On 25 September 2014, the Government announced that it would be creating a new temporary protection visa, to be known as a Safe Haven Enterprise Visa (SHEV) which would be available to refugees that had arrived by boat prior to the commencement of the regional processing regime announced by former Prime Minister Kevin Rudd in July 2013. Though the visa criteria are yet to be finalised, the SHEV is expected to be valid for five years and is specifically designed to encourage refugees to move to regional Australia. SHEV holders who are able to work in regional Australia without requiring access to income support for three and a half years will be able to apply for other onshore migration visas such as a family or skilled visa as well as a student visa, but not a permanent protection visa.

While the SHEV does appear to provide a pathway to permanent residency, the likelihood of this being the case for the majority of refugees has been questioned. Some commentators have pointed out that refugees may find it difficult to meet the eligibility criteria for these mainstream migration visas due to high application fees, lack of required English language skills, and a lack of recognised skills required for skilled migrant visas. Minister Morrison himself has acknowledged that the path to permanent residency offered by the SHEV will not be easy one, stating ‘... these benchmarks of working or studying in these regional areas are very high. Our experience on resettlement for people in this situation would mean that this is a very high bar to clear. Good luck to them if they choose to do that and if they achieve it. ... There is an opportunity here but I think it is a very limited opportunity and we will see how it works out’. It is interesting to recall that this is not the first time temporary protection visa holders will have had the opportunity to apply for other mainstream visas. In July 2004, then Minister Vanstone announced that 9500 temporary protection visa (TPV) holders would have the opportunity to apply for mainstream migration visas to enable them to remain in Australia permanently. The changes were announced in recognition of the fact that many TPV holders were making a significant contribution to the Australian community, particularly in regional areas, or had established links with Australia through social or work activities. Accordingly, changes were made to the Migration Regulations to enable refugees
as at 27 August 2004 who held a TPV or Temporary Offshore Humanitarian Visa (THV) to apply for a range of mainstream onshore permanent and temporary visas. Previously, TPV and THV holders were barred from making a valid application for any visa other than a further protection visa while they remained in Australia. As outlined in the Department’s Fact Sheet refugees could thus apply for some 36 onshore mainstream visas, including employer, regional sponsored and business skills visas; family migration, including spouse visas; and a broad range of temporary visas including students, temporary business (long stay and medical practitioners) and religious workers. Though applications for these onshore visas were assessed against the existing requirements, special arrangements were made for student visa applications to ‘introduce more flexible English language and financial requirements that better reflect the circumstances of TPV and THV holders’. In addition, the criteria were amended for the Regional Sponsored Migration Scheme (RSMS) to allow TPV or THV holders who had worked in regional Australia for at least 12 months and whose skills were required by an employer in regional Australia, to meet the skills requirement of this visa.

Interestingly, six months after these changes commenced, only 20 applications for mainstream visas had been lodged by refugees. As of February 2005, fifteen refugees had been granted permanent visas, and one was granted a temporary visa. As at July 2005, a year after the Minister’s announcement, a total of 34 applications had been received by the Department from TPV holders for visas other than protection visas. These included 12 applications under the RSMS of which three were granted; seven applications under the Employer Nomination Scheme of which five were granted; 14 spouse applications of which seven were granted; and one application under the 422 subclass, for which a Medical Practitioner (Temporary) visa which was granted.

Though at this time there were approximately 2000 TPV and THV holders in Australia, these statistics suggest that the take-up rate of the mainstream visa option was not high and the success rate of such applications was not great. However, these statistics do lend support to the Minister’s assertions that it would not be impossible for refugees to satisfy the mainstream visa criteria, though it is not currently known whether the Government plans to make any special arrangements for refugees in assessing certain visa criteria, as was done in the past.

Regulation 2.07AO of the Migration Regulations 1994, which enabled TPV and THV holders to apply for mainstream temporary and permanent visas was repealed by the former Labor Government in March 2013 as ‘the regulation is now redundant because there are no longer any persons in the defined cohort’.

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