

CHAPTER 11 – CULTURAL AND SOCIAL STREAM: RELIGIOUS WORKER VISA

BACKGROUND

Policy Objective

11.1 The visa is intended for persons providing spiritual leadership in their religious community, for example, ministers of religion, priests, deacons, imams, nuns, rabbis, monks etc and for other missionary, evangelical and proselytising activities. It does not provide for people who are members of a religious organisation doing some work for the organisation that is not of a religious nature or does not require any religious training.

Current Arrangements

11.2 This visa is intended to permit the temporary entry of certain persons undertaking religious work. The requirements for the visa are that:

- the work will be done for a religious organisation;
- the work must directly serve the religious objectives of the organisation, that is, directly ministering to the spiritual needs of the organisation's members;
- the applicant must be sponsored by the religious organisation and the sponsorship approved by the Minister; and
- the applicant must be mainly engaged in the religious activities (although the religious work is not required to be full-time).

11.3 The religious worker visa was developed at a time when Christian religions dominated religious activity in Australia. However that context is clearly very different from the current religious community life of Australia. There is now a much broader range of religious

institutions that are seeking to bring religious workers to Australia.

11.4 DIMIA has sought to accommodate this broadening range of religious groups and activities within existing policy and this has required some very flexible and broad interpretations of policy under this and other visas in order to provide for the legitimate entry of personnel for religious institutions.

11.5 Over 1,500 of these visas were granted in 2000-01. Around two thirds of the people using this visa stay in Australia less than twelve months.

Is a Separate Visa Needed?

11.6 Religious workers are required to be sponsored and they are generally considered to be employed by their religious organisation while in Australia. The benefit to Australia of these visa applicants is different from many of the temporary resident workers using other visa arrangements, which focus heavily on the economic benefit to Australia. The main benefits to Australia of allowing religious workers to enter arise from their contribution to the spiritual and community life of Australia.

11.7 Similarly, despite the cultural and social benefits, the purpose of this visa does not align well with any other of the cultural and social stream visas, such that visa arrangements could be amalgamated together.

11.8 The recommended arrangements for religious workers proposed in this chapter would also require specific arrangements that do not fit well with other cultural and

social stream visas. It is therefore proposed that a specific visa be retained for religious workers.

undertaking pastoral activities, missionary work or similar activities of a religious nature.

Major Issues Raised

11.9 The main issues raised in relation to this visa are the following.

- the need to clarify what constitutes a religious organisation;
- the need to clarify what constitutes religious activities;
- the applicability or inapplicability of this visa in certain situations; and
- the range of visas available to clients.

11.10 These issues are considered in the context of the five policy parameters and client service and administrative efficiency.

CLIENT SERVICE AND ADMINISTRATIVE EFFICIENCY

The Sponsoring Religious Organisation

11.11 Current arrangements cater well for many religious organisations, particularly those from the more 'mainstream' religions or traditional large churches and religious institutions. However some stakeholders have suggested that the current definition of 'religious organisations' does not provide as well for emerging and non-traditional organisations.

11.12 Under current policy, an organisation is be considered a religious organisation only if:

- it is exempt from income tax under paragraph 23(E) of the *Income Tax Assessment Act 1936*, that is, on the basis of being a religious group or institution; and
- its adherents meet, or act together, for religious purposes; and
- it has established churches or other regular meeting places for worship; and
- it has an established record of

11.13 The requirements are readily met by the long established religious organisations but are not necessarily met by some of the newly emerging religious institutions.

11.14 In addition, the arrangement whereby the interpretation of 'religious organisation' for immigration purposes is contained in immigration policy guidelines means that DIMIA may make a different determination to the Australian Tax Office. That is, DIMIA may determine that an institution is not a 'religious institution' for the purposes of this visa, while the Australian Tax Office may determine that the institution is a 'religious institution' for its purposes. A consistent approach is clearly desirable.

