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Australian Government
Department of Home Affairs

Background Brief

For information

PDMS Number: MB21-000975

To: Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
Subject: Process and Progress of the Afghan LEE program

Purpose

Your office has requested a short brief containing the latest up to date statistics for you to brief the Governor General on the Afghan LEE program.

Background

1. To be eligible for the program, visa applicants must be certified by the relevant Minister as being at significant individual risk of harm as a result of their support to Australia's whole of Government mission in Afghanistan.
2. Since the beginning of the Afghan LEE program in 2013, over 1,600 visas have been granted to Afghan LEE and their family.
3. The Government has requested that the certification, visa application process and grants, as well as travel to Australia, for all eligible Afghan LEE be completed by 31 August 2021.

Key Issues

4. The Department continues to urgently progress visa processing for the onhand LEE applications.
5. The main visa processing impediment is the completion of the mandatory health examination which relies on services of our contracted provider (IOM) in Kabul. IOM have agreed to extend service hours which will increase the amount of medical appointments that can be completed. The Department continues discussion with IOM on the possible deployment of additional resources.
6. The Ministers for Defence and Foreign Affairs need to finalise any additional certifications as soon as possible to enable the LEE to lodge visa applications in a timely fashion so that Home Affairs officers in Amman can finalise the visa processing.
7. DFAT and the Department of Health are progressing arrangements for a charter flight to transport up to 200 Afghan LEE and their families to Australia via the Howard Springs quarantine facility. At this stage the flight is expected to arrive on 30 August 2021.

Data/ Statistics**Onhand caseload**

- 76 applications on hand (369 applicants).
 - 56 of these applications (252 applicants) are awaiting health examinations.
- IOM expect to finalise medicals for the current on hand caseload by about 8 August 2021.
- Visa processing for the majority of the onhand caseload should therefore be completed by 15 August 2021.

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- In addition to the current on hand caseload, the Departments of Defence and Foreign Affairs expect up to a further 49 LEE to be certified which would be approximately 250 visa applicants. These should be able to be processed by the end of August if certifications are made and applications are lodged in the coming days.

Arrivals and travel pending

- 376 visas have been granted since 15 April 2021, when the Prime Minister announced Australia's planned withdrawal from Afghanistan.
- 228 LEE and their family members have arrived in Australia since 15 April 2021.
 - A further 43 persons are expected to arrive by the end of July 2021.
- 133 visa holders are yet to be booked on a flight.
- Tighter quarantine caps have seen arrivals and bookings reduced to less than five passengers per day.
- NSW Government has indicated an additional 100 seats can be made available from late July to early August for humanitarian entrants.

8. **Attachment A** provides the most recent LEE dashboard as at 19 July 2021.

Further Applications

9. To be eligible for the Afghan LEE program, applicants must be certified by their employing Minister. Whilst the Departments of Defence and Foreign Affairs are managing a significant amount of interest, they do not expect a large volume of enquiries to translate into ministerial certifications.

Authorising Officer	Contact Officer
David Wilden First Assistant Secretary, Refugee Humanitarian and Settlement Division 22 / 07 / 2021 Ph: 02 s. 22(1)(a)(ii)	Sally Pfeiffer Assistant Secretary, Refugee Humanitarian and Settlement Division Ph: 02 s. 22(1)(a)(ii)

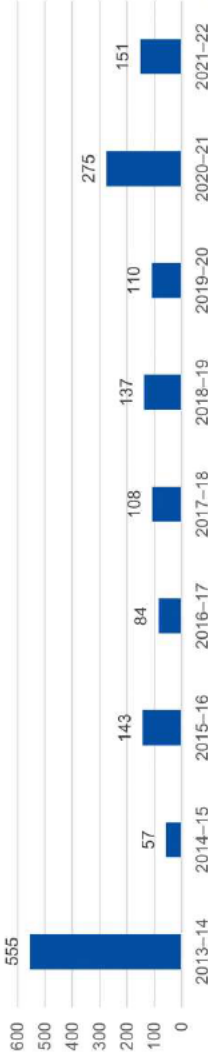
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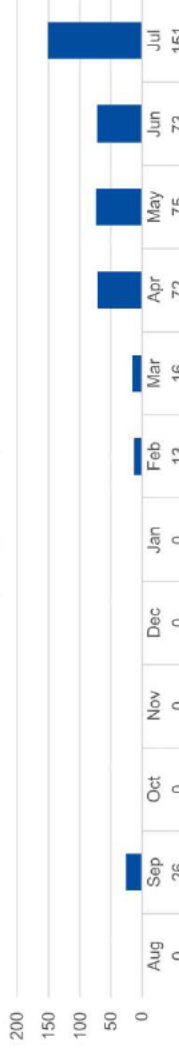
Afghan Locally Engaged Employee (LEE) Processing

