicant, it can be accepted that the applicant satisfies 200.221 or 201.221.

Compelling reasons

200.222, 201.222

When considering if there are compelling reasons for granting the applicant an XB-200 or XB-201 visa, officers should take into account:

- those who have served the Australian Government are at risk of harm in their home country and possibly also in neighbouring countries because of that relationship
- having put themselves at risk of harm by serving the Australian Government, LEE applicants have a significant connection to Australia.

The Community Proposal Pilot and the Community Support Programme

Background

About the CPP and the CSP

The Community Proposal Pilot (CPP) is a program trialled by the Australian Government to provide a mechanism for community organisations to identify people in humanitarian situations overseas and assist them to apply for Refugee and Humanitarian (Class XB) visas and to settle in Australia. Its purpose was to test the capacity of the Australian community to provide a substantial financial contribution towards the costs of humanitarian settlement and practical support to assist humanitarian entrants to settle successfully.

On 1 July 2017, the pilot closed to new applications and its permanent replacement, the Community Support Programme (CSP), commenced.

The CSP allows communities and also businesses, as well as families and individuals, to propose applicants for XB-202 visas and support their settlement in Australia. Approved Proposing Organisations must show they can assist applicants to achieve financial self-sufficiency within their first year in Australia. An assurance of support is required for working age applicants.

As the CPP and the CSP are part of the offshore humanitarian program, visa grants must be consistent with the size and composition, as well as the regional and global priorities, of the offshore program as a whole - refer to Regional and global priorities and Out of region cases.

Unfinalised CPP applications should be processed as usual, in accordance with this instruction.

Pending publication of guidelines on the CSP, contact Humanitarian Programme Management Section via the Community Proposal Pilot mailbox or the Humanitarian Helpdesk.

Involved organisations

Approved proposing organisations (APOs)

APOs are organisations that have entered into a deed of agreement with the department. They are responsible for liaising with their local communities to identify people to propose for a humanitarian visa and coordinating:

- submission of forms 842 and 1417, and
- payment of VACs.

APOs are also required to oversee settlement support of successful applicants for up to 12 months after arrival.

Only APOs can propose a visa applicant under the CPP or the CSP. To constitute a valid application under the Pilot, form 842 must be lodged at an SHPC together with a form 1417 (Proposal for refugee and special humanitarian entrants by Approved Proposing Organisation) and the visa application charge (refer to Visa application charge).

APOs may work independently or with the assistance of a supporting community organisation (SCO).

Officers should be aware that APOs do not deliver services on behalf of the Commonwealth.

Supporting community organisations (SCOs)

An SCO is an organisation appointed by the APO to perform part or all of the APO's obligations under the deed of agreement with the department.

SCOs work under the guidance of the APO to ensure that the required settlement services and support are provided to humanitarian entrants for the first 12 months after arrival in Australia.

Although an APO may authorise the SCO to provide services on the APO's behalf, the APO will ultimately be responsible for ensuring all services and support obligations are met. As part of the deed of agreement with the department, APOs are required to advise the department of the SCOs with whom the APO is working.

APO obligations under the deed

Prior to a client's arrival in Australia, the APO is required under the deed of agreement to coordinate :

- completion and lodgment of forms 842 and 1417
- payment of the visa application charge at time of lodgment
- payment for medical assessments that are required for the visa application process and
- payment for airfares to Australia.

On a client's arrival in Australia, the APO is required under the deed to ensure they receive:

- initial arrival services including:
  - reception of the entrant at the airport or other arrival port
  - on-arrival clothing and footwear, if required
  - appropriate food for 5 days
  - on-arrival emergency medical assistance, if required and
  - transport to their accommodation
- safe, secure and clean accommodation that is appropriate for the family size, composition, needs and within the financial means of the entrant
- furnishings that are appropriate for the family size, composition and needs of the entrant
- the following assistance within 5 days of arrival in Australia:
  - assisting the entrant to locate their nearest Centrelink office, Medicare office and bank and
  - assisting the entrant to register their details with their nearest Centrelink office, Medicare office and bank.

The APO is also required to register entrants for a general health assessment, within 4 weeks of the entrant's arrival in Australia; and if an entrant requests, provide assistance with any follow up or other health assessments that may be identified.

Other settlement assistance that the APO will provide includes:

- referring entrants into the Adult Migrant English Program
- assisting entrants who require interpreting services by referring them to the TIS National
- assisting entrants to find employment, including assisting them with referrals to Job Services
- assisting entrants to adjust to life in Australia, such as by providing orientation to their local community
- educating entrants about the rights and responsibilities of Australian permanent residents, including residential and tenancy rights and responsibilities
- if required, providing assistance to entrants in:
  - registering children at the nearest appropriate school and
  - arranging childcare.

Duration of obligations under the deed

The period over which an APO must meet the obligations under the deed is up to 12 months following the entrant's arrival in Australia. An APO may seek to end the proposal period sooner if the entrant has settled well.

Refer to Discharge of obligations.

Supporting community organisations

An APO may appoint SCOs to undertake, on its behalf, any of its obligations under the deed. However, the APO retains the ultimate responsibility as a party to the deed.

Feedback mechanisms

Humanitarian entrants will be encouraged to discuss any issues or concerns they may have with their APO or SCO in the first instance.

Humanitarian entrants, APO and SCO may also forward any issues or concerns they may have to the Global Feedback Unit:

Phone: 133 177

Web: http://www.border.gov.au/about/contact/provide-feedback

Mail: Global Feedback Unit, GPO Box 241, Melbourne, VIC, 3001.

Alternatively, issues or concerns can be emailed to Community Proposal Pilot.

Discharge of obligations

The APO is considered to have fulfilled its obligations under the deed, and the entrant formally exited the CPP or the CSP, when:

- the APO is satisfied that the required settlement support (refer to APO obligations under the deed) has been provided over a period of up to 12 months, following the entrant's arrival in Australia and
- the 3 monthly report, which provides details of the settlement support obligations provided, at the end of the 12 month period has been received by the department at the time of exit.

In determining whether an entrant has settled successfully, the department will look at a number of initial indicators. These indicators include whether the entrant can: find government services and other services that can help them; make appointments; use public transport; manage their money; resolve tenancy issues; know how to find work; know how to find further education.

Should the APO believe an entrant has settled successfully, and no longer requires settlement support, the APO may seek to formally exit the entrant. The deed requires the APO to:

- ensure obligations under the deed have been fulfilled
- notify the department in writing that the entrant has settled successfully and no longer requires settlement support
- satisfy any queries the department may have in relation to the APO's obligations towards the entrant.

Working with APOs

It is APOs' role to propose persons for a humanitarian visa by submitting the appropriate application forms and ensuring the visa application charge is paid by the supporting Australian community. APOs are also responsible for coordinating the payment of other application-related costs.

To coordinate this process, APOs are instructed to establish themselves as authorised recipients for the applications they propose. Case officers should ensure that all application-related correspondence is copied to the APO representative. If case officers are unsure whether APOs are appropriately established as authorised recipients for the application, they should contact the Humanitarian Helpdesk.

APOs are not authorised to select applicants to propose on the strength of their humanitarian claims or the degree of their humanitarian need. APOs also make no assessment of the applicants they propose against humanitarian criteria. Proposal by an APO and/or payment of a VAC should not influence decision makers' assessment of the merits of the application.

APOs may be helpful in coordinating the provision of any required additional information for case officers and the progression of applications they have proposed. APOs may at times advocate for the expedited processing of the applications they have proposed. Notwithstanding the priority processing that is to be afforded to these applications, this kind of advocacy is not a requirement of APOs under the deed of agreement. In responding to enquiries from APOs, officers may email Humanitarian Programme Management Section via Community Proposal Pilot or the Humanitarian helpdesk for advice.