11.15 The following definition of a 'religious institution' is used by the Australian Taxation Office and endorsed by the High Court of Australia:

A body is a 'religious organisation' if it is instituted for religious purposes. For a body to be regarded as a religious organisation:

- (a) *its objects and activities must reflect its character as a body instituted for the promotion of some religious object; and*
- (b) *the beliefs and practices of the members of that body must constitute a religion.*

The two most important factors for determining whether a particular set of beliefs and practices constitute a religion are:

- *belief in a supernatural Being, Thing or Principle; and*
- *acceptance of canons of conduct which give effect to that belief, but which do not offend against the ordinary laws.*

11.16 This definition would provide more appropriately for emerging religious organisations that may not yet have an established record of religious activities and an established meeting place.

11.17 Using the same definition as the Tax Office would reduce the possibility of an inconsistent approach across Government, which may occur under the current arrangements. To avoid inconsistency altogether, DIMIA could use determinations by the Tax Office in relation to interpreting 'religious institutions' rather than making determinations itself. This approach is preferable to DIMIA doing these assessments. Clients would be likely to support this approach also:

In order to simplify matters this term shall be linked to the Australian Taxation Office status of religious organisations. (Submission from Mukti-Gupteshwar Mandir Society Inc)

11.18 This would be consistent with the objective of using expert third parties to make assessments on matters which require more specialised expertise than DIMIA is equipped to undertake (see Chapter 3).

11.19 It would be appropriate to require sponsors to show that they have recognition of their status as a religious organisation by the Australian Taxation Office at the time of sponsoring the visa applicant, consistent with 'front-end loading' discussion in Chapter 3. This would allow much faster processing of religious worker sponsorships and applications.

The Nature of the Work

11.20 Under current policy, 'religious work' is defined as activities that are religious in nature and directly serve the spiritual needs of the religious institution. In the course

of this Review the question of whether this term should be redefined to allow for a broader range of activities was raised.

11.21 Currently the primary activity of a religious worker must be of a religious nature. It is proposed that the requirement for the applicant's activities to be primarily religious in nature be retained, but that it be made explicit that this can also include a range of administrative and other legitimate functions for the organisation. It is proposed to allow for the entry of people who plan to undertake religious activities on behalf of the religious organisation that do not necessarily involving spiritual leadership of the religious organisation or community. This would also allow for religious novices and trainees to use this visa to undertake their religious training or guidance.

11.22 However this visa is not appropriate for any person seeking entry to:

- provide ancillary support to a religious organisation such as domestic work;
- prepare magazines/newsletters or provide meals for the community;
- be involved in building or construction projects for a religious organisation;
- assist in any activities that have a commercial function (such as restaurant operations or market gardens) for a religious organisation; or
- engage in any other activities not directly related to the religious objectives of an organisation.

11.23 These activities are not primarily of a religious nature, even though they may be performed by a religious adherent.

11.24 It was suggested that a broader interpretation would allow the visa to better serve those people who, under current arrangements, use other visas to enter Australia to undertake a variety of tasks for religious institutions. People who are

undertaking or completing their religious training have, for example, been using the Occupational Trainee visa, although this requires a broader interpretation of 'occupational trainee' than was intended under the policy for that visa. Broadening the concept of 'religious work' may provide an opportunity to cater for the training needs of smaller and emerging religious institutions more appropriately.

11.25 In practice, it is expected that this proposed approach would not result in significantly different outcomes from the current arrangements where a wide range of people enter Australia on a range of visas to undertake a variety of activities for religious institutions. DIMIA is aware of these cases because of the amount of consultation undertaken in order to identify an appropriate visa for them under the current arrangements. The proposed approach would formalise the current arrangements rather than result in significantly larger numbers of people entering Australia. The proposed approach should also help make it clearer to such people which visa to apply for and what requirements they need to meet in order to obtain the visa. Consistent with current arrangements and the recommendations of Chapter 4 regarding sponsorship more generally, all applicants for this visa will be required to be sponsored by the religious institution. This approach would however be closely monitored (see paragraphs 11.29 – 11.40).

