

## From Afghanistan: Nerjes' story



*For 20 years, Afghanistan has been ravaged by war and violence. It is the world's largest refugee producing nation, and millions have fled their homes in search of safety.*

*Hundreds of thousands have been killed or injured in indiscriminate bombing and shelling of residential areas. Thousands have been arbitrarily arrested, tortured and raped, 'disappeared', or murdered for their political affiliation, ethnic identity, gender, or in reprisal attacks by the various armed groups fighting for control of territory. Schools, hospitals, homes, and farms have been burned and destroyed leaving millions of Afghans displaced and dispossessed. (Amnesty International)*

Nerjes is a young Afghan woman from the Hazara ethnic minority.

In 1999, Nerjes' father fled Afghanistan and the persecution he had suffered under the Taliban. He undertook a long and dangerous journey to Australia in search of security for himself and his family.

Soon afterwards, Nerjes was also forced to leave the country where she was born, travelling to Syria with her mother, four brothers and two nephews.

When Nerjes' father arrived in Australia he immediately began the difficult task of finding his family among the millions of Afghan refugees living in countries throughout the Middle East and South West Asia. After initial attempts by the Red Cross Tracing Service were unsuccessful, luck, friends and an unusual family name brought him the good news that his family was still alive.



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He worked to save the money he would need to bring his family to join him. In 2006 his hard work was rewarded. Nerjes remembers their reunion at Sydney Airport as a very happy moment, ending more than six years of separation and anxiety.

Since arriving in Australia, Nerjes and her family are working hard to build new lives in regional Australia. Her nephew, Moslem, grins when he says he wants to be a police officer and work with multicultural communities. On Australia Day 2009 Nerjes proudly pledged her loyalty to Australia and became an Australian citizen.

With a hint of sadness but in the calm tone of many refugees, Nerjes speaks for her family when she says that the only thing that could make their lives perfect would be finding the rest of their family members still lost overseas, and sharing with them the new sense of security they have found in Australia.

## Chapter Three

### Protection—the onshore component of the Humanitarian Program

#### Australia’s obligations to refugees

Australia’s fundamental obligation under the Refugees Convention (see Chapter One) is to provide protection to people who are in Australia and who face persecution in their home country on account of their race, religion, nationality, membership of a particular social group or political opinion. This includes not returning refugees or asylum seekers to places where their lives or liberties are in danger (*non-refoulement*).

The onshore (or protection) component of the Humanitarian Program enables people seeking asylum in Australia to have their claims for protection assessed. People in Australia who are found to be refugees and who satisfy health and character requirements are granted Protection visas.

Figure 5: Top ten nationalities of initial Protection visa applications lodged and top ten nationalities of Protection visas granted\* in 2007–08

Nationality	Initial Protection visa applications lodged	Nationality	Protection visas granted**
China (PRC)	1234	Sri Lanka	415
Sri Lanka	395	China (PRC)	434
Malaysia	219	Iraq	221
Indonesia	218	Pakistan	117
Iraq	200	Iran	97
India	200	Zimbabwe	87
Pakistan	181	Burma	56
Zimbabwe	140	Bangladesh	42
Iran	113	Egypt	37
South Korea	93	Afghanistan	32
Other	994	Other	395
<b>Total</b>	<b>3987</b>	<b>Total</b>	<b>1933</b>

Source: Department of Immigration and Citizenship

\* These numbers include some Protection visa grants that are not counted towards the Humanitarian Program, such as children born in Australia to Protection visa holders.

\*\* Grants may include applicants from previous years

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## Protection in the industrialised world

Australia is one of the countries responding to the global increase in asylum claims, although Australia does not figure in the top ten countries receiving asylum seekers compared to the US and Europe.

UNHCR reports that in 2008 there was a 12 per cent rise in new asylum applications submitted in industrialised countries. After the United States (49 000 new claims), the main countries of destination for asylum seekers in 2008 were Canada (36 900), France (35 200), Italy (31 200) and the United Kingdom (30 500).

It can be expected that, in the future, many thousands of refugees will continue to flee their homes and seek protection in other countries.

Figure 6: New asylum applications in industrialised countries during 2008

Country	New applications
USA	49 000
Canada	36 900
France	35 200
Italy	31 200
United Kingdom	30 500
Sweden	24 400
Germany	21 400
Greece	19 900
Switzerland	16 600
Norway	14 400
Australia	4 700
Other (43 countries)	98 800
<b>Industrialised world total</b>	<b>383 000</b>

Source: UNHCR, Asylum Levels and Trends in Industrialized Countries 2008 (March 2009)

## Protection in Australia

Asylum seekers who are found to be in need of protection under the Refugees Convention and who meet health and character requirements are granted a permanent Protection visa.