(as at 19 July 2021 unless noted otherwise)

GRANTS BY PROGRAM YEAR



GRANTS BY MONTH (as at 19 July 2021)
(Rolling 12 months)



COHORT PROGRESS

Cohort	Afghan LEE As at 24 May 2021	Total Applicants	Afghan LEE As at 19 July 2021	Total Applicants
1. Humanitarian visa holders granted since 01 July 2020 - Those who have been certified, submitted a visa application and then granted	46	165	As at 19 July 2021 101	426
2. Applicants onhand Those who have been certified, submitted a visa application not yet granted	108	564	As at 19 July 2021 76	369
3. Awaiting ministerial certification Engaged with their employing agency and awaiting a decision as to whether they are able to lodge an application under this program.	38	100-200*	As at 19 July 2021 277	1,100*
4. Certified LEE yet to lodge a visa application Those who have been certified but have not lodged a visa application.	As at 19 July 2021		As at 19 July 2021	
	Certified in 2021		17	85*
	Certified 2013-20		77	385*

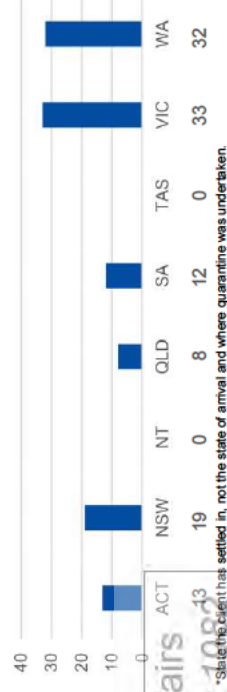
*Potential number of applicants.

Note that original forecast on 24 May was that the possible LEE cohort would be around 1,000 persons. The Cohort who may seek future certification has grown significantly, but may not result in ministerial certification and a visa application.

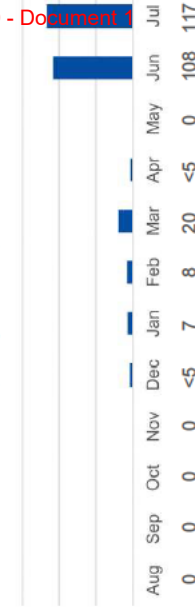
INTERNAL PROCESSING STEPS

Status at 19 July 2021	Afghan LEE	Total Applicants
Granted since 15 April 2021 (in Afghanistan)	88	376
Granted since 15 April 2021 (outside of Afghanistan)	<5	7
Status	Afghan LEE	Total Applicants
Cohort		
Health completed - other matters to resolve.	9	40
Undertaken health - all applicants not yet cleared in system	10	72
Referred to provider to complete medicals	56	252
Under assessment (complex Member of Family Unit cases)	<5	5
Ready to refer to provider to complete medicals	0	0
Total onhand	76	369
Applications lodged in the past seven days	<5	15

2021-22 ARRIVALS BY STATE* (as at 19 July 2021)



ARRIVALS BY MONTH (as at 19 July 2021)
(Rolling 12 months)



Travel Status	Afghan LEE	Total Applicants
Visa granted (01 July 2020 – 19 July 2021)	101	426
Referred to IOM to schedule travel	33	146
Scheduled to travel within next seven days (20 July 2021 – 29 July 2021)	40	43
Arrived in Australia (01 July 2020 – 19 July 2021)	66	267

*Includes applicants granted prior to 01 July 2020. *Statistical certainty settled in, not the state of arrival and where quarantine was undertaken.

Notes

- This information is provided by the Department of Home Affairs, The Department of Defence and the Department of Foreign Affairs and Trade. As data has been drawn from a dynamic system environment, the information is correct at the time of publication and figures may differ slightly from previous or future reporting.
- The Department of Home Affairs must be consulted regarding any request to use this data for purposes not originally intended. Cells with values of less than 5 are masked in accordance with Departmental data release protocols.
- As per Home Affairs Departmental data release protocols, numbers less than five are masked to ensure the privacy of applicants is maintained.



Australian Government
Department of Home Affairs

Submission

For information

PDMS Ref. Number: MS21-001538

Date of Clearance: 12/07/2021

To **Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

Subject **Afghan Locally Engaged Employees (LEE) - broadening the cohort**

Timing *Not applicable.*

Recommendations

That you:

1. note the advice on the Afghan LEE program and options and risks of expanding the program. noted / please discuss

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Signature.....

Date:...../...../2021

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Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On Sunday 11 July 2021, the Department of Home Affairs (the Department) provided your office with a paper on managing Afghan applications in the Humanitarian Program, focussing on the Afghan LEE cohort.
2. This Submission is to provide formal advice regarding the Afghan LEE cohort.