11.26 These provisions will also remove the incentive for people to use other, inappropriate visas when working for a religious institution. The proposals are therefore a means of achieving greater integrity in the temporary visa arrangements. It is expected that the proposed approach would be seen as a positive development and this expectation is supported by the views of the External Reference Group for this Review. For

example, the Submission from the Vietnamese Community of Australia indicated that they expected the visa to provide for:

... situations where the person enters Australia to perform some work (paid or unpaid) of a religious nature. The person may or may not be a leader of a church....the policy objective is to facilitate the development of religious activities in Australia....a Religious Worker does not need to be a Leader to help the attainment of that objective.

11.27 Where the entry of a religious worker is considered to be primarily for commercial activities, for example large-scale cultivation of vegetable produce for sale, working in public restaurants owned by the religious organisation or involvement in construction of religious buildings, or where the activities might provide a religious organisation with an unfair commercial advantage over other Australian businesses that are required to employ staff in accordance with award wages and conditions, it is proposed that this visa would not be the appropriate visa. Some of these people might be eligible for a temporary business visa on the basis that they are engaging in economic activity, although they would need to meet the skill thresholds for that visa. Australia's temporary residence regime does not generally provide for the entry of people to perform unskilled work in Australia.

11.28 **RECOMMENDATION:**

That the range of activities allowed under the religious worker visa be broadened and clearly specified, and that commercial activities be specifically excluded.

IMMIGRATION INTEGRITY**Bona Fides of Visa Applicants – Monitoring**

- 11.29 Monitoring of the use made of this visa could be enhanced. Under current arrangements, religious organisations sponsor visa applicants and take responsibility for them during their time in Australia. The proposed broadening of the definition of 'religious work' as recommended above could lead to some religious institutions wanting to sponsor more religious workers. The nature of religious work covered by the broader definition means that there may be a wider range of persons using the religious worker visa in the future, including:
- religious and spiritual leaders;
 - their assistants in their religious activities; and
 - religious trainees.
- 11.30 To ensure that there are no unintended consequences from expanding the definition of religious work for the purposes of this visa, it is proposed that the sponsorship arrangements be managed through a framework of formal agreements between DIMIA and the sponsoring religious institutions. These agreements would have the following features:
- be for a fixed term (one or two years is suggested) and be renewable;
 - contain a declaration from the religious organisation that the applicant will not be engaged in activities that generate a commercial return;
 - specify the number of religious workers that the religious organisation would be permitted to sponsor in any period of the agreement. This would depend on the size of the organisation and its capacity to support its sponsored workers;
 - specify the nature of the activities proposed for the religious workers. This approach will allow the flexibility that is required because of the range of institutions and the range of possible activities; and
- accommodate short and longer-term periods of stay.
- 11.31 Limits on the number of people to be sponsored could be set by DIMIA. In setting these limits, account would be taken of the religious organisation's capacity to support the number of religious workers sought. This is consistent with the way in which any sponsorship or other formal agreement is currently assessed.
- 11.32 These arrangements would reflect the fact that it is considered desirable to facilitate the entry of persons where it would be of 'benefit to Australia', as long as the religious institution is able to adequately provide for the persons they bring to Australia. DIMIA would develop a framework agreement that would form the basis for negotiation of individual agreements after consultation with representatives of religious organisations that frequently use the religious worker visa. The agreement would be based on DIMIA's need for integrity. It would take account of the organisational arrangements of individual organisations but would not be driven by them.
- 11.33 Assessment of the bona fides of the religious organisation and its ability to meet the sponsorship obligations for the number of the visa applicants proposed would only need to be undertaken once. Making this assessment at the time that the agreement is made would obviate the need to repeat this assessment each time an individual application is lodged. This would speed processing for visa applications and focus DIMIA assessments on individual visa applicants and the mandatory health and character checks for individuals.
- 11.34 It is envisaged that the visa will not prescribe in detail the range of activities

that it will allow for under these proposals. In fact it would be somewhat difficult to anticipate the full range of activities performed for religious institutions and to ensure that the provisions remain current to the changing role of religious organisations in modern society.