The overwhelming majority of around 4000 people who seek Australia's protection each year arrive lawfully by commercial aircraft. Asylum seekers arriving by boat in an unauthorised manner constitute a very small proportion of the total and have their claims considered on Christmas Island.

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## Assessment of an application

Each Protection visa application is assessed by a departmental decision-maker in accordance with the provisions in the Refugees Convention and the requirements of Australian law. The process takes into account all relevant information that is available concerning the human rights situation in the applicant's home country. Applicants are given a chance to comment on any personal information under consideration, and update their claims if country conditions change. These procedures ensure that the decision making process is fair, open, objective and consistent.

Information consulted by decision-makers comes from the following sources:

- the department's Country Research Service, which gathers information from sources such as the international media, academics, international agencies, human rights groups, Australian immigration offices overseas and foreign governments specifically for use in the assessment of protection claims
- relevant departmental guidelines and advice on the law, policy and procedures
- the applicant's visa application and any further comments provided in writing or in an interview (with the assistance of an interpreter if necessary).

Fact Sheet 61 – *Seeking Asylum in Australia* provides information on how to apply for a Protection visa. This fact sheet is available at [www.immi.gov.au](http://www.immi.gov.au) or from the department's offices.

## Health and character checks

By law, all visa applicants must satisfy public interest criteria intended to protect the Australian community. These criteria include health and character requirements.

*Health requirement:* the health requirement applies to all applicants for humanitarian visas and any dependent family members included in their application. Applicants must undergo a health check, which generally includes an x-ray and medical examination.

This requirement is designed to prevent risks to public health, reduce public expenditure on health and community services and safeguard access to health services for Australians.

The Minister for Immigration and Citizenship may decide to waive the health requirement if there is no threat to public health and safety and the applicant's circumstances are so compelling that they outweigh the cost to the Australian community.

*Character requirements:* other public interest criteria help to prevent the entry of people who pose a threat to the community or to community harmony, or who place national security at risk.

Under these requirements decision-makers consider the applicant's criminal record, involvement in war crimes or crimes against humanity and any other conduct that might pose a threat to the Australian community.

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## The Refugees Convention's character provisions

Generally, the Refugees Convention prohibits Australia from returning refugees to a country where they will face persecution. Exceptions are made for people who:

- are regarded as a danger to the security of Australia
- have been convicted of a serious crime and are a danger to the community, or
- are suspected of having committed war crimes or crimes against humanity.

## Application success rate

Of the initial applications decided in 2007–08, some 46 per cent were successful. It is important to note that this figure varies across nationalities and can also vary at different times for applicants of the same nationality depending on country circumstances.

## Review process

If a Protection visa application is refused, the applicant may apply to the appropriate tribunal for a review of the merits of the case. Applications for merits review must be lodged within 28 days of the decision notification.

A decision to refuse a Protection visa is reviewable by the Refugee Review Tribunal (RRT). The exception is for applications refused for character reasons, which are reviewed by the Administrative Appeals Tribunal (AAT).

### The Refugee Review Tribunal

The RRT is an independent statutory body with the power to review decisions on Protection visa applications that do not involve character matters. The RRT examines the applicant's claims against the provisions in the Refugees Convention, providing an informal non-adversarial setting to hear evidence.

The RRT has the power to do one of the following:

- uphold the primary decision—agreeing that the applicant is not entitled to a Protection visa
- refer the matter to the department for reconsideration—the department makes a fresh assessment of the application, considering the RRT's directions and recommendations
- set aside the department's decision and substitute a new decision—if the RRT finds that the applicant is entitled to a Protection visa.

A decision by the RRT to set aside a primary refusal does not necessarily indicate an error in the earlier decision by the department. The RRT considers each Protection visa application afresh and takes into account any new claims or information advanced by the applicant and any changes in country information which have occurred since the initial decision.

During 2007–08, the RRT upheld the department's decision in 71.7 per cent of all applications for review, while 18.2 per cent were either referred to the department for reconsideration or set aside. Further information is available at [www.mrt-rrt.gov.au](http://www.mrt-rrt.gov.au).



**Left:** An Iraqi woman and her daughter wait to register with the UNHCR © AFP / Getty Images / Ramzi Haidar  
**Right:** A UNHCR worker discusses new arrivals data with administrators in the Mae Ra Ma Luang Refugee Camp on the Thai-Burma border © UNHCR / J. Redfern / June 2006

### Ministerial intervention on humanitarian grounds

The Migration Act gives the Minister for Immigration and Citizenship the power to substitute a decision of either the RRT or AAT if he considers it to be in the public interest.

Procedures for ministerial intervention are currently under review, and several options for improving this process are under consideration.