APOs and Migration Agents

If an applicant has both an APO and a migration agent attached to their application, for advice on notification email Humanitarian Programme Management Section via Community Proposal Pilot or the Humanitarian Helpdesk.

Applicants with both CPP or CSP and SHP applications

Applicants under the Community Proposal Pilot or the Community Support Programme may also have a separate SHP application under consideration by the Department.

If an SHPC or post has both on hand, the SHP application should be held, and the CPP or CSP application prioritised. The SHP application should **not** be progressed until the CPP or CSP application has been finalised.

The CPP or CSP application should be assessed as normal and the SHP application should be administratively paused.

A CPP or CSP application cannot be paused or held while another Class XB application is pursued. The CPP or CSP application must be progressed as per usual practice and the applicant must continue to engage with this process as normal (including arranging payment for medical checks and VACs), otherwise the application may be refused.

CPP- and CSP-specific criteria

The following criteria were deleted on 1 July 2017 from all XB subclasses other than XB-202. They continue to apply to unfinalised applications made under the Community Proposal Pilot (that is, before 1 July 2017) and to applications made under the Community Support Programme (from 1 Jul 2017).

Approved proposing organisation (APO)

200.111, 201.111, 202.111, 203.111, 204.111

An *approved proposing organisation* is an organisation that has entered into a deed of agreement with the department relating to the proposal of applicants for Class XB visas and the provision and management of resettlement services to those applicants. The deed must be in effect and not suspended.

A list of APOs is on Govdex.

Humanitarian and International Protection Policy Section will advise officers of suspended or terminated deeds of agreement.

Form 1417 (Refugee and Special Humanitarian proposal) by an APO

200.212, 201.212, 202.212, 203.212, 204.211A

The applicant's entry to Australia is to be proposed by an APO in accordance with form 1417 (Proposal for refugee and special humanitarian entrants by Approved Proposing Organisation).

The application is valid only if form 1417 was posted or couriered with the visa application (form 842) to the SHPC - refer to:

- Schedule 1 item 1402(3)(a) and its associated legislative instrument
- Application validity and decision making framework.

Applications for a Class XB visa must not be proposed by an APO on behalf of persons described in regulation 2.07AM(5).

Proposal by APO must be in effect at time of decision

200.221, 201.221, 202.221, 203.221, 204.221

Applicants must be proposed by a current APO at the time the application is made and when the application is decided.

Class XB-specific criteria

This part provides policy and procedure on criteria that are common to all or most of the Class XB visa subclasses.

Time of decision criteria

Schedule 2 requirements

Continued eligibility

200.221, 201.221(1), 202.221, 203.221, 204.221

For each of the Class XB subclasses, if the applicant is subject to persecution or substantial discrimination or is a woman at risk, officers must be satisfied that the relevant criteria are satisfied at time of application and continue to be satisfied at time of decision.

Generally, officers may, without the need for further assessment, consider that the relevant criteria continue to be satisfied at time of decision. If there is reason to consider otherwise, for example, if conditions in the applicant's home country have changed such that the applicant is no longer subject to persecution or substantial discrimination, a further assessment should be made in light of the new circumstances. Such cases will be rare, and should be brought to the attention of Humanitarian Programme Management Section before any decision is made.

For split family cases, officers can assume that 20X.221 is taken to be satisfied. This is because the High Court has found that 202.221 did not require an XB-202 primary applicant to satisfy any of the requirements in 202.211(2) at the time of decision.

This finding affects all Class XB subclasses. Among other things, this means that primary applicants are not required to continue to be a 'member of the immediate family' of the proposer (that is, as per 20X.211(2)(c)) at the time of decision. For example, a primary applicant will satisfy 20X.221 even though the applicant:

- has ceased to be a spouse or de facto partner of the proposer at the time of decision or
- has ceased to be a dependent child of the proposer at the time of decision or
- is a parent of the proposer, and the proposer has turned 18 years old at the time of decision.

The existence of any of these circumstances may, however, affect the weight the s65 delegate puts on the extent of the applicant's connection to Australia when assessing the application against the "compelling reasons"

criterion. For further guidance, email Humanitarian Programme Management Section via the Humanitarian Helpdesk.

No change in circumstances

Under s104 of the Act, applicants are required to notify the department of any change in their circumstances. It follows that applicants must advise the department of any changes in their family composition, for example, as a result of birth, death or change in relationship status. If no such notification is received and there is no reason to believe that there has been a change in the applicant's circumstances, officers may generally consider that criteria relating to family composition continue to be met at time of decision.

If a significant time has elapsed since the application was made, officers should take reasonable steps to satisfy themselves that there has been no material change in the applicant's family composition. This can be done via a brief interview or by asking the applicant to advise in writing whether there has been any change in their circumstances.

Persecution

200.211(1)(a), 201.211(1)(a), 203.211(1)(a), 204.211(1)(a)

Class XB subclasses other than XB-202 prescribe primary criteria relating to persecution.

Neither the phrase 'subject to' nor 'persecution' is defined for the purpose of Class XB, therefore the common meaning of these words is to be used in interpreting the criteria.

'Persecution' requires repeated or persistent oppression, injury, maltreatment or harassment.

The various subclass criteria state that the applicant is to be 'subject to persecution'. This requires a determination whether the individual applicant is 'subject to persecution'. Whether the applicant 'is subject to' persecution requires an assessment of the available evidence as to whether the applicant is open to, or exposed to, or under the domination of, persecutory acts in their home country.

In assessing claims of persecution, officers should take into account the following:

- any threat to the applicant's life, liberty or security
- continued or periodic harassment, detention or arrest
- exile from the home country or to a remote area within that country
- arbitrary arrest, detention or exile (except during emergencies if such measures may be considered necessary to safeguard the safety and rights of others and to maintain order)
- torture or cruel, inhuman or degrading treatment
- slavery or servitude without compensation
- confiscation of property or assets
- indoctrination or re-education.

Officers should also take the applicant's personal profile into account. A person with a relatively high profile may be subject to a greater degree of oppression or other actions amounting to persecution. The political or other associations of the applicant's family may also be relevant to and provide support for claims of persecution.

In situations of civil disorder where the rule of law has broken down, many people may lose their jobs and homes, experience hardship and become a victim of criminal behaviour. These circumstances do not necessarily constitute persecution. An applicant would not generally be considered to be subject to persecution if:

- they were detained in their home country for criminal activity, unless they attracted a heavier penalty than normal
- they are avoiding (or have avoided) military service that is based on general conscription requirements in the home country

- they have suffered economic hardship in a context where the general economic situation in a country is in issue
- they have left their home country illegally but such action would not incur harsh and oppressive punishment on return
- they have left their home country due to economic hardship or natural disaster.

Officers need to be mindful not to apply the Refugees Convention test or definitions or terms, as these matters are not relevant to the criteria. Officers should take care to avoid using terms that indicate or could give rise to the perception that they have applied terms or interpretations of terms from the Refugees Convention in their assessment. Expressions to be avoided include 'targeted', 'singled out', 'real chance', 'for reason of' and 'particular social group'. Any interpretation that imports definitions from the Convention or deviates from the common meaning of persecution is an error of law.

Officers also need to be aware that they shouldn't embark on an exercise of comparison, nor require applicants to be subject to more persecution than others in their country. Officers should undertake the assessment of whether the applicant is subject to persecution on the basis of the individual case.

Substantial discrimination

202.211(1)(a)

'Substantial discrimination amounting to gross violation of human rights' is not defined in legislation, therefore it should be taken to have its common meaning.

'Discrimination' requires an unfavourable distinction against the applicant in their home country.

In assessing claims of discrimination, officers should explore the following:

- arbitrary interference with the applicant's privacy, family, home or correspondence
- deprivation of means of earning a livelihood, denial of work commensurate with training and qualifications and/or payment of unreasonably low wages
- relegation to substandard dwellings
- exclusion from the right to education
- enforced social and civil inactivity
- removal of citizenship rights
- denial of a passport
- constant surveillance or pressure to become an informer.

