



Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number: MS24-001575

Date of Clearance: 04/09/2024

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

Subject Implementation of offers for temporary stay in Australia for Palestinian and Israeli nationals; S. 47F(1)
S. 47F(1)

Timing At your convenience.

Recommendations

That you:

1. S. 47F(1) signed/ please discuss
2. S. 47F(1) signed / please discuss
3. S. 47F(1) noted / please discuss
4. agree to the application of Public Interest Criteria and visa conditions as outlined in **Attachment D**; agreed / not agreed
5. S. 47E(d) agreed / not agreed
6. S. 47E(d) noted / please discuss
7. note the Department will provide further individuals for your consideration of a temporary stay on a case by case basis, S. 47E(d) noted / please discuss

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8. agree that once 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.

agreed / not agreed

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

Signature.....

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

• s. 47E(d)

2.

S. 47F(1)

3. 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.

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4. s. 47F(1) [REDACTED] it remains open to them to apply for and be granted any other visa subclass (subject to meeting eligibility criteria) or remain in Australia on a Bridging E (subclass 050 and subclass 051) visa.

Further offers

5. s. 47F(1) [REDACTED] on a case by case basis s. 47C(1) [REDACTED] The process for any future offers will involve the Department (**Attachment E**):

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- s. 47E(d) [REDACTED] including providing the fact sheet outlining Benefits and services available to subclass 449 and subclass 786 visa holders (at **Attachment C**).

Visa processing and entitlements

6. The Department anticipates that, subject to any unforeseen issues, the process to grant subclasses 449 and 786 visas respectively to s. 47F(1) [REDACTED] 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 this cohort 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]
[REDACTED]
[REDACTED]
 - The Department will commence engagement with trusted partners in the sector to facilitate support arrangements.

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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).
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 this cohort.
9. Individuals will be required to undertake a full Immigration Medical Examination including a chest x-ray. S. 47E(d)
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. Individuals who have lodged a subclass 866 Permanent Protection visa (PV) application and who are made an offer of a temporary stay will not be eligible to be granted a PV due to the requirement in Schedule 2 of the Migration Regulations that, at the time of the visa decision, the individual is *not* a person who has been offered a temporary stay.

12. S. 47E(d)

13. S. 47E(d)

14. Individuals who have *not* yet applied for a PV, and who are offered, and accept a temporary stay, and are then granted a subclass 449 visa, will no longer be able to make a Protection visa application (even after the 91K bar is lifted), due to validity requirements in Schedule 1 of the Migration Regulations to make a valid PV application that the applicant not have held a subclass 449 visa.

15. S. 47E(d)

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s. 47C(1)

16.

S. 47C(1)

Background

Visa application bar affecting subclass 449 visa holders

17. 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.
18. 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

19. 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.
20. Group Manager Legal

Consultation – Secretary / Associate Secretary Immigration / ABF Commissioner

21. The Secretary was consulted on the Department's approach S. 47C(1)

22. The Associate Secretary Immigration was consulted on the approach in the submission.
23. The Commissioner was not consulted on this submission.

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Client service implications

24. The Department's capacity to process and grant subclass 449 and 786 visas for this cohort will depend on how many staff are transferred from other visa processing functions to support this outcome. The movement of any staff will impact processing times for those other visa programs. Further, referrals for character consideration may have some impact on the delivery of the character program.
25. Further to the above, processing this cohort will likely strain the Department's onshore biometrics collection capability, as biometric collection for this cohort will need to be balanced with ongoing biometrics collection for the Department's Protection (subclass 866) visa caseload. To manage this issue, the Department is currently exploring options to temporarily surge biometrics collection capability for the Israeli and Palestinian cohort.

Risks and Sensitivities

26. s. 47C(1), s. 47E(d)

27.

28.

29. 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

30 s. 47C(1), s. 47E(d)

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32. The Department is developing a communications plan to manage responses to questions from the community, non-government organisations, media enquiries, and Ministerial

correspondence. However, it is likely at some stage an announcement and the publication of information on the Department's website will be necessary.

- The Department will monitor and liaise with your office to manage any required changes to the public messaging approach.

Attachments

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

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

Attachment C Fact sheet

Attachment D Public interest criteria

Attachment E s. 47E(d)

Authorising Officer Cleared by: Andrew Kiley First Assistant Secretary Refugee, Humanitarian and Settlement Division Date: 7 September 2024 Mob: s. 22(1)(a)(ii)

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

Through Group Manager Immigration Operations

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 to 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>.