- 11.35 As part of these agreement arrangements, it is proposed that religious organisations be required to participate in regular monitoring and (annual) reporting on persons they bring in on this visa. The formal monitoring arrangements are integral to the recommendation to broaden the scope of the religious worker visa and are seen as a key means of ensuring the integrity of the agreement and the religious worker visa. It is not envisaged that the monitoring or reporting requirements be onerous – reporting would relate to the use made of the agreement (the number of workers and their activities), any visa difficulties, any bona fides issues that arise post arrival, and so on.
- 11.36 Reporting will allow any issues that need to be addressed to be detected (and resolved) much earlier than under current arrangements whereby there is often an absence of contact between DIMIA and religious organisations until visa extension or new sponsorships are sought.
- 11.37 At the end of any period of an agreement, a religious organisation may seek to enter into a new agreement and may be required to lodge a submission. The decision by DIMIA to enter into a new agreement would be based on appropriate conduct by the religious organisation and its religious workers in the context of the previous agreement. The negotiation process could also provide an excellent opportunity to reinforce the character test that is part of the public interest criteria that must be satisfied for the grant of this visa. This includes the requirement that

people not pose a significant risk in terms of:

- vilification of a segment of the Australian community; or
- inciting discord in the Australian community or in a segment of that community; or
- representing a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way.

- 11.38 These enhanced monitoring arrangements should also assist in addressing concerns raised that while current sponsorship arrangements for this visa work well, there is some difficulty linking one sponsorship with another in assessing a sponsoring organisation's capacity to provide support for subsequent sponsorships.
- 11.39 The proposed agreements with sponsors will improve the integrity of the religious worker sponsor arrangements and the associated monitoring arrangements will provide for greater accountability for users of this visa than under current arrangements.

11.40 ***RECOMMENDATION:***

That the religious worker visa incorporate provisions for agreements with individual religious institutions, and that these agreements be for a fixed period and subject to regular monitoring, including site visits, and reporting.

Permanent Intentions

- 11.41 While most applicants for the Religious Worker (428) temporary visa may intend to work in Australia temporarily, a number subsequently seek permanent stay.

Available statistics show that around 13 per cent of religious worker visa holders applied for a permanent visa in 2000-01 – most of these were for either the Employer Nomination Scheme or the Regional Sponsored Migration Scheme. Both of these schemes enable an employer to nominate an employee from overseas to fill a skilled permanent vacancy because they cannot find suitably qualified workers in Australia. The main difficulty in meeting permanent criteria under these schemes is the need for the position to be full-time, highly skilled and paid in accordance with Australian awards and conditions. These requirements do not all apply to the religious worker temporary visa – temporary stay is handled with considerable flexibility, reflecting the mutual benefits from temporary residence. Permanent stay has higher thresholds. Client information needs to make it clear that different thresholds apply for permanent visas applicants.

- 11.42 A discussion of generic immigration integrity issues can be found in Chapter 2. Available departmental statistics do not suggest any integrity issues.
- Around 300 religious worker visa holders applied for temporary entry visas while in Australia. This is not an insignificant proportion of these visa holders, given that only around 1,500 of these visas are granted each year. Most of these people were applying for another religious worker visa, rather than changing status to another type of visa. (The issue of people extending their stay on another temporary resident visa of the same kind was discussed in Chapter 2 at paragraphs 2.88–2.96). This pattern is not considered a concern.
 - A small number of religious worker visas were cancelled in 2000-01 - this level is not considered a matter of concern.
 - Statistics regarding overstayers indicate that only a very small proportion of religious worker visa holders remain in

Australia beyond the validity of their visa, for example just over one and a half per cent in 2000-01.

EMPLOYMENT OPPORTUNITIES FOR AUSTRALIANS

- 11.43 Given the specific nature of this visa and the recognised shortage of bona fide religious workers in a range of religions, both established and emerging, labour market testing as such is not required for this visa. It is, however, important to ensure the bona fides of persons entering under this visa and that they do not engage in other kinds of work which attract remuneration in accordance with awards.
- 11.44 While a religious worker may spend a portion of time participating in a range of activities not primarily religious in nature (see paragraph 11.22) the sponsor is expected to demonstrate that such activities are purely incidental to the applicant's primary purpose of entry. Incidental activities should only involve a relatively small amount of time (no more than 1 to 2 hours per day) and should have no bearing on the sponsor's desire to attract the religious worker from overseas.
- 11.45 It is important to recognise that while some of the activities listed above may be performed by a religious *adherent*, they do not require a religious *worker* to perform them. In this context, the activities listed above should not be considered as *work* which directly serves the religious objectives of worship, religious teaching/guidance/ministry or proselytising. Rather, they perform a support function in relation to these objectives, which may be carried out by an adherent rather than a religious worker. If any of these activities are assessed by an officer to represent the primary purpose of entry, they should be assessed more appropriately against the requirements for other visas, where labour market assessment may be required.