In situations of civil disorder where the rule of law has broken down, many people may lose their jobs and homes, experience hardship and become a victim of criminal behaviour. These circumstances do not constitute discrimination unless it is apparent an unfavourable distinction has been made against the applicant.

For 'substantial discrimination', s65 delegates should assess whether the amount of discrimination or the impact of the discrimination is considerable and real (not imagined or fanciful).

Officers should consider whether the amount or impact of the discrimination is such that it would extend to or qualify as gross breaches or infringements of human rights. The impact of cumulative actions may be assessed as whether they extend to gross violations of human rights. 'Gross violations' are flagrant or cumulative actions that are breaches or infringements of human rights.

Officers also need to be aware that they shouldn't embark on an exercise of comparison, nor require applicants to be subject to a higher level of substantial discrimination than others in their country. Officers should undertake the assessment of whether the applicant is subject to substantial discrimination amounting to a gross violation of human rights on the basis of the individual case.

Compelling reasons

200.222, 201.222, 202.222, 203.222, 204.224

About this criterion

The ‘compelling reasons’ criterion is a primary criterion in all Class XB subclasses. The criterion prescribes the following 4 factors to which officers must have regard in assessing whether there are ‘compelling reasons’ for giving ‘special consideration’ to granting the applicant a permanent visa:

- The degree of persecution (or discrimination) to which the applicant is subject in their home country – refer to The degree of persecution or discrimination.
- The extent of the applicant’s connection with Australia – refer to The extent of the applicant’s connection with Australia.
- Whether or not there is any suitable country available, other than Australia, that can provide for the applicant’s settlement and protection – refer to Other suitable country.
- The capacity of the Australian community or the proposing organisation (for Community Proposal Pilot or Community Support Programme applications) to provide for the settlement of persons such as the applicant – refer to Australian community’s capacity.

The words 'compelling reasons' and 'special consideration', should be given their ordinary dictionary meaning.

On 28 September 2012, an alternative, single-factor form of this criterion was inserted in the regulations for all Class XB subclasses except 201. This form puts into law the policy for split family cases of regarding the 'compelling reasons' criterion as satisfied on the basis of the extent of the applicant's connection to Australia alone. The single-factor form applies to applications made by split family of XB-200, XB-202, XB-203 and XB-204 visa holders.

The original form of the ‘compelling reasons’ criterion, with its 4 factors, is to be applied in full to:

- claims-based applications
- applications proposed by split family of XA-866 or CD-851 visa holders and
- applications proposed by XB-201 visa holders.

For split family applicants who have not provided claims, it will be necessary to write to them about the changed processing arrangements and give them an opportunity to submit claims.

For applications under the Community Proposal Pilot or the Community Support Programme, refer to 'Compelling reasons' criterion for CPP AND CSP applications.

Background to the 'compelling reasons' criterion

It is a reality of the global situation that every year many more persons apply for a Class XB visa than Australia has the capacity to accept. From a pool of many applicants, officers must ensure that the limited resettlement places available each year are offered to those applicants for whom there are compelling reasons for resettlement. This is, by necessity, a subjective process.

The four-factor 'compelling reasons' criterion is the mechanism that allows officers to make weighted decisions on visa applications in assessing the case against the factors set out in (a) to (d) in 200.222, 201.222, 202.222, 203.222, and 204.224.

The four factors should be considered both individually and cumulatively. For example, the applicant’s circumstances might, when considered cumulatively, present compelling reasons for giving special consideration to granting a visa. Further, if little weight has been attached to one factor, but another has been accorded greater weight, the overall effect might be that the criterion is satisfied.

The single-factor ‘compelling reasons’ criterion was introduced as a concession for immediate family members of those who migrated in a regular manner, having applied for and been granted a Class XB visa offshore. Until 22 March 2014, this concession applied also to “split family” applications proposed by XA-866 or CD-851 visa holders who were under 18 at the time the application was made. Applications of this kind that are assessed on or after 22 March 2014 must be assessed against the four-factor form of the criterion.

When assessing the 'compelling reasons' criterion, officers should be aware of the following background:

- the Government's current priorities for resettlement of persons under the humanitarian program, as announced each year, including the number of visa places available under the refugee and special humanitarian program categories and
- the current and predicted application rates for persons in the relevant categories.

|Officers should have regard to this background in determining whether an applicant should be given 'special consideration' for grant of a visa.

If the s65 delegate is not satisfied there are compelling reasons for giving special consideration to grant of a visa, they must refuse the application.

The degree of persecution or discrimination

The Government recognises that most applicants for a refugee and humanitarian visa face persecution, discrimination or significant hardship in their home country. While an officer might accept an applicant's claim to have experienced or be subject to persecution or substantial discrimination, this is not the issue being addressed here.

In assessing this factor, the officer is required to assess the degree of persecution or discrimination faced by the applicant in their home country. The degree of persecution or discrimination involves a spectrum of persecution or discrimination, within which the applicant's individual circumstances will fall, as determined by the degree, that is, level, or amount of persecution or discrimination. Officers should not embark on a comparative analysis between the applicant and others in their home country, and the degree of persecution or discrimination is to be assessed in the context of the individual case. The officer should consider whether the degree of persecution is sufficient (either as an individual factor or cumulatively with the other factors) to amount to compelling reasons for giving special consideration to granting a permanent visa.

For further advice on assessing claims of persecution and discrimination, refer to:

- Persecution
- Substantial discrimination.

The last three factors that must be given regard to in assessing whether there are compelling reasons for giving special consideration to granting the applicant a permanent visa are self-explanatory. However, officers should refer to the background, set out above, for context.

The extent of the applicant's connection with Australia

In assessing this factor, officers should consider any family or social ties the applicant has in Australia. In considering the extent of the connection officers should have regard to the nature and closeness of the relationship between the parties, not just the familial relationship. Officers should consider the support to be provided (or received) by the family members in Australia, which may include any of financial, physical or psychological support.

Officers should weigh the strength of the relationships and links to Australia against the strength of relationships and links to other countries.

Cases may also arise in which the strength of a non-familial relationship may be such as to warrant special consideration against this factor.

In assessing split family applications, officers should consider known facts about the nature of the relationship, whether the "split family" members intend to live as a family or provide mutual support to each other as a family, or instances of family violence reported by UNHCR or another credible source. Officers may consider that such negative circumstances lessen the weight that should be given to the connection with Australia factor in assessing the "compelling reasons" criterion.

Other suitable country

If information is available (for example, from UNHCR) that an applicant currently has the offer of resettlement in another country which can provide protection, this will be a strong negative factor which officers should consider.

Similarly, if the applicant has permanent residence and protection in another country, or there is a very strong (and not merely week-to-week) temporary arrangement, then the "compellingness" of their case may be diluted.

Officers should also consider whether the applicant may have a right to obtain residence in another country, for example, through a spousal relationship.

If no evidence is available to suggest that an applicant is currently eligible for residence in another suitable country, then this factor need not be further considered.

Australian community's capacity

The Australian community does not have the capacity to offer resettlement to all persons who seek entry to Australia under the humanitarian program. Officers should consider the stated Government priorities and the size of the program when assessing this factor.

Applicants who have been assessed as refugees by UNHCR and formally referred to Australia for resettlement are a priority for the Government and on this basis officers will generally be in a position to conclude that there are compelling reasons for giving special consideration to granting such applicants a permanent visa.

Applicants who are not proposed for resettlement and have not been formally referred by UNHCR for resettlement in Australia have a lower Government priority than other groups of applicants.

Applicants to whom 200.211(1A) and (1B) or 201.211(1A) and (1B) apply have the highest Government priority and officers may readily conclude that there are compelling reasons for giving special consideration to granting such applicants a permanent visa.