Applications for those previously refused grant or certification

3. There is no scope for the visa applicants that have been refused, or that withdrew, under the LEE program to have their applications reconsidered. They would need to reapply if they wanted to be considered for resettlement in Australia.
4. It would be possible for the Department to contact refused or withdrawn applicants to advise them of the option to apply for the subclass 201 – In-country Special Humanitarian; however, contact details may be out of date.
5. Those refused certification by Defence, DFAT or AFP under the LEE Program could also apply under subclass 201 – In-country Special Humanitarian. The Department does not have records of those refused certification but could seek contact information from relevant agencies or provide information for agencies to provide to those refused certification, which may be more appropriate given Privacy provisions.
6. For both those previously refused and those not approved for certification under the LEE program, applicants would need to lodge an application at an Australian mission (by post, courier or email) to be considered for a sub-class 201 In-country Special Humanitarian visa. Applicants must meet the visa criteria and satisfy PICs for Character, Security and Health. As non-LEE applicants, standard processing would apply including the requirement to interview the applicants.

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s. 47C(1)



Issues for processing and transfer to Australia

11. There are ongoing challenges to the processing of humanitarian program applications, including Afghan LEE applications, as a result of continuing restrictions on the Department's offshore activities and those of our partner agencies due to COVID-19, for example an inability to conduct medical assessments. This, combined with the deteriorating security situation in Afghanistan, makes it extremely difficult to not only process visas but uplift people from Kabul.
12. On 10 July 2021, the UAE announced that it will suspend arriving and transiting passengers from Afghanistan from 2359 UAE time Sunday (11 July 2021) evening. Since 21 June 2021, all Afghan LEE and their families have transited the UAE on their way to Australia. Our Post in the UAE has engaged with local authorities and received assurances that transit passengers from Kabul through Dubai to Australia will be accepted for travel as long as they remain in a specified airside transit lounge.
13. With the suspension of flights to the UAE, commercial flights will become very limited. The Department may be able to use alternative routes through Turkey but this currently requires a 14-day quarantine period in Turkey. The Department has discussed the possibility of charters from Kabul directly to Australia with DFAT and Defence; however, noting the security situation, this is considered a high risk.

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Background

Refugee and Humanitarian (Class XB) (offshore) visas

14. Class XB has five subclasses:

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

15. Subclass 201 requires the visa applicant to be living in their home country, all other subclasses require the applicant to be living outside their home country. Therefore, Afghans who remain in Afghanistan are only eligible for Subclass 201.

16. The policy advice manual for subclass 201 indicates:

- 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. Subclass 201 was established to enable Australia to assist in exceptional cases and for these reasons there is no regular allocation of places.

17. Under all subclasses in Class XB, applicants are able to include members of the family unit or members of their immediate family in their application – that is, at the same time as their application.

Afghans in the Humanitarian Program

18. In the past five years the following volume of visas have been granted under the Locally Engaged Employee (LEE) program and the broader offshore Humanitarian program to Afghan nationals. Afghanistan has been in the top five nationalities each year.

Year	Afghan LEE grants	Other Afghan grants	Total Grants
2019-20	114	505	619
2018-19	137	1,186	1,323
2017-18	108	1,022	1,130
2016-17	84	1,874	1,958
2015-16	143	1,571	1,714
Total	586	6,158	6,744

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19. The vast majority of non-LEE grants were not subclass 201 – In-country Special Humanitarian and were granted where the applicants were outside of Afghanistan. The Department does not have any visa processing officers in Afghanistan and has not processed visas from within Afghanistan.

The Afghan LEE Program

20. Eligibility for the LEE program is defined in an instrument to the Migration Regulations (IMMI 12/127) that commenced on 1 January 2013 and has not been altered since then Minister for Immigration, Chris Bowen, signed it on 14 December 2012. Paragraph three of the Instrument states that an individual needs to have been:

...employed with the Department of Foreign Affairs and Trade (DFAT), the Australian Defence Force (ADF), the Australian Agency for International Development (AusAID) or the Australian Federal Police (AFP):

- (a) have been assessed as being at significant individual risk of harm as a result of their support to Australia's whole of Government mission in Afghanistan due to their role, location, employment period and currency of employment; including:*
 - (i) interpreters in Uruzgan Province in positions funded by DFAT; or*
 - (ii) interpreters or instructors employed with the ADF or AFP; or*
 - (iii) project, facilities management and advisory staff in the Provincial Reconstruction Team in Uruzgan on behalf of AusAID and/or DFAT; or*
 - (iv) a person who is able to satisfy the relevant agency Minister that exceptional circumstances exist for that Minister to certify that the non-citizen is in that class of persons; and*
- (b) are not, or were not, an Afghan government or military official or employed in a private security capacity; and*
- (c) are not nationals or citizens of another country other than Afghanistan; and*

4. *[The individual] under paragraph 3 must have sought to be certified by the relevant agency Minister under paragraph 200.211(1A)(b) or 201.211(1A)(b):*

