Fast Track processing

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There is a group of around 25,000 people seeking asylum in Australia who are currently in the process of gradually receiving Ministerial permissions to lodge protection visa applications – the fast track group. Fast track processing started in around July 2015.

Who is a fast track applicant?

A person seeking asylum who came by boat to Australia is a fast track applicant if they:

- arrived in Australia on or after 13 August 2012 and before 1 January 2014; and
- have not previously been to a regional processing country (either Nauru or PNG)[1].

The 13 August 2012 date corresponds with the previous government's announcement of its "no advantage" policy. Not making a decision about refugee status was part of that policy. After a period in detention in Australia, most fast track applicants were granted bridging visas. Another part of the "no advantage" policy was that although they were permitted to live in the community, they were not allowed to work. The Minister began granted bridging visas with work rights after the fast track legislation was passed in December 2014. Most fast track applicants now hold BVEs with work rights and have signed the "Code of Behaviour" as a condition of their Bridging Visa. Fast track applicants' future protection visa applications benefit from access to their entry interview under FOI.

Bar lift letters

People who have come by boat to Australia are barred under section 46A(1) of the Migration Act from making any kind of application for a visa without the Minister's permission.

Fast track applicants are notified of their ability to make a protection visa application in writing advising them that the 46A(1) bar has been lifted to allow them to apply. Bar lift letters state that applications are encouraged within 28 days, but with no extension required if the application will be lodged within 60 days from the date of the letter. Extensions may be sought of the Department by email. Applications lodged outside of either the 28 or 60 day requested time frames are valid.

Fast track applicants in the community generally receive permission to apply in order of date of arrival. The arrival dates currently receiving bar lift letters can be viewed on the Department's website.

Choice of visa application: Temporary Protection Visa or Safe Haven Enterprise Visa

At point of a person's "bar lift", fast track applicants must make a choice between applying for two kinds of temporary visas. They must choose whether they lodge a form 866 to apply for a TPV (temporary protection visa) or a form 790 to apply for a SHEV (a safe haven enterprise visa). Both visas are temporary, and do not allow for citizenship or family reunion. The TPV's duration is 3 years whereas the SHEV's is 5 years. On both visas you can apply for further temporary protection visas

[1] During 2016 there have been three new legislative instruments making clear three other categories of people who may be fast track applicants:
Under this legislative instrument (IMMI 16/049 commencing 7 May 2016), babies born in Australia on or after 1 January 2014 to a fast track applicant are fast track applicants.
Under this legislative instrument (IMMI 16/008 commencing 1 April 2016) a person is a fast track applicant if they (or their children) were taken to Nauru or Manus between 13 August 2012 and 19 July 2013 and are now in Australia.
Under this legislative instrument (IMMI16/010 commencing 24 March 2016) a person is a fast track applicant if they are a baby born in Australia on or after 6 November 2013 and before 5 December 2014 to a parent who arrived on or after 19 July 2013 and was taken to Nauru (and their parents and siblings).

(either TPVs or SHEVs). But those who have worked or studied in designated areas for 3.5 years while holding a SHEV visa are then not barred under s46A from applying for prescribed family, student or work visas. Current declared areas are all of Tasmania, and almost all of NSW outside of Sydney, Wollongong and Newcastle. A SHEV cannot be cancelled where a person fails to work or study in a declared area. But to apply for a SHEV a person must declare and sign to their intention to work or study in a declared area while accessing minimum social security.

Acknowledgement letters / 91W requests

After lodgement of a protection visa application, fast track applicants receive a "91W request" within the letter of acknowledgment from the Department. This request asks for the applicant to supply any evidence of their identity, nationality or citizenship within 14 days after they are taken to have received the letter. Failure to respond could result in refusal of the protection visa application.

Section 487ZI(1) provides that a person must not provide a bogus document to the Department including a document obtained because of a false statement whether or not made knowingly.

91WA mandates the Minister must refuse to grant a protection visa where the applicant provided a bogus document as evidence of their identity, nationality or citizenship or destroyed such evidence without reasonable explanation. The PAMS on 91WA advise that a reasonable explanation for destruction of documents could include acts by a third party which involve destroying or removing documents from the applicant's possession, but the deliberate destruction or disposal of the document by the applicant will not be considered a reasonable explanation.

Departmental interviews and assessment of claims

Fast track interviews with the Department are similar to other protection visa interviews, although with shorter time frames specified for responses to adverse information provided at interview.

Fast track applicants are assessed against the new definitions of refugee and complementary protection applying to all protection visa applications lodged on or after 16 December 2014. Under these definitions reasonableness of relocation may now only be pleaded in relation to complementary protection. 91WB(2) and 36(2)(b) and (c) make clear that membership of the same family unit claims can only be pleaded for fast track applicants currently applying for the same visa class. A permanent protection visa is class XA, a TPV is a class XD and a SHEV is a class XE.

Merits review – the Immigration Assessment Authority

The main difference between the fast track process and the system that continues for other protection visa applicants is that the only avenue for merits review of fast track decisions is a new body, the Immigration Assessment Authority (IAA). Departmental refusals are automatically referred to the IAA without application being required, unless the Department assesses the applicant to be "excluded". A person may be excluded from merits review because they are considered to have made manifestly unfounded claims (as assessed by the Departmental), or have provided a document in support of their application that is suspected to be non-genuine or counterfeit without a reasonable explanation, or have previously been refused protection in Australia, in another country or by the UNHCR. Excluded applicants may seek judicial review of both the decision to exclude them and of their Departmental decision to refuse the visa.

The IAA has no obligation to hold a hearing or seek any information from an applicant, has no obligation to allow a fast track applicant to respond or correct adverse information raised, and is not required to consider new information provided by the applicant other than in what it considers to be exceptional circumstances. New information (not previously known at the time of the Department's decision) which the applicant seeks to be considered by the IAA must be provided to the IAA within 21 days after the date of the Department's decision. The IAA's practice direction makes clear that submissions of longer than 5 pages may be returned.

The only situation in which the IAA is required to invite a fast track applicant to comment on information is where the IAA seeks to affirm the decision under review by relying on information that wasn't available to the primary decision maker.

Aspects of the procedural fairness of this new process have yet to be tested by the Courts.

Options after a decision by the Immigration Assessment Authority

Fast track applicants who have received a negative decision by the IAA may seek judicial review of that decision with the Federal Circuit Court and may request Ministerial permission to lodge a second protection visa application under s 48B. No Ministerial requests are possible for fast track applicants under s417.

Judicial review applications must be filed within 35 days of the IAA decision although leave to file out of time may be granted. An application for a Bridging Visa must be made before expiry of the previous Bridging Visa which will be 28 days after notice of the IAA decision.