

## Temporary Protection Visas: The protection you have when you're not very protected (*part 1*)

*Social Issues briefing #016, 1/7/2004.*

Another side to Australia's handling of asylum seekers, is the issue of something called Temporary Protection Visas. These are mentioned from time to time in the news, but it is easy to miss their significance. In the first of a two-part series, we will mainly just outline the origins of the TPV in international law, and some aspects of their use in Australia. Our next briefing will then look at some controversy about the way Australia uses TPVs. We won't say anything very theological over the next two weeks. We simply want to help build up some more facts of the case about TPVs, as part of our ongoing program to help us all become more knowledgeable about the refugee issue.

The 1951 *Refugees Convention* was drafted to deal with the many people who were displaced by the events of World War 2 and its aftermath. The *Convention* provides a framework for defining who a refugee is for the purposes of the *Convention* – it sets out the obligations to refugees of the State signatories.

Article 1A(2) of the *Convention* defines a refugee as any person who:

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable, or owing to such fear, is unwilling to return to it.

Australia has incorporated the *Refugee Convention* and *Protocol* into domestic law through the *Migration Act*, which together with the *Migration Regulations*, sets out the rights of and processes of determining who is a refugee in Australia.

For the majority of the world's refugees, their experience of exile is temporary. The partition of Pakistan, the decolonization of Africa and the Vietnam War all resulted in population movements that were measured in hundreds of thousands, and in some cases millions. They flee their country of origin, remain in a neighbouring country for a period (sometimes months, or years) and then return home when conditions there have changed for the better. This is the pattern that has traditionally, but not exclusively, been the domain of the developing world where refugee protection typically arises in situations of mass influx.

Western states have tended to adopt a somewhat different approach. There has been a general acceptance that once a refugee has been determined as having a legitimate claim and has spent some time integrating into the new country, it is unreasonable to expect that person to return to their country of origin when conditions change. The countries that refugees fled may have changed and the host country may have become the new home. This especially true for refugees who arrive in host nations when young but can hold true for many refugees who work, make friends, study or become part of the community in the host country regardless of age. Many refugees have lost everything upon fleeing their homes and have nothing to go back to. For this reason, most Western states have traditionally granted permanent protection to *Convention* refugees.

It took the conflict in the former Yugoslavia to bring the notion of using temporary protection in situations of mass influx to the West. Soon after the outbreak of the conflict, the United Nations High Commissioner for Refugees (UNHCR) issued a paper in which it proposed that people fleeing the conflict and who are in need of international protection should be able to receive it on a temporary basis (this was in recognition of the impracticality of employing individualized asylum procedures for such a large number of people).

In discussing temporary protection at the time, UNHCR emphasized that while refugee protection does not presuppose permanent exile, refugees must be provided with some sense of stability. Further, UNHCR asserted that those in receipt of temporary protection be afforded substantially

the same treatment as formally recognized refugees and that temporary measures do not supplant the duties set out by the *Refugee Convention*.

The countries that receive the highest number of asylum seekers – the UK and Germany – both grant permanent residence to Convention refugees, as does Austria, Belgium, Spain and Sweden. Similarly, Canada and the USA also grant permanent residence to *Convention* refugees.

It is important to note that in countries in which temporary visas are granted to Convention refugees:

1. there is no requirement that the refugees undergo refugee status determination to have their visas renewed;
2. renewal of the visa is viewed as an administrative formality;
3. the only circumstances whereby visas are not renewed are if the Cessation Clause (Article 1C of the Refugee Convention) is invoked, the person has willingly renewed contact with the country of origin, or if the person has committed an offence. Both occur infrequently and are subject to appeal;
4. refugees on temporary visas have access to the full range of entitlements as residents including family reunification and travel rights.

There have been several times when the Australian Governments have used temporary protection visas (TPVs) for people with humanitarian needs:

- in the 1980's and early 1990's, temporary humanitarian visas were granted to people in Australia at the time when a conflict erupted in their homeland – eg Sri Lanka, Lebanon and the Former Yugoslavia.
- For a period in the early 1990s, temporary visas were granted to people determined to be refugees. This policy was reversed prior to the expiry of the visas and all were automatically converted to permanent protection visas.
- Temporary Safe Haven Visas were used when Australia participated in an emergency rescue program for Kosovars and East Timorese in 1999.

It is, however, its present application that has proven the most contentious. Philip Ruddock, then Minister for Immigration, introduced TPVs in October 1999. TPVs are currently granted to:

- asylum seekers who arrived without proper documentation and/or who were not immigration cleared, and were subsequently determined to be refugees, and
- people outside Australia who had moved from the country of first asylum, ie for people granted visas in Indonesia, the Pacific States or one of Australia's excised zones.

Prior to this, everyone recognized as a refugee in Australia was granted permanent residence, regardless of how they arrived here.

There are several restrictions placed on TPV holders in Australia – including limited access to Social Security, effective exclusion from universities, ineligibility for most DIMIA-funded services, no family reunion rights, permission to work but ineligible for most employment assistance programs, no automatic right of return if the TPV holder leaves the country.

Of all the restrictions imposed on refugees with a TPV, it is the denial of family reunion that arguably causes the greatest anguish. The importance of family unity is well-defined in international law. The Universal Declaration of Human Rights proclaims that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” (Article 15(3))

[To be continued ...]

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### **Sources/Further Reading:**

Peter Mares, Refugees: It's time to clean up the mess of temporary protection visas, Institute for Social Research, Swinburne University of Technology. Found at:  
<http://www.apo.org.au/webboard/items/2004/06/00711.shtml>

Position Paper on Australia's Use of Temporary Protection Visas for Convention Refugees, Refugee Council of Australia, September 2003

Temporary Protection Visa Project Volunteer Handbook, Refugee Advice and Casework Service, February 2004.

The full text of the 1951 UN Convention on Refugees can be accessed online via:

<http://www.unhcr.ch/cgi-bin/texis/vtx/home?page=PROTECT&id=3c0762ea4> or at this record breakingly long URL:  
[http://www.unhcr.ch/cgi-bin/texis/vtx/home/+LwwBmeJAIS\\_www3wwwwwwFqzvaXsK69s6mFqA7ZZR0qRfZNHfA7ZZR0qRfZNIffarpGdBnqBzFqmRbZAFqA7ZZR0qRfZNDzmwwwwww1FqhuNlq2/pendoc.pdf](http://www.unhcr.ch/cgi-bin/texis/vtx/home/+LwwBmeJAIS_www3wwwwwwFqzvaXsK69s6mFqA7ZZR0qRfZNHfA7ZZR0qRfZNIffarpGdBnqBzFqmRbZAFqA7ZZR0qRfZNDzmwwwwww1FqhuNlq2/pendoc.pdf)

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