If the applicant has a proposer, officers must consider the level of support available to the applicant from the proposer or other friends, relatives or organisations in Australia in assessing the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant.

'Compelling reasons' criterion for CPP and CSP applications

Applications under the Community Proposal Pilot (CPP) and the Community Support Programme (CSP) are assessed against a different 'compelling reasons' criterion.

The four 'compelling reasons' factors for applicants under CPP or CSP are identical to those for other applications with the exception that the fourth 'compelling reasons' criterion refers to the capacity of the APO (as opposed to the capacity of the Australian community) to provide for the permanent settlement of persons such as the applicant in Australia.

The four-factor 'compelling reasons' criterion is the mechanism that allows officers to make weighted decisions on visa applications when assessing the case against the factors set out in (a) to (d) in 200.222(2), 201.222(2), 202.222(3), 203.222(2) and 204.224(2).

The four factors should be considered both individually and cumulatively. For example, the applicant's circumstances might, when considered cumulatively, present compelling reasons for giving special consideration to granting a visa. Further, if little weight has been attached to one factor, but another has been accorded greater weight, the overall effect might be that the criterion is satisfied.

Three of the factors are the same as those in the 'compelling reasons' criterion for other applications and should be considered in the same way. Refer to:

- The degree of persecution or discrimination
- The extent of the applicant's connection with Australia
- Other suitable country.

APO's capacity

As persons granted Class XB visas under the CPP and the CSP are not provided with services through the HSP, the capacity of the APO to provide for the permanent settlement of the applicant in Australia needs to be assessed.

In assessing this criterion, officers should consider the circumstances and needs of the applicant and the level of support available to the applicant from the supporting community.

Officers should give particular consideration to the level of support available to the applicant from the supporting community where the applicant's circumstances may indicate a need for more intensive settlement support. These circumstances include, but are not limited to:

- significant disability or health issue
- unaccompanied minors and cases with a primary applicant who is a minor
- significant adverse psychological effects of torture and trauma
- applications with a female primary applicant who is at risk.

In assessing applications from applicants in these circumstances, officers should take into consideration the entirety of the applicant's circumstances, such as the extent of the applicant's family in Australia, in determining the capacity of the APO to provide for the applicant's resettlement.

It is recommended that officers at post contact the APO to discuss additional measures or services that may be required to cater for the applicant's particular settlement needs.

If officers are not satisfied that the supporting community has the capacity to provide the necessary level of support, officers should email Humanitarian and International Protection Policy Section via the Community Proposal Pilot mailbox.

Regional and global priorities

200.223, 201.223, 202.223, 203.223, 204.223

It is a requirement for all Class XB visa subclasses that the permanent settlement of the applicant in Australia would be consistent with the regional and global priorities of the Commonwealth in relation to the settlement of persons in Australia on humanitarian grounds.

The phrase 'regional and global priorities' refers to caseloads, identified by nationality, ethnic or religious group, or other characteristic, and country, to which places are allocated, by region, post and subclass, each program year , to the offshore humanitarian program as determined by the government. An applicant satisfies this criterion if there is a place available for the grant of a visa to a person such as the applicant - refer to The offshore humanitarian program - Planning and prioritising for further details.

Permanent settlement appropriate and not contrary to Australia's interests

200.224, 201.224, 202.224, 203.224, 204.222A

The criteria for all visa subclasses under Class XB contain the requirement that permanent settlement in Australia be the appropriate course for the applicant, and not be contrary to the interests of Australia.

Settlement as the appropriate course for the applicant

Considerations

In assessing this criterion officers should consider whether other durable solutions would be more appropriate for the applicant than permanent resettlement in Australia. The Australian government recognises that

resettlement is only one of the available durable solutions to the circumstances of refugees. The government supports the internationally recognised approach of UNHCR of three durable solutions for refugees. These solutions, in order of internationally agreed preference, are:

- voluntary repatriation under safe and suitable conditions
- integration in the country or region of first refuge
- resettlement in a third country.

Interviewing

To assess the appropriateness of resettlement in Australia, officers may seek additional information, for example, as to:

- whether the applicant has left the country of first asylum since their first arrival and, if so, the dates of departure and return, destinations and purposes of the trips should be recorded
- whether the applicant is legally in the country of first asylum and, if so, the period of time and the conditions under which the local authorities permit them to remain should be recorded
- the residence status of immediate relatives in other countries of potential settlement and
- whether the applicant has made efforts to settle in other countries.

Officers must be satisfied that voluntary repatriation, integration in the country or region of first refuge or resettlement in a country other than Australia are not appropriate in the applicant's case.

Officers must give particular regard to this criterion when assessing any application involving an unaccompanied humanitarian minor. Refer to PAM3: Refugee and Humanitarian - Unaccompanied Humanitarian Minors (UHM) Programme.

Australia's interests

Officers must also be satisfied that the permanent settlement of the applicant in Australia is not contrary to the interests of Australia. Officers may have regard to a wide range of considerations that include but are not limited to the following:

- permanent settlement of the applicant in Australia could harm Australia's relations with another country
- the relevant officer is not satisfied of the applicant's identity for reasons that may include the provision by the applicant of false or misleading information
- departmental checks identify security concerns relating to the applicant.

In reaching a finding that the criterion is not satisfied for reasons related to Australia's interests, officers must:

a. explain why the particular concern identified means that permanent settlement of the applicant would be contrary to Australia's interests; and
b. afford the applicant appropriate procedural fairness.

For policy and procedure on the procedural fairness provisions, refer to PAM3: GenGuideA - All visas - Visa application procedures.

If there are no indications that the applicant's settlement would be detrimental to Australia's interests for any reason, officers may consider this criterion to be satisfied.

Generic criteria

Visa capping

Number of visas granted

200.225, 201.225, 202.226, 203.225, 204.225

For all subclasses under Class XB it is a requirement that the number of visas granted each year would not exceed the maximum number that may be granted as determined by legislative instrument.

This criterion relates to the provisions under the Act for visa capping. Do not confuse this criterion with the allocation of places under the offshore humanitarian program, as described in Program formulation.

Policy and procedure on visa capping are in PAM3: GenGuideA - All visas - Visa application procedures - Program management. There is currently no legislative instrument limiting the number of Class XB visas that may be granted in a financial year. Unless such limits are introduced by legislative instrument, this criterion is satisfied without further enquiry.

Public interest and related criteria

About PICs

200.226, 201.226, 202.227, 203.226, 204.226, 200.323, 201.323, 202.323, 203.323, 204.323

All Class XB visa applicants must satisfy several public interest criteria (PICs) before a visa can be granted.

Members of the family unit (or, if applicable, members of the immediate family) included in the application must also satisfy PICs.

If the main applicant or any other applicant who is included in the application fails to satisfy a PIC, all applicants must be refused a visa - refer to The "one fails, all fail" criterion.

The "one fails, all fail" criterion

200.229, 201.229, 202.229, 203.229, 204.229

Certain PICs must also be satisfied by non-migrating family unit members, that is, members of the family unit who are not included in the application. If a member of the family unit fails to satisfy a PIC, the visa applicant must be refused a visa, whether or not the member of the family unit is an applicant for a visa.

The requirement for non-migrating family unit members to undergo (as part of the "one fails, all fail" criterion) PIC 4007 health checking may be waived if officers are satisfied that it would be "unreasonable" to require the family unit member to undergo assessment in relation to that criterion. For policy and procedure on this "waiver" provision, refer to PAM3: Sch4/4005-4007 - The health requirement - Health assessment - Permanent and provisional visas.

The Class XB health requirement

PIC 4007

The health requirement is as prescribed in PIC 4007.

Guidelines on assessing health criteria are in PAM3: Sch4/4005-4007 - The health requirement. Officers should familiarise themselves with this document for all matters relating to the assessment of health criteria, including:

- the validity of health clearances and extending health clearance validity
- the "one fails, all fail" requirement in relation to health checking
- health waiver provisions
- health undertakings
- procedures to be followed when an applicant fails health requirements.

