



REFUGEE LEGAL WORKSHOP

On 17 September 2022, the Australian Federation of Ukrainian Organisations (AFUO) held a visa workshop with Refugee Legal, Australia's largest provider of free specialist legal assistance to people seeking asylum, refugees and disadvantaged migrants. Thank you to community representatives from VIC, NSW, QLD, SA, WA, and ACT for attending.

According to the Department of Home Affairs, there were 4,648 Subclass 449 and Subclass 786 visa holders in Australia as at 12 September 2022. From 1 August – 9 September 2022, there have been 1,851 international movement arrivals using Ukraine travel documents (440 visitor visa holders, the remainder were maritime crew visa holders).

Considering the end of the humanitarian visa program and the announcement of the new visa pathway for Ukrainians entering Australia post July 31st, the AFUO conducted a visa workshop with the help of Refugee Legal to learn more about the new visa pathway. A summary of the workshop is provided below.

Refugee Legal overview:

- Safety security and stability for Ukrainians
- Complex immigration system
- In this changing and fluid environment government can be slow to respond so we have to raise these issues with them
- We have a government that is committed to working with us on an ongoing basis and are open in sharing their thinking

Background on Refugee Legal

- Refugee Legal is a not-for-profit legal centre – work nationally
- Everything they do is for free – general immigration, asylum seekers & refugees, policy & advocacy
- Legal advice and assistance – independent non-government
- There is a network of similar centres – QLD, NSW, SA, etc
- Have a core staff, but also partner with law firms for pro bono work which means thousands of people can obtain help
- Work on levels of urgency (on a triage basis) – every week structure services where people can get help immediately
- A lot of the work can be done through Refugee Legal without referring people to a Migration Agent
- It's about people understanding their legal pathways – Refugee Legal will not take on a case if they do not feel it will succeed. It's not about winning or losing a case – it's what is possible and available to the refugee.
- Interpreters can be provided for DPs – meetings can be face to face, on the phone or zoom.
- How to give people confidence:
 - The advice needs to be simple and clear
 - There are organisations out there with experience and knowledge – do not listen to FB, chat groups.
 - Get some timely advice and then make your decision

786 TEMPORARY HUMANITARIAN CONCERN VISA

Some background about this visa:

- The 786 visa is designed to respond to a “temporary” humanitarian need, valid for 3 years
- The reason it was created many years ago was to deal with a “safe haven” situation – urgent need for evacuation of people in danger eg: Kosovo, Timor
- The concept is that this visa is for an emergency situation but only “temporary” (as in the situation may resolve itself and people may be able to return) as it may not require ongoing / permanent protection
- Expiry date is fixed – 3 years from when the visa was granted
- An unusual visa in the system – essentially one of the rare visas – offer and acceptance rather than having to apply for it
- There is no visa that comes after this
- Once you accepted the visa you accept the terms that come with it
- It's a visa that you cannot apply for any other visa from this one. It has a “bar” – you cannot apply for any other visa whilst you are on the 786 visa.

Australia's approach is in line with international thinking – this is a temporary safe have

- All Australia is doing at the moment is responding to the standard position internationally. This is not a fixed position
- When does this become a situation where it does not become feasible for people to return?
- The 600 visa = short term solution
- The 786 = medium to long term solution
- The visa is static at the moment and there is no immediate pathway forward for Ukrainians, but that does not mean that will not change.
- The visa pathway for Ukrainians was meant to provide security, but unfortunately it is doing the opposite by creating uncertainty. We have to quash the uncertainty – it is not sustainable.

Q: Has the current Minister given any consideration for changing the visa pathway?

- There is ministerial discretion – that is in the legislation. Under Australian law, the Minister has personal powers to effectively lift the bar (prohibition to apply for any other type of visa) to open up the gateway to other visa options.

Q: What's the thinking of the Minister at the moment?

- There may be a good skilled visa option

Q: Protection visa as an option?

- Some visas are quite substantial work and expensive so would not suggest rushing ahead.
- You cannot apply for a protection visa on a 449 or 786
- Even if the bar was lifted, you cannot go from a 786 to an 866 (protection visa)

Q: Travel to Ukraine?

- The Department is suggesting it may be possible – on compelling and compassionate grounds – to obtain permission to travel on a humanitarian visa. You will need to notify government of your return and you will be “re-granted” the remaining period of your 786 visa.
- There is no “list” of compelling circumstances – suggest to get advice on this if you wish to apply. Keep it simple – Refugee Legal can assist with this.
- 786 – it is a visa to remain in Australia. The law says if you leave that is the end of the visa you cannot come back on it.
- The reasoning for this is, if you go back, the whole reason for you applying for this visa in the first place is you were offered protection and yet you are going back to a country that you sought protection from.
- The Department is indicating that there is a procedure under compelling circumstance – on their website. Doesn't say how they will assess this – critically ill, dying, etc. It is not for work reasons, holidays, sporting events.
- “No further stay” – this condition can be removed. Instructions on the Department's website.

Q: Do you need to re-register for Centrelink, Medicare etc if you leave Australia and return?

- Refugee Legal will raise this question with the Department.

SUBCLASS 866 PROTECTION VISA (PV)

- The UNHCR refugee agency – Ukrainians technically do not fall under the definition of “refugee”
- The whole issue with protection visas is you have to meet the requirements of “refugee” status
- PV is granted if they meet a test of a “refugee” (legal definition):
 - You have to meet that test to get a PV
 - Have to demonstrate a well-founded fear of persecution on the basis of one or more of these – race, religion, political opinion, nationality, member of a social group
 - You have to show you are specifically targeted for a civil or political reason, not just caught up the in cross fire of a war – something specific to you
- This is the prevalent thinking at the moment amongst western governments: that it's not clear that every Ukrainian is a refugee. What is clear however is the danger.
- “No further stay” condition does not apply to Protection Visas
- There is an automatic right in Australia to apply for an 866 Protection visa
- If you are not on a 449 or 786 you can apply for an 866 Protection visa, but then the question is – do you qualify as a refugee?
- 600 to 449 to 786 was just a click of a button, the 866 Protection visa is much more complex
- You can only apply once for the 866 Protection visa
- Bridging visa only gives you access to Medicare & right the to work, not Centrelink – processing times anywhere from a few months to a few years (unknown delay). Backlog of around 10,000 applications. There will not be priority processing of Ukrainians.
- Skilled visas – there may be a limited number issued
- Does a rejection on an application then preclude you from applying for another? – yes possibly

Family & student visas

If you are on a 786 visa now and family join you, they will not put your family of the same visa stream

- No specific family visa – just because they have family here
- Parent visas – must be over pension age, more children here than anywhere else, very long 10-20 years wait, but Ukrainians are being processed as priority
- Contributory parents – faster but very expensive ~\$50k
- Student visa very limiting – much less rights, must pay, no Medicare etc. You have study rights on 786

In summary – there is no simple answer.

There is a gap now – the cut off of the 786 visa has left a bit of a conundrum. It is notoriously complex and disjointed.

It's really going back to what the government's thinking is around timelines – at what point are they going to start looking at other options?

- Need a coherent policy solution that responds to the predicament – very clear what the issues are
- A bridging visa is a clumsy, insufficient pathway that does not solve the problem
- Limit uncertainty – create more certainty
- Family unity – allow them to be on the same visa
- Next steps – to explore what other options will be available to Ukrainians, bearing in mind that even if the bar is lifted there may not be other options for all Ukrainians