- (i) within six months of ceasing employment; or*
- (ii) in the case of a locally engaged employee who has ceased employment on or after 1 January 2012, before 30 June 2013; or*
- (iii) where the relevant agency Minister is satisfied that exceptional circumstances exist – at any time.*

21. Therefore, at this point in time, i.e. in 2021, eligibility is restricted to the exceptional circumstances identified in paragraph 4(iii) above.
22. Once the applicant is certified by the relevant Minister, they are eligible to lodge a visa application and are assessed against the criteria in Subclass 201 – In-Country Special Humanitarian visa.
23. Applicants must meet the visa criteria and satisfy PICs for Character, Security and Health. Unlike other cohorts in the program, LEE are not required to be interviewed, unless consideration of their application raises a concern.
24. As with all Class XB applicants, certified LEE are able to include their immediate family and members of their family unit.

25. There have been 1,473 visa grants in the Program and 451 refusals (at 2 July 2021). The refusals can be broken into two groups – those where all applicants in the application were refused and those where secondary applicants—members of the family unit—were refused:

Applicants where the LEE (the primary applicant) was refused	Applicants where the LEE (the principal applicant) was <u>not</u> refused	Total
25 cases / 123 applicants	328 secondary applicants	451 applicants

26. Of the 25 LEE cases refused, 24 of them were found to have been resettled elsewhere. ^{s. 47F(1)}



27. The 328 secondary applicants refused are likely to have not satisfied the Member of the Family Unit criterion. This criterion applies to all Class XB – Refugee and Humanitarian visa subclasses and is defined in the Migration Regulations and means:

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

28. The last dot point above means that married parents of a LEE are not a Member of the Family Unit as they clearly do not meet the 'does not have a spouse or de facto partner' requirement. Other secondary applicants are often refused as they are not found to be dependent on the primary applicant (the LEE).

29. Members of the family unit must apply at the same time as the Principal Applicant.

30. There are also 53 applicants who withdrew their applications, 49 of whom were secondary applicants where the primary applicant did not withdraw and therefore they were likely to not meet the Member of the Family Unit criterion.

31. The Department of Home Affairs does not have a record of the people who have expressed interest or been refused certification by the relevant Ministers (ADF, DFAT, AusAID, AFP).

Issues with granting more visas to relatives of Afghan LEE

32. There is no scope for the visa applicants that have been refused, or that withdrew, to have their applications reconsidered. They would need to reapply if they wanted to be considered for resettlement in Australia.

33. Applicants would need to lodge an application at an Australian mission (by post, courier or email) to be considered for a sub-class 201 In-country Special Humanitarian visa. As non-LEE applicants, standard processing would apply including the requirement to interview the applicants.

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34. Processing of visa applications in the current security and COVID-19 environment is particularly difficult. Applicants must meet health requirements and therefore need to complete an immigration medical examination which is reliant on an empanelled physician being able to complete the process. Applicants must be interviewed, which would be extremely difficult to conduct face to face. It is possible that interviews could be conducted by video-conference or phone but with little on the ground support as services (Post, IOM, UNHCR) withdraw or reduce significantly, this will become more challenging.
35. The Department would seek to process the caseload in Amman, where the LEE cohort are being assessed, and would require up to five additional officers to be allocated to the caseload depending on volume.
36. It is highly likely that as the security situation deteriorates people will seek to leave Afghanistan and cross the border into other countries where they may seek resettlement and engage with UNHCR. It is most likely that people would move to Pakistan or Iran. The Government's position to date has been not to process applicants located in Iran.
37. You will be provided a submission shortly to assist you to decide the composition of the 2021-22 Humanitarian Program. s. 47C(1)
38. For Afghan LEE, the Australian Government had a significant relationship with the principal applicant. If the cohort is expanded, the security risk would increase and therefore a deeper investigation would be required to ensure that visa applicants satisfy security and character requirements.
39. s. 47C(1)

Consultation – internal/external

40. The Department has engaged extensively with Defence, DFAT, PM&C, Health and Infrastructure regarding the Afghan LEE program over the past several months including on the issues of certification and transit to Australia.

Consultation – Secretary

41. The Secretary was not consulted on the approach in the submission.

Client service implications

42. Any change to the scope of the Afghan LEE program may impact finalisation of the cohort before 31 August 2021.

43. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – media@homeaffairs.gov.au.

Financial/systems/legislation/deregulation/media implications

Attachments

Authorising Officer
Cleared by:
David Wilden First Assistant Secretary Refugee, Humanitarian and Settlement Division
Date: 12/07/2021 Mob: s. 22(1)(a)(ii)

Through

CC Minister for Home Affairs
Secretary
Deputy Secretary, Immigration and Settlement Services Group
Deputy Secretary, National Resilience and Cyber Security
Group Manager Legal

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