



Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number: MS24-001705

Date of Clearance: 09/09/2024

To Minister for Home Affairs, Minister for Immigration and Multicultural Affairs, Minister for Cyber Security

Subject Offers of temporary humanitarian stay for Palestinians in Australia

Timing At your convenience

Recommendations

That you:

1. s. 47F(1) [redacted] signed / please discuss
2. s. 47F(1) [redacted] signed / please discuss
3. s. 47F(1) [redacted] noted / please discuss
4. agree to the application of Public Interest Criteria and visa conditions (including waiving health checks at the 449 stage) as outlined in Attachment D; agreed / not agreed
5. s. 47F(1) [redacted] agreed / not agreed
6. s. 47E(d) [redacted] noted / please discuss
7. note that once these individuals are made an offer of a subclass 449 visa, they will be taken to be ineligible for a subclass 866 Permanent Protection visa, consistent with the relevant Schedule 2 requirement in the Migration Regulations. noted / please discuss

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Minister for Home Affairs, Minister for Immigration and
Multicultural Affairs, Minister for Cyber Security

Signature.....



Date: 9/9/2024

Minister's Comments

Key Issues

1. This submission provides s. 47F(1) for you to consider making an offer of temporary stay. This temporary humanitarian visa pathway involves the offer of a stay in Australia on a subclass 449 visa, followed by a subclass 786 visa which would be valid for three years.
2. s. 47E(d)
 - s. 47E(d)
 - s. 47E(d)
3. s. 47F(1)
 - s. 47F(1)
 - s. 47F(1)

s. 47F(1)
4. s. 47F(1), the Department will assess them against the visa eligibility criteria before they are granted subclass 449 and 786 visas. There is no visa application charge or visa application form for subclass 449 and 786 visas. The Department will also provide a fact sheet outlining Benefits and services available to subclass 449 and subclass 786 visa holders (at **Attachment C**).
5. s. 47F(1), it remains open to them to apply for and be granted any other visa subclass other than a Protection visa (subject to

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meeting eligibility criteria) or remain in Australia on a Bridging E (subclass 050 and subclass 051) visa.

Visa processing and entitlements

6. The Department anticipates that, subject to any unforeseen issues, the process to grant subclasses 449 and 786 visas respectively s. 47F(1) [REDACTED]
- The subclass 449 visa provides holders with work rights, eligibility for Services Australia Special Benefit payments, support through the Humanitarian Settlement Program and Settlement Engagement and Transition Support (SETS) program, which includes providing support to access primary, secondary and tertiary education.
 - The subclass 449 visa does not provide Medicare access.
 - Subclass 449 visas will be granted for a period of six months to mitigate any unforeseen delays associated with subclass 786 visa clearances, including health examinations and biometrics collection.
 - The transition to a subclass 786 will enable individuals to access all the services on a subclass 449, with the addition of Medicare access.
 - Individuals are able to travel while on a subclass 449, however, the subclass 786 restricts travel rights. s. 47E(d) [REDACTED]
 - s. 47E(d) [REDACTED]
 - The Department will engage with trusted partners in the sector to facilitate support arrangements.

Public Interest Criteria (PICs) and Visa Conditions

7. Subclass 449 visa applicants are required to satisfy PICs 4002 (security) and 4003A (weapons of mass destruction). The Department will (subject to your agreement) waive the requirement for health checks at the 449 stage.
8. Subclass 786 visa applicants are required to satisfy PIC 4002 and 4003A, as well as the character test (PIC 4001). The Department will be applying standard visa processing security and character checks for all individuals provided an offer on a case-by-case basis.
9. Individuals will be required to undertake a full Immigration Medical Examination including a chest x-ray at the 786 stage. s. 47E(d) [REDACTED]
10. Further information about the proposed approach to PICs and visa conditions for these individuals is available at Attachment D.

Implications for Protection visa applications

11. s. 47F(1) [REDACTED]

s. 47C(1) [REDACTED]

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12. s. 47C(1)

s. 34(3)

- s. 47C(1) s. 34(3)

Background

Visa application bar affecting subclass 449 visa holders

13. Subclass 449 visa holders cannot make valid applications for any other visas (other than another subclass 449 visa), due to the operation of section 91K of the Act. Section 91L of the Act provides you with a personal power to lift that bar if you think it is in the public interest to do so.
14. Lifting the application bar to allow holders of a subclass 449 visas to apply for another visa involves the following steps:
 - You (Minister) personally make a decision to lift the section 91K application bar and sign a notice of determination under section 91L of the Act.
 - Each client is notified that the section 91K application bar has been lifted. The client may apply for any visa, noting eligibility criteria for each visa still applies.
 - Any visa application must be lodged within seven working days of notice of the section 91K bar lift being deemed to be received.
 - You (Minister) table a statement in Parliament regarding the section 91L determination that you have been made.