The health waiver - Class XB visas

PIC 4007 provides for waiver of the health requirement. Waiver must always be considered if an applicant fails to meet the health requirement. PAM3: Sch4/4005-4007 - The health requirement - The PIC 4007 health waiver - PIC 4007 waivers for humanitarian visas sets out the procedure to follow in considering waiver in Class XB cases.

From 1 July 2012, under policy, no costs are to be considered undue.

It is important that Humanitarian Programme Management Section be advised of all serious medical conditions (even if the estimate of costs is below AUD 200 000) as they may affect applicants' fitness to travel and settlement needs. If health concerns are such that a medical escort is necessary, officers should email (via Humanitarian Program Management and Operations) Refugee and Humanitarian Assistance Section.

If the applicant is applying under the Community Proposal Pilot or the Community Support Programme, officers must email (via Community Proposal Pilot) the APO supporting the application.

Payment of medical fees for PIC 4007

The medical checks undertaken for the purposes of applications under the Community Proposal Pilot or the Community Support Programme are paid for by the APO.

The cost of all other medical checks undertaken for the purpose of Class XB applications is met by the department. Most posts have arrangements with the local IOM office under which IOM pays panel doctor and radiologist fees on behalf of the department and are reimbursed by Refugee and Humanitarian Programme Branch. Other posts pay doctor and radiologist fees on behalf of visa applicants and are given the relevant codes for these charges to be borne by Refugee and Humanitarian Programme Branch.

Procedures for the payment of such fees vary from post to post, according to local conditions. Enquiries should be emailed via Humanitarian Program Management and Operations to Refugee and Humanitarian Assistance Section.

The Class XB character requirement

PIC 4001

The character requirement is PIC 4001. Policy and procedure on assessing PIC 4001 are in:

- PAM3: Act - Character and security - s501 - The character test, visa refusal and visa cancellation
- PAM3: Act – Character and security – Penal checking handbook.

Officers must familiarise themselves with these instructions. As there are several issues that are particularly relevant to the offshore humanitarian program, an overview of the character checking process is given below.

The character test

PIC 4001 requires that the applicant pass the ***character test***, which is defined in s501(6) of the Act. Briefly, an applicant does not pass the character test if they:

- have a ***substantial criminal record*** (defined at s501(7) of the Act) or
- have or had an association with a person, group or organisation reasonably suspected of being involved in criminal conduct or
- are not of good character having regard to their past and present conduct (including involvement in war crimes or crimes against humanity) or
- are likely to engage in criminal conduct in Australia, or harass, molest, intimidate or stalk another person in Australia or
- are likely to vilify a segment of the Australian community or incite discord in the Australian community or in a segment of that community or
- are likely to represent a danger to the Australian community or to a segment of that community.

Checking procedures

In deciding whether a Class XB applicant passes the character test, officers should:

- check the applicant against the Movement Alert List (MAL) and any local warning records held at the post
- carefully check the applicant's answers to the character questions in form 842
- request penal checks from all countries in which the applicant, since reaching 16 years of age, has lived for 12 months or longer in the last 10 years (subject to the exemptions mentioned below).

Penal checks

Officers should request penal checks for any country in which the applicant, since reaching 16 years of age, has lived for at least 12 months in the last ten years. Class XB applicants who are subject to persecution or substantial discrimination in their home country should not be requested to obtain a penal clearance from their home country.

Officers should exercise discretion and flexibility in requesting penal checks for frail, elderly or otherwise physically incapacitated. Such applicants may be exempted from penal checking where appropriate.

Officers are to refer to PAM3: Act – Character and security - Penal checking handbook for policy advice on penal checking and individual country information. Advice for applicants on how to obtain penal clearances is in the Character Requirements - Penal Clearance Certificates document, which is available on the department's website at http://www.border.gov.au/Trav/Visa/Char. Generally, the applicant is responsible for obtaining and submitting a penal clearance from the authorities of the country concerned, and in the case of SHP applicants, paying any costs involved. In a few instances, the post must initiate penal checks with the authorities of the country concerned.

Under policy, penal clearances are taken to be valid for 12 months from the date of issue. If an officer has good reason to believe that a penal clearance completed within the last 12 months should be updated, a new check may be requested. Generally, if an application is not finalised within the 12 month validity period of any penal clearance, the applicant should undergo the check again, unless there is good reason to believe that this is not warranted.

If an applicant obtained a penal clearance more than 12 months ago while living in a particular country and has not lived there since, the clearance would normally be acceptable. A new penal clearance for that country need not be requested unless there is reason to believe it is warranted.

Waiving penal checks

The decision to waive the requirement to obtain a penal clearance is made by Character Support Section. In all cases, the waiver request must have the support of the responsible post.

Penal checks can be waived if it is impossible to obtain a penal certificate, for example, in situations such as war or civil disturbance or if the authorities of a country do not issue certificates to former residents who have left the country. In some situations, the requirement for penal checking may also be waived for split family applicants in relation to their home country. Split family applicants are generally required to undergo penal checking in their home country, given that they are not relying on claims of persecution or substantial discrimination. However, officers should be flexible on this point. A split family applicant may have legitimate fears of undergoing penal checking in the home country, depending on their circumstances. If a split family applicant claims to be unable to undergo penal checking in the home country because of a fear of persecution or substantial discrimination, officers should consider requesting a waiver.

For all waiver requests, officers should:

- establish why the applicant is unable to obtain a penal clearance, including, if applicable, what steps they have taken to try to obtain one. Officers may request a written statement from the applicant or the applicant may provide this information orally (in which case a comprehensive file note or case note should be made)
- if appropriate, provide evidence that the applicant has attempted to obtain a clearance

- consult the post responsible for the country for which the waiver is sought, and ascertain whether the post supports the request for a penal checking waiver under the circumstances
- obtain a statutory declaration from the applicant stating whether they have been arrested, charged, convicted or imprisoned in any country
- complete a "Request for waiver of penal checking" pro forma and email it to Character National Office.

The request for waiver of the penal checking requirement will be considered and the processing area advised of the outcome of the request. Most requests for waiver are answered within 48 hours.

War crimes and crimes against humanity

An applicant who has been involved in war crimes or crimes against humanity may fail the character test as per s501(6)(c)(ii) - refer to s499 direction Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA.

If there is reason to believe that the applicant, primary or secondary, may have been involved in war crimes or crimes against humanity, the application is to be scrutinised carefully. Information suggesting involvement in such activities may be disclosed in the application form or come to light during interview. Alternatively, credible information about the applicant's involvement in war crimes or crimes against humanity may have been received from a third party or the applicant may have served in the military forces or held a prominent position in a regime known to have committed atrocities.

If there are concerns that an applicant may have been involved in war crimes or crimes against humanity and the applicant fails to satisfy other criteria for a Class XB visa, the visa should be refused on the other criteria. Posts should consider adding the applicant to MAL and advise/email Humanitarian Programme Management Section via the Humanitarian Helpdesk.

If the applicant otherwise appears eligible to be granted a Class XB visa, for guidance details of the case should be referred/emailed to:

- War Crimes Screening and
- via the Humanitarian Helpdesk, Humanitarian Programme Management Section.

Officers should exercise particular caution when dealing with minors who are suspected of committing war crimes or crimes against humanity, or of being child soldiers. For guidance refer to PAM3: Refugee and Humanitarian - Child soldiers. These cases are highly sensitive and complex and should be brought to the attention of Humanitarian Programme Management Section and War Crimes Screening Unit as soon as possible.

For policy and procedure on screening applicants who may have been involved in war crimes or crimes against humanity, refer to PAM3: Act – Character and security - War crimes - Screening of visa and citizenship applicants.