PROTECTED**Attachment D****Public Interest Criteria (PIC) and Visa Conditions on Temporary Humanitarian Stay Pathway**

PIC/Visa Condition	Application of PIC/Visa Condition
<i>PIC 4001 (Character)</i>	PIC 4001 – only applies at the subclass 786 stage. All subclass 786 visa applicants are required to satisfy the character test (PIC 4001) or, if the applicant is unable to satisfy that criterion because the appropriate inquiries have not been completed, Regulation 786.224 allows for visa applicants to declare in writing, to the satisfaction of the Minister, that the applicant: (a) does not have a criminal record; and (b) is not a terrorist; and (c) has not engaged in crimes against humanity or war crimes; and (d) will assist Immigration by attempting to obtain any relevant records relating to the applicant. For the subclass 786 cohort, standard character checking will apply in accordance with the Penal Checking Handbook including: • reviewing self-declarations of the character related questions on the application form • reviewing any relevant security profiles or alerts • requesting police checks for every person over the age of 17, from every country they have resided in in the last 10 years since turning 16. In lieu of a penal clearance from the Occupied Palestinian Territories applicants will likely be asked to complete a 'Statement of Character' Form 1563. s. 47E(d)
<i>PIC 4002 (Security)</i>	For PIC 4002 (applies at both the subclass 449 and 786 stages), the applicant is not assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security, within the meaning of section 4 of the <i>Australian Security Intelligence Organisation Act 1979</i>. s. 47E(d)

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<i>Personal identifiers (Biometrics) collection</i>	s. 47E(d) Biometrics collection will occur during the subclass 786 visa application process, concurrent with applicants' undertaking required health checks. Running these processes concurrently will avoid delays transitioning individuals from their current visas to subclass 449 visas. It will also allow individuals, particularly those on Visitor visas, to access some support services in advance of the grant of a subclass 786 visa. A requirement may exist to collect biometrics in locations where the Department does not have a permanent collection capability. • Depending on the location of the applicants, interim collection arrangements may be required to be put in place which may require additional resourcing.
<i>Condition 8529 (Health checks)</i>	This condition requires individuals to undergo a medical examination, including a chest x-ray after entering Australia. Criteria for the grant of a subclass 786 visa includes the requirement for a health examination and a chest x-ray (for those aged 11 years and older). • These health checks focus only on ensuring that persons with serious medical issues are identified by a medical professional, but will not result in a visa refusal. • These health checks will be required unless a medical assessment has been undertaken within the previous 12 months and is still valid, and there are no known health concerns noted by the Department. s. 47E(d)

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<i>PIC 4007 (Health)</i>	Subclass 449 visa applicants are required to satisfy PIC 4007 to be granted the visa unless you (Minister) or a delegate, are satisfied that it would be unreasonable to require the applicant to undergo an assessment in relation to PIC 4007. s. 47E(d) Where a delegate determines that an assessment in relation to PIC 4007 is not required, Condition 8529 ordinarily applies to the subclass 449 visa, requiring that the applicant completes health checks in Australia to identify public health risks only. However, in practice the Department will not enforce condition 8529, as health checks are required as part of the subclass 786 process. s. 47E(d)
<i>Waiver of condition 8503 (No further stay)</i>	Some individuals in this cohort are subject to conditions that prevent them from applying for further visas to remain in Australia, including the 8503 “No Further Stay” condition attached to their visa. Condition 8503 states “The holder will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa, while the holder remains in Australia”. s. 47E(d)
<i>Place of Residence Assessment (subclass 449)</i>	Subclass 449 visa applicants may satisfy the criteria for the grant of the visa if they: - have been displaced from their usual place of residence (and cannot reasonably return to this place and are in grave fear of their personal safety because of the circumstances, or reasons why, they were displaced from their place of residence); or - there is a strong likelihood that they would be displaced from their usual place of residence. s. 47E(d)
<i>Reason of Stay in Australia (subclass 786)</i>	Subclass 786 visa applicants may satisfy the criteria for the grant of the visa if you (Minister) or your delegate, is satisfied that, for reasons of humanitarian concern, the applicant should be permitted to remain in Australia for a further period. The Department will, subject to individual delegate consideration, find that the individuals at Attachment A, will satisfy this criteria without further enquiry.