### Judicial review

Judicial review is available to consider whether legal errors occurred during the decision-making process. An application for judicial review must be made within 28 days of notification of the tribunal's decision.

### Unsuccessful applicants

Individuals whose Protection visa applications have been rejected by a tribunal and who are no longer pursuing judicial review or ministerial intervention, who have no other legal reason to remain, have 28 days to depart Australia. If they stay beyond this 28-day period, they may be placed in immigration detention or removed from Australia.

### Processing times

All Protection visa decisions are to be made by the department within 90 days of receipt of the application. Similarly, merits review of Protection visa decisions by the RRT must be finalised within 90 days of the application for review.

Cases where these time limits are not met are the subject of periodic reports to the Minister and are tabled in Parliament. This ensures that the department remains open and accountable at each stage of the application process. In 2007–08, the department decided 80 per cent of Protection visa applications within 90 days. In most cases where this timeframe was not met, delays were caused by factors outside the department's control such as security clearances by external agencies.

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## The applicant's status during processing

The majority of asylum seekers are people who have arrived in Australia on a valid visa and subsequently apply for protection. Most of these applicants receive a bridging visa upon lodging their application, which allows them to remain lawfully in the community until the application is finalised. Many bridging visas provide the applicant with work rights in Australia and access to Medicare benefits.

Any person who arrives in Australia without a valid visa may be detained unless they are granted a visa or leave the country. Persons in detention who apply for protection receive priority processing of their applications and are provided with assistance for their applications under the Immigration Advice and Application Assistance Scheme (IAAAS – see page 33 for details).

Applicants in detention who are refused a Protection visa at the primary stage are also able to seek merits review of the decision in the appropriate tribunal (see page 30) and to pursue judicial review or request ministerial intervention.

### New immigration detention policy

In July 2008, the following seven 'Key Immigration Detention Values' were announced:

1. Mandatory detention is an essential component of strong border control.
2. To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:
  - i. all unauthorised arrivals, for management of health, identity and security risks to the community
  - ii. unlawful non-citizens who present unacceptable risks to the community
  - iii. unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.
4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.
6. People in detention will be treated fairly and reasonably within the law.
7. Conditions of detention will ensure the inherent dignity of the human person.

## Complementary Protection

In May 2009, the government announced that it would introduce legislation to enable people to whom Australia owes non-refoulement obligations under international treaties other than the Refugees Convention, to have their claims considered under the Protection visa framework rather than through ministerial intervention. This would include people who would be killed, tortured or subjected to cruel and inhumane treatment in their homeland, but would not be at risk for one of the specific reasons set out in the Refugees Convention.

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## The Resolution of Status visa

On 9 August 2008, the government abolished Temporary Protection visas (TPVs). Certain Temporary Humanitarian visas (THVs) granted to people outside Australia were also abolished on that date.

All people found to be owed protection and who meet health and character requirements are now granted a permanent Protection visa. These new arrangements treat refugees fairly and with dignity and will enable them to engage fully in the Australian community.

In addition, current and former TPV and THV holders who have remained in Australia are now eligible for a Resolution of Status (RoS) visa. The RoS visa was introduced to allow these individuals a speedy resolution of their status. It provides permanent residence and access to the same benefits and entitlements as the permanent Protection visa.

## Assistance for asylum seekers

The department is committed to fair and reasonable dealings with everyone who applies for a Protection visa. Assistance is provided to those who need help with lodging a Protection visa application and supporting themselves while the application is processed:

### Immigration Advice and Application Assistance Scheme (IAAAS)

The IAAAS is a service administered by the department and provided by registered migration agents. It helps asylum seekers in detention and disadvantaged Protection visa applicants in the community to prepare, lodge and present visa applications at the primary and merits review stages.

The IAAAS is wholly funded by the government and is delivered by 23 service providers throughout Australia.

### Asylum Seeker Assistance (ASA)

A Protection visa applicant in the community can request ASA to assist with basic food and accommodation needs if there are delays in processing the visa application or if they qualify for support on other grounds.

ASA provides financial assistance equivalent to 89 per cent of that available to Australians through Centrelink. The benefits also include, as needed, basic health care, assistance buying medicines, torture and trauma counselling services and bereavement assistance. The scheme is funded by the department and administered by the Australian Red Cross. Protection visa applications lodged by clients who receive ASA are processed as a matter of priority.

Further information about the IAAAS and ASA Scheme is provided in Fact Sheet 62 – *Assistance for Asylum seekers in Australia* and Fact Sheet 63 – *Immigration Advice and Application Assistance Scheme* which are available on the department's website.

Many religious and community based organisations and volunteers also support asylum seekers in a variety of ways.