Deciding whether character requirements are met

Generally, if no adverse information as to the applicant's character is disclosed in the application form, during the interview, on MAL or as a result of penal checking, the applicant will pass the character test and PIC 4001 will be satisfied.

If there is information to suggest that the applicant fails the character test, the application may be liable for refusal under s501 of the Act. All offshore visa applications that fall within the scope of s501 are assessed by the Visa Applicant Character Consideration Unit (VACCU) in the National Character Consideration Centre (NCCC). For policy and procedure, refer to Bordernet's Character assessments and visa cancellations page or email VACCU.

Other public interest criteria

Child custody criteria

PICs 4015, 4016, 4017 and 4018

200.228, **200.322**, **201.228**, **201.322**, **202.228**, **202.322**, **203.228**, **203.322**, **204.228**, **204.322**

Schedule 2 criteria for the Class XB subclasses require that, before a visa can be granted to a minor (child under 18) who is assessed against secondary criteria in a Class XB application, the child custody requirements prescribed in PIC 4017 and 4018 must be satisfied.

For PIC 4017 to be satisfied, officers must be satisfied that one of the following applies:

- the law of the child's home country permits the removal of the child or
- each person who can lawfully determine where the child is to live consents to the grant of the visa or
- the grant of the visa would be consistent with any Australian child order in force in relation to the child.

For PIC 4018 to be satisfied, officers must be satisfied that there is no compelling reason to believe that the grant of the visa would not be in the best interests of the child.

For further details on these requirements and how they should be assessed refer first to PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

Officers should note that if a minor child included in a Class XB application does not satisfy the above requirements, the main applicant must be refused a visa along with the child (in other words, child custody is a "one fails, all fail" criterion for Class XB visa subclasses) - refer to The "one fails, all fail" criterion.

Officers should also note that PICs 4017 and 4018 are "time of decision" Schedule 2 secondary criteria for each Class XB subclass. This means that these PICs:

- apply only to children who are included in an application as members of a family unit or as immediate family members, and who have not turned 18 at the time the application is decided
- do **not** apply to minors who apply for a Class XB visa in their own right.

For minors applying in their own right, however, case officers should still consider any possible custody issues when assessing whether permanent settlement in Australia is the appropriate course for the applicant, as required by 200.224(a) and equivalent for other subclasses - refer to:

- Class XB-specific criteria - Permanent settlement appropriate and not contrary to Australia's interests
- PAM3: Refugee and Humanitarian - Unaccompanied Humanitarian Minors (UHM) Programme.

Other public interest criteria

For assessing all other PICs officers should follow the policy and procedure set out in the following instructions.

4002:	PAM3: Sch4/4002 – The security requirement and PAM3: Act – Character and security – Security Checking Handbook
4003(a):	PAM3: Act – Character and security - Foreign policy travel sanctions and autonomous travel sanctions
4003(b):	PAM3: Act – Character and security - Proliferation of weapons of mass destruction - Risk assessment procedures and PAM3: Act – Character and security - s501 - The character test, visa refusal and visa cancellation

4003(c):	PAM3: Act – Character and security - Foreign policy travel sanctions and autonomous travel sanctions
4004:	PAM3: Sch4/4004 - Debts to the Commonwealth
4010:	PAM3: Sch4/4010 - The settlement requirement
4019:	PAM3: Sch4/4019 - PIC 4019 - The values statement

In relation to PIC 4002, also note:

- For those cases that must be referred for checking (refer to PAM3: Act – Character and security - Proliferation of weapons of mass destruction - Risk assessment procedures), checks should be initiated as early as possible for cases that prima facie meet visa requirements, as this process can take considerable time
- All PIC 4002 referrals are to be transmitted via the Security Referral Service (SRS) in accordance with the instructions in PAM3: Act – Character and security - Security Checking Handbook and the SRS User Guide. It is essential that full and accurate details are provided - missing or incorrect information can delay the checking process. For a full list of information required for an SRS referral, refer to PAM3: Act – Character and security - Security Checking Handbook
- If an applicant's circumstances warrant expedited checking ("escalation"), the case should be emailed via the Humanitarian Helpdesk to Humanitarian Programme Management Section for consideration, using the template that can be requested via email.

Special return criteria

200.227, 200.323(b), 201.227, 201.323(b), 202.227, 202.323(b), 203.227, 203.323(b), 204.227, 204.323(b)

Any Class XB applicant who has previously been in Australia must satisfy special return criterion 5001 - refer to PAM3: Act – Visa cancellation - Exclusion periods for policy and procedure on assessing this criterion.

Class XB visa grant and evidencing

Granting Class XB visas

200.411, 201.411, 202.411, 203.411, 204.411

The applicant must be outside Australia when a Class XB visa is granted.

Applicants under the Community Proposal Pilot or the Community Support Programme must pay the second instalment of the visa application charge before being granted a Class XB visa - refer to Schedule 1 item 1402(2).

200.511, 201.511, 202.511, 203.511, 204.511

A Class XB visa permits the holder to travel to and enter Australia for 5 years from the date of grant. It permits the holder to remain in Australia indefinitely.

Class XB visa conditions

200.611, 201.611, 202.611, 203.611, 204.611

Class XB visa holders must make their first entry to Australia by a specified date. For guidelines on establishing this first entry date, refer to PAM3: GenGuideB - Non-humanitarian migration - Visa application and related procedures - Granting visas.

200.612, 201.612, 202.612, 203.612, 204.612

Condition 8502 ('must not enter Australia before the entry to Australia of a person specified in the visa') may be imposed on a Class XB visa. An objective of this condition is to prevent dependants from migrating without the person from whom they derive their eligibility for their visa. Under policy, it should not be imposed on Class

XB visa holders without special reason and only after consultation with Humanitarian Programme Management Section.

Travel documents for Class XB visa holders

Note: Relevant to this section are:

- PAM3: Act - Passports, travel documents and visa evidencing - Travel documents - DFTTA - Document For Travel To Australia
- PAM3: Act – Identity, biometrics and immigration status – ImmiCards and the Identity Lock Down policy.

Since May 2015, in place of a document for travel to Australia (DFTTA), the Australian Migration Status (AMS) ImmiCard has been issued to persons who have been granted a Class XB visa. The AMS ImmiCard is a label-free travel document that facilitates one-way, single travel and entry to Australia.

Under policy, each person granted a visa should be provided with their own separate ImmiCard. This is because the ImmiCard serves as the official Commencement of Identity document in Australia for Class XB visa holders. Both the ImmiCard and the DFTTA are accepted as the primary document to access services and to obtain other identity documents.

More information on AMS ImmiCards can be found on the ImmiCard webpages.

Post-grant issues

Additional family members after grant

If a child is born to a Class XB visa holder shortly after the grant of that visa and before the visa holder's travel to Australia, the post should ask the family to apply for a visa on behalf of the child. If the parents were granted XB-202 visas, the original proposer should also be asked to submit a form 681 for the child. The child's application should be processed as a priority.

Class XB visa holders requesting new travel documents

AMS ImmiCards are issued to Class XB visa holders for the purpose of travel to Australia. The documents are valid for single entry to Australia. The documents also serve as key identity documents, particularly for those who do not have any other official identity documents.

Persons who have lost their ImmiCard can Order a replacement ImmiCard online.

Class XB visa holders issued a DFTTA can apply for an ImmiCard if they require a valid credential to access government services. For policy and procedure, refer to:

- PAM3: Act – Identity, biometrics and immigration status – ImmiCards and the Identity Lock Down policy.

Class XB visa holders who do not hold a passport and wish to travel overseas should be advised to apply to DFAT for a Convention travel document (also known as a titre de voyage) or a certificate of identity.

Contracted services for Class XB

Overview

A range of services to assist Class XB applicants and visa holders are delivered under contractual arrangements managed by Refugee and Humanitarian Assistance Section. These include travel arrangements for refugee category visa holders, health screening, offshore cultural orientation classes, and interest-free loans to assist SHP visa holders and their proposers with the cost of travel to Australia.

