PARISH PATIENCE IMMIGRATION LAWYERS

"THE IMMIGRATION MAZE,"
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This article was originally published in the *Nepali Australian Link* in January 2003.

"Now I'm here, how can I get my relatives?" A question asked by almost every new migrant to Australia.

Unfortunately the answer to the question more often than not is "At the moment, it's not possible". Migration has always been a hot political issue in Australia. People somewhat naively believe that the Migration Act is designed to assist the entry of people to Australia. Nothing can be further from the truth! The complex web of laws and policies are in fact designed more to keep people out. That is after all the purpose of a visa system.

It is interesting that, 101 years after the Federation of the Australian nation, immigration remains as sensitive an issue as it was at the time of Federation. Indeed, one of the most significant first Acts of the new Commonwealth Parliament in 1901 was the Immigration Restriction Act. More aptly named than the current Migration Act. In those days control was crudely established by the device known as the Language Test whereby migration officers at their discretion could require any intending migrant to pass a test in any modern European language. Thus, in one celebrated case in the mid 1930s Egon Kisch, a Czech intending migrant fluent in many modern European languages including English, was required to sit for and pass a test in Gaelic. Needless to say he was unsuccessful and the case found its way to the High Court.

Today, the Migration Act and Regulations, which provide the fundamental skeleton on which the immigration system is based, contain over 100 different visa classes providing for temporary and permanent entry of non citizens to Australia. The law which currently exists replaced a discretionary regime which gave the Minister of Immigration through his departmental officers great discretions in allowing the entry to and stay in Australia of non citizens. The current law came into effect in December 1989.

That situation still applies to the bewilderment of not only applicants unfortunate enough to be caught up within the system or trying to understand its intricacies, but also to immigration officers seeking to apply the law and even to judges who are increasingly called upon to interpret it.

In this and the articles which will follow it is my intention to give a general overview of specific areas of interest to the reader about how the law works to provide a general response to the question which commenced this article. To maintain interest of readers I would also encourage letters from readers posing questions which I will be happy to answer in general terms.

Generally, there are seven broad ways by which people can migrate permanently to Australia. I categorise these within the following:

1. The partner applications – marriage, de facto and interdependent (same sex relationships).

   Generally, applicants can lodge both onshore applications for residence or offshore applications for migration on the basis of a genuine partner relationship with an Australian citizen, permanent resident or eligible New Zealand citizen.

2. Refugee and humanitarian visas.

   The only onshore application for residence under this category is the protection visa. There are no onshore humanitarian visa classes. It is important to note that applicants claiming a protection visa onshore who have entered Australia unlawfully or relying on false documentation or declarations are not eligible to apply for the permanent protection visa, but only the 3 year temporary protection visa which contains substantial limitations.

3. Skilled Migration applications. There are both offshore and onshore applications, independent family sponsored and state or regional sponsored.

4. Employer sponsored visa applications. With many limitations, these can be lodged onshore or offshore. Frequently, applicants will have been granted temporary residence and will then convert to permanent residence.

5. Business migration applications.

   There are 3 main categories: senior executives of major businesses, businessmen running substantial enterprises and investors. Onshore applications as well as offshore applications are possible. One category of particular significance exists for applicants onshore with an established business.

6. Family sponsored – parent, child and four special preferential family categories. Onshore and offshore applications for most are possible.

7. Residual categories, the most significant of which is the Distinguished Talent category.

The criteria for eligibility for each of the visas are complex and will be the subject of more detailed consideration in subsequent articles. Readers should appreciate that applying for a visa is a bit like a children's puzzle. Applicants for visas are eligible when they have the perfect match. If one piece of the puzzle does not properly fit then the puzzle is not complete. Similarly, where a visa applicant fails to meet even one of the technically required requirements, the visa cannot be granted.

Welcome to the immigration maze!

May I also extend my congratulations to the publishers of this paper which will serve an important informative function for readers in the Australian Nepalese community.

Disclaimer

The contents of this article are not intended to be legal advice. Parish Patience Immigration accepts no responsibility for any action taken in reliance on anything contained in this article. Individuals should seek advice about their own circumstances only from a registered migration agent.

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