Work Rights for Family Members

- 11.46 Under current arrangements, family members of 'main' applicants are given full permission to work. However the nature of this visa is such that the activities are not necessarily skilled work and they usually involve a relatively low salary or allowance.
- 11.47 Given that it does not have the same skill or salary requirements as other temporary resident visas and given the absence of any labour market or comparable testing, there might be a concern about the access of family members to full work rights. Given that the 'main' applicant does not necessarily receive a salary, any accompanying family member may need to seek work, possibly unskilled work, to help meet family expenses. Any access of overseas workers to the unskilled segment of the labour market is a concern.
- 11.48 Chapter 3 discussed a new approach for work rights for family members accompanying temporary residents to Australia. Under the proposed approach, family members of religious workers will retain access to work rights where the 'main' visa holder is approved for a period of stay longer than 12 months. This policy balances the potential impact on the unskilled labour market of providing unrestricted work rights to family members against the legitimate aspirations of long-term temporary residents and the benefit these visa holders bring to Australia.
- 11.49 Holders of the religious worker visa tend to remain in Australia for short periods of time and are unlikely to bring family members with them with the expectation of working in Australia. Where the period of stay granted is less than 12 months, family members who wish to undertake similar religious work at the same time, could continue to do so, by applying and meeting the criteria for a Religious Worker

visa in their own right. Opportunities for dependants to undertake study, as long as it is not at tax-payers' expense, are not affected.

TRAINING OPPORTUNITIES FOR AUSTRALIANS

- 11.50 As communities become more established it is expected that the need to import religious workers would decrease and could be filled from the local community. However it is recognised that this is not a given and that Australians may not necessarily step in to fill vacancies. Religious organisations are not currently required to provide evidence of training records or plans, but for both established and emerging religious organisations, there is little reason for them not to be required to provide information on their efforts to train or attract local trainees. They are employers with employer responsibilities. As with other employers, there is a need to ensure that the use of overseas workers is not a substitute for providing appropriate training opportunities within Australia.
- 11.51 Sponsoring religious organisations should therefore be required to demonstrate how they plan to train local adherents as religious workers. Ongoing agreements between DIMIA and a religious organisation for the purposes of this visa may be dependent upon satisfaction by DIMIA that the organisation has actively sought Australians for religious positions.

PAY AND CONDITIONS FOR AUSTRALIAN WORKERS

- 11.52 The nature of the employment relationship between a religious organisation and a religious worker is different from that between an employer and employee in a normal business situation. It is however up to all employers, including religious organisations, to determine whether there is an award in relation to the occupation

to be filled by the religious worker. If so, the employer is obliged under industrial law to remunerate the worker accordingly. Where there is no award, and in many cases there will not be a relevant award for religious work, there are still some industrial laws (for example, in relation to payment of superannuation and insurance payments) which will apply. Where DIMIA becomes aware of failure to remunerate in accordance with an award, these issues are referred to the appropriate State or Federal industrial relations body.

NO NET COST TO THE AUSTRALIAN COMMUNITY

11.53 Religious workers like other temporary residents are not eligible for Medicare or any other social security benefits and should therefore take out private health insurance. Their sponsors are required sign an undertaking to be responsible for all financial obligation to the Commonwealth arising during the applicant's stay in Australia. In addition, the sponsors must sign an undertaking that they will meet all travel expenses incurred by the visa holder in returning to their home country and not seek to recover these from the visa holder. Greater efforts could be made to ensure that such recovery action does not occur by making the religious worker aware of the sponsoring organisation's written undertaking in this regard.