Travel and medical services

Assisted passage, medical and related services deed of agreement

The International Organization for Migration (IOM) is contracted by the department to deliver travel, medical and related services globally through the Assisted Passage, Medical and Related Services deed of agreement. The deed establishes a financial reimbursement facility whereby IOM co-ordinates, delivers and, where necessary, purchases medical services for Class XB visa applicants and holders and then seeks reimbursement from the department. Key dimensions of this contract are expanded on below.

Initial medical screening

As outlined in The Class XB health requirement, all Class XB applicants must be assessed against the health requirement prescribed in PIC 4007:

Examinations for the purpose of the health requirement are provided at no cost to Class XB applicants other than those applying under the Community Proposal Pilot or the Community Support Programme.

In many places, IOM employs physicians and radiologists who are appointed by the Global Health Unit as members of the overseas panel physician network. They carry out medical examinations and x-ray screening of Class XB visa holders in accordance with the health requirement. In some instances, IOM is invoiced by and pays independent panel physicians and radiologists, then seeks reimbursement from the department. A few posts are responsible for processing payments for clients' health screening costs, drawing on funds administered by Refugee and Humanitarian Assistance Section.

Assisted passage

IOM facilitates all aspects of travel for holders of Refugee visas (XB-200, XB-201, XB-203 and XB-204) - except for Refugee visa holders granted under the Community Proposal Pilot - from their usual place of residence to their place of settlement in Australia. If necessary, IOM provides transit assistance that includes meals and toiletries. Associated costs are invoiced to Refugee and Humanitarian Assistance Section by IOM in line with the contractual reimbursement arrangements.

Travel arrangements for SHP visa holders

SHP visa holders and their proposers are responsible for their own travel costs. However, IOM may assist with travel arrangements and will seek the best flexible and refundable fare. IOM charges an administrative fee for this service. SHP visa holders whose travel is arranged by IOM may be eligible for assistance with the costs of travel through the No Interest Loan Scheme. Refer to No Interest Travel Loan Scheme.

Depending on local circumstances, the visa holder will receive their ImmiCard from either IOM or the Australian Embassy/High Commission. Often visa holders will not be given their ImmiCard until the day they leave for Australia. This is to reduce the risk of losing the travel documents prior to travel.

It is important that XB-202 visa holders who are making their own travel arrangements receive their ImmiCard prior to travelling. It can take up to 4 weeks for visa holders to be issued their ImmiCard following visa grant. To ensure visa holders have their ImmiCard in time for travel, flights to Australia should be booked at least 4 weeks after the date of visa grant.

Travel arrangements for CPP or CSP clients

APOs are responsible for arranging and funding airfares to Australia of the humanitarian entrants that they have proposed under the Community Proposal Pilot or the Community Support Programme. However, IOM may assist with travel arrangements and will seek the best flexible and refundable fare. IOM charges an administrative fee for this service.

Departure health check (DHC)

DHC physical examinations are available to Class XB visa holders within 72 hours before their confirmed departure for Australia. The service is offered in most places from which Class XB visa holders depart for Australia.

DHC aims to:

- ensure Class XB visa holders are healthy enough to undertake the journey to Australia
- vaccinate Class XB visa holders and treat them for parasites before their resettlement
- reduce the number of acute post-arrival health issues, thereby facilitating resettlement of Class XB visa holders and protecting the health of the Australian community
- allow post-arrival follow-up arrangements to be made for any health issues identified.

DHC comprises a physical examination, tests for pregnancy and communicable diseases, administration of prescribed vaccinations (against measles, mumps and rubella) and empirical treatment of parasites and infestations.

Officers should make themselves aware of the DHC model in operation in the countries their post covers.

In most places, IOM's panel physicians provide the DHC service. Elsewhere, independent panel physicians are engaged.

DHC is offered free to all Class XB visa holders, including CPP and CSP clients, and attendance is strongly encouraged in the visa grant letter. Nonetheless, attendance is voluntary and there is no adverse impact on a visa holder's visa status if they choose not to undertake DHC.

Occasionally, travel to Australia may be delayed because a DHC physical examination identifies a medical condition requiring treatment prior to travel. More rarely, a DHC examination may result in a recommendation that a client travel with a medical escort - refer to Operational and medical escorts.

If travel is delayed or an escort recommended, IOM will advise the relevant post, Refugee and Humanitarian Assistance Section, Global Health, and Settlement Services Referral Management Section in the Department of Social Services.. In these instances, posts must determine whether delays will prevent the visa holder from entering Australia before the expiry of their initial entry date and take appropriate action - refer to:

- Post-grant issues and
- PAM3: Sch8 - Visa conditions - Breach of entry-related visa conditions (inc. first entry date).

Posts must ensure that IOM is notified of Class XB visa grants with sufficient time to organise DHC. IOM may seek assistance from posts to arrange medical escorts for visa holders whose departure has been delayed.

For further details of DHC, refer to "Departure Health Check Instructions", which can be obtained from the DHC Coordinator, Immigration Health:

- by email, via Health

s. 47E(d)

Operational and medical escorts

If a panel physician, Medical Officer of the Commonwealth (MOC), A-based officer at post or IOM has assessed it as necessary, IOM provides operational and medical escorts to accompany and assist Refugee category visa holders during their travel to Australia. IOM seeks reimbursement from the department for the provision of these services.

If a medical escort has been recommended for a Refugee visa holder, the GHU and Refugee and Humanitarian Assistance Section must be contacted for approval, and Humanitarian Settlement Referrals Section in the Department of Social Services copied into any correspondence.

If IOM or a post believes there is a need for an escort for an SHP visa holder, they must contact the GHU, Humanitarian Programme Management Section and Refugee and Humanitarian Assistance Section for advice.

In all cases, the use of escorts requires prior written approval of the Director, Refugee and Humanitarian Assistance Section (email Humanitarian Program Management and Operations). Where the need for an escort is foreseen and cannot be funded by the applicant or their proposer, post may consider whether it is appropriate to grant the visa in a Refugee subclass so that these costs can be covered by the department. If this is not appropriate, on grant the case should be referred to IOM to make travel and escort arrangements at the clients' expense, with the option of a No Interest Travel Loan Scheme (NILS) loan, and the ImmiCard should be retained until departure to ensure compliance.

The department does not fund escorts for CPP or CSP clients. Those applicants should be counselled and the APO advised at the earliest opportunity that they will be required to fund the escort in the event one is needed. In the case of a medical escort, this will be determined by Immigration Health. While in some cases an escort may not be essential and an accompanying family member will be able to provide the required assistance, in other cases travel may be impossible or life threatening without one. To ensure compliance, where it is considered necessary, post may retain the ImmiCard until satisfactory arrangements have been made.

Miscellaneous services

IOM can also:

- assist applicants referred by UNHCR to make applications
- provide interpreting services
- assist with negotiating exit requirements for Class XB visa holders
- identify and secure office accommodation for interviews.

Further information about IOM's miscellaneous services can be obtained from Refugee and Humanitarian Assistance Section.

No Interest Travel Loan Scheme

IOM, in partnership with the department, operates the No Interest Travel Loan Scheme (NILS) to assist SHP clients (XB-202) with expenses associated with travel to Australia. Travel loans are interest free and cover up to 65% of the cost of a visa holder's airfare to Australia.

At appropriate stages in the processing of the application, posts are encouraged to advise SHP visa applicants and their proposers of the option to access NILS.

SHP visa holders or their proposers who arrange travel through IOM may be eligible to access a No Interest Travel Loan. Officers should direct any requests for information about the scheme and the eligibility requirements that must be met to IOM:

s. 47E(d)

website: http://www.iomaustralia.org/projects_nils.htm

Posts should not advise applicants under the Community Proposal Pilot or the Community Support Programme who are granted an XB-202 visa to access NILS. APOs are responsible for funding the airfares to Australia for the humanitarian entrants that they have proposed. Refer to APO obligations under the Deed.