Consultation – internal/external

15. Refugee, Humanitarian and Settlement Division, Service Design and Delivery Programs, Counter Terrorism Coordination Centre, Character Cancellation and Case Resolution Division, Immigration Compliance Intelligence Branch, Health Policy & Assurance Division, Media & Communication, Visa Support Centre, Commercial, Employment & Information Law Branch, Migration, Citizenship & International Law Branch.
16. Group Manager Legal

Consultation – Secretary / Associate Secretary Immigration / ABF Commissioner

17. The Secretary was consulted on the Department's approach to the Government's offer of a temporary stay for Palestinians on a case by case basis.
18. The Associate Secretary Immigration was consulted on the approach in the submission.
19. The Commissioner was not consulted on this submission.

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Client service implications

20. The Department will work with you and your Office on managing the processing of these individuals and any further individuals offered a temporary stay on a case by case basis, alongside other visa processing priorities, including character cancellations. This includes managing any potential impact on the Department's onshore biometrics collection capability.

Risks and Sensitivities

21. s. 47E(d) [REDACTED]
22. s. 47E(d) [REDACTED]
23. 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 Operations team - media@homeaffairs.gov.au

Financial/systems/legal/deregulation/media implications

24. The Department is developing a communications plan to manage responses to questions from the community, non-government organisations, media enquiries, and Ministerial correspondence (including any commentary on how this approach compares to responses to other crises).
- The Department will work closely with your office on any public messaging, including whether information on the Department's website is needed at some point.

Attachments

Attachment A Australian Government offer of a temporary stay in Australia to s. 47F(1) [REDACTED]

Attachment B Ministerial determination under section 91L to lift the section 91K bar s. 47F(1) [REDACTED]

Attachment C Fact sheet

Attachment D Public interest criteria

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Authorising Officer
Cleared by : Andrew Kiley First Assistant Secretary Refugee, Humanitarian and Settlement Division Date: 9 September 2024 Mob: s. 22(1)(a)(ii)

Contact Officer Meredith Byron, Assistant Secretary, Humanitarian Crisis Onshore Support Taskforce, Ph: s. 22(1)(a)(ii)
/ Mob: s. 22(1)(a)(ii)

CC Associate Secretary Immigration
Group Manager Immigration Policy
Group Manager Immigration Compliance DS Chief Operating Officer
DS Executive
DS National Security and Resilience Group Manager Legal
Chief Finance Officer
FAS Executive Coordination
Assistant Secretary Legislation

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Factsheet – subclass 449 and subclass 786 visas

Benefits and services available to subclass 449 and subclass 786 visa holders

Both visas allow holders to work and study in Australia without any limitations.

Holders of either visa are eligible to access settlement support through the Humanitarian Settlement Program (HSP). The HSP supports humanitarian entrants and other eligible visa holders. Further information about the HSP is available on our website: <https://immi.homeaffairs.gov.au/settling-in-australia/humanitarian-settlement-program/about-the-program>.

Holders of either visa can apply for payments and services from Services Australia, including:

- Special Benefit
- Family Tax Benefit
- Low income health care card

Holders of either visa can receive free English language tuition through the Adult Migrant English Program (AMEP) (<https://immi.homeaffairs.gov.au/settling-in-australia/amep/about-the-program>).

Holders of either visa can access the Australian Government's Translating and Interpreting Service (TIS National <https://www.tisnational.gov.au/>), which provides interpreting services to people who do not speak English and to agencies and businesses that need to communicate with their non-English speaking clients. These services enable non-English speakers to independently access services and information in Australia.

Medicare access

Medicare is a part of Australia's health care system that helps eligible people with the cost of their health care.

You will not be able to access Medicare if you have been granted a Subclass 449 Humanitarian Stay (Temporary) visa. You will only be able to access Medicare once you are granted a subclass 786 Temporary (Humanitarian Concern) visa.

If you currently have access to Medicare, your access will be restored once you are transitioned to a subclass 786 Temporary (Humanitarian Concern) visa.

Medical requirements

To be granted a Temporary (Humanitarian Concern) (subclass 786) visa, you will likely be required to undertake a medical examination and/or a chest x-ray. If this is the case, you will be required to pay for the cost of the examination and/or chest x-ray.

Accepting the offer of a temporary stay in Australia

If an offer of a temporary stay in Australia is extended to you, the Department of Home Affairs will contact you in writing to confirm if you would like to accept the offer.

It is recommended that you consult with a registered migration agent or legal practitioner before deciding to apply for the temporary humanitarian visa pathway. More information is available on our website: <https://immi.homeaffairs.gov.au/help-support/who-can-help-with-your-application/using-a-migration-agent>.