Australian Cultural Orientation (AUSCO) program

The AUSCO Programme provides Class XB visa holders with essential information about travelling to and settling in Australia.

The six objectives of AUSCO are:

- to provide accurate information on departure processes

- to present a realistic picture of life in Australia
- to describe the settlement process and provide practical information about post-arrival settlement services and how to access them
- to encourage language training on arrival in Australia
- to provide participants with the basic skills necessary to achieve self-sufficiency and
- equip participants with the necessary tools to deal with initial settlement concerns and the different stages of cultural, social and economic adaptation.

IOM is contracted to deliver AUSCO on behalf of the Commonwealth. AUSCO courses are up to 5 days in duration and all Class XB visa holders aged 5 years and over are eligible to attend. Attendance is voluntary, but strongly recommended.

AUSCO courses are delivered in the period between visa grant and departure for Australia. Timely delivery of client information to IOM is critical for arranging AUSCO invitations, scheduling of classes and maximising participation. To facilitate AUSCO arrangements, posts should refer the contact details of Class XB visa holders within seven days of visa grant.

Posts also play a role in monitoring the quality of the AUSCO program. Officers are encouraged to make site visits to AUSCO courses and to give feedback to the contract managers in Humanitarian Settlement Policy Section in the Department of Social Services s. 47E(d)

Settlement issues

Overview

Settlement services are provided to humanitarian program entrants through the Humanitarian Settlement Programme (HSP). These services are delivered by contracted service providers in all states and territories, and allocation of cases to states and territories is coordinated by Humanitarian Settlement Referrals Section, Department of Social Services.

Posts play an essential role in the successful delivery of these settlement services to Class XB visa holders by providing information that allows Humanitarian Settlement Referrals Section to allocate and refer cases effectively.

The role of posts in providing settlement information

When a Class XB visa is granted, the case details automatically download from IRIS into the Humanitarian Entrants Management System (HEMS). This download takes place every morning around 6:00 am Australian Eastern Standard Time, two days after visa grant.

HEMS is a web based system available to all posts, Humanitarian Settlement Referrals Section in the Department of Social Services, state or territory offices and HSP service providers. Posts with significant humanitarian allocations are expected to use HEMS:

- to refer details of all Class XB visa grants
- to provide information relevant to settlement service providers
- for all case related communication with onshore stakeholders
- to clearly flag Community Proposal Pilot and Community Support Programme cases (which are ineligible for HSP).

HEMS provides a secure mechanism for stakeholders to communicate with each other, and it is important that posts log in to HEMS frequently to take action on new cases and respond quickly to notes.

Posts with small humanitarian visa allocations (that is, less than 50), or no initial allocations, are not expected to use HEMS and should instead email case information to Humanitarian Settlement Referrals Section s. 47E(d) within two days of grant of a Class XB visa. Humanitarian Settlement Referrals Section will behalf of the post, using the information provided.

More detailed information on HEMS and post-grant referral procedures, including access forms, technical support and electronic training materials, can be obtained from Humanitarian Settlement Referrals Section (refer to Contacting Humanitarian Settlement Referrals Section). Phone based HEMS tutorial sessions are also available on request.

The role of posts and unaccompanied humanitarian minors (UHMs)

Posts should email s. 47E(d) before accepting the referral of an unaccompanied minor. If it is agreed to proceed with the case, before visa grant posts should contact s. 47E(d) and attach copies of all relevant documentation, such as:

- UHM Supporting Information form (see TRIM file ADD2008/1095437)
- UNHCR resettlement registration form (RRF)
- UNHCR Best Interests Determination Report (BID)
- interview report (or similar)
- Form 1258 signed by the minor's primary carer (if there is a carer over 21 years of age, and whether or not this person is the primary applicant)
- copies of any documents supporting PICs 4015, 4016, 4017 and 4018 (such as adoption orders completed in country of origin, court orders, permissions to travel and Form 1229).

UHM Intake and Reporting will complete an 'indicative' IGOC assessment and complete a settlement service referral for either the state or territory child welfare agency or service provider model, based on the particular circumstances of the child. UHM Intake and Reporting will liaise with post, state or territory child welfare agency and service providers during this process to facilitate a smooth transition into the UHM Programme.

In all cases, it is important that posts s. 47E(d) of the minor's understanding of the circumstances in which they became a member of the primary visa applicant's family (for example, whether they know they are informally adopted) to ensure that these matters are handled in a sensitive manner

The role of posts in providing travel details

To assist HSP service providers, posts must ensure that certain information is provided to Humanitarian Settlement Referrals Section in the Department of Social Services when granting Class XB visas. Accurate and complete information is required to ensure that appropriate settlement arrangements can be made for Class XB visa holders before and after their arrival in Australia.

Most of this information is extracted automatically by HEMS from IRIS, but all posts are required to provide the following additional information to Humanitarian Settlement Referrals Section using either HEMS or email:

- visa entry expiry date
- information about links with proposers, family or friends already in Australia or with their own Class XB applications in process, including addresses, telephone numbers, relationship to the visa holders, and a brief assessment of the closeness of the relationship wherever possible
- health undertaking access numbers
- special medical conditions that may affect settlement decisions or require onshore follow-up, for example, any MOC comments, health waiver information, requirements for medical escorts, wheelchair assistance and/or ground floor accommodation, or other special requirements
- language and ethnic group details
- UHM status (refer to PAM3: Refugee and Humanitarian - Unaccompanied Humanitarian Minors (UHM) Programme)
- further information on the relationship between the main applicant and applicants marked as "other" in IRIS. For visa holders under 18, the whereabouts of the minor's parent should also be included as this will affect the minor's UHM status
- any other information that may assist Humanitarian Settlement Referrals Section to make appropriate settlement decisions or help HSS service providers make settlement arrangements.

Humanitarian Settlement Referrals Section decides visa holders' settlement destination on the basis of this information, in particular giving regard to the whereabouts of any close relatives in Australia. Factors such as

the location of existing communities, access to services and the availability of affordable housing, education and employment opportunities are also considered. Humanitarian Settlement Referrals Section then refers the case in HEMS to the relevant state or territory office, which refers it on to the appropriate HSS service provider.

The role of posts - in settlement counselling

It is essential that Humanitarian Settlement Referrals Section is given accurate flight details of Refugee category visa holders so that arrangements can be made for them to be met at the airport on arrival in Australia.

Posts should follow five steps to record and refer a Class XB visa holder's flight details.

1. Pass on requests for a preferred arrival window received in HEMS or by email from an HSP service provider to IOM so that flights can be arranged.
2. Enter flight details received from IOM into IRIS (in the settlement information section) so that they are automatically transferred into HEMS at the next download and can be viewed by Humanitarian Settlement Referrals Section, state or territory offices and HSP service providers.
3. Enter travel details received from IOM for SHP visa holders who choose to book their flights through IOM into IRIS (SHP visa holders and their families are responsible for their own travel but may choose to use IOM services - refer to Travel and medical services.
4. Promptly enter any changes to flight details into IRIS.
5. Inform Humanitarian Settlement Referrals Section of any difficulties IOM has in booking travel within the preferred arrival window requested by the HSP service provider and suggest an alternative travel period. Officers should note that they will need to confirm the alternative travel window with the service provider before bookings are made.

Contacting Humanitarian Settlement Referrals Section

Humanitarian Settlement Referrals Section can be contacted s. 47E(d)

The role of posts in settlement counselling

Officers should not provide settlement information to Class XB applicants during interview. Cultural orientation information is provided via the AUSCO program for most Refugee and Humanitarian posts. For posts where AUSCO is not available, booklets containing settlement information are available on the department's website at www.border.gov.au.