FAMILY VIOLENCE AND VISAS

If you are sponsored for a partner visa and the relationship breaks down, and there has been family violence, you may still be able to get a permanent resident visa. You should get legal and family violence advice urgently.

If you already have permanent residence and your relationship breaks down, your abusive partner cannot get you deported.

Getting a permanent partner visa

To get permanent residence a partner visa applicant must be in a genuine ongoing spouse or de facto relationship, sponsored by an Australian citizen or permanent resident partner, usually for at least two years.

Getting a permanent partner visa is a two-stage process. The applicant and sponsor must first prove to the Department of Home Affairs (DHA) that it is a genuine relationship in order to get a temporary partner visa. Then, sometime after two years, the application is assessed again by DHA to see if the relationship is still ongoing.

If relationship ends can still get permanent visa

If the relationship ends before permanent residence is granted by DHA, you may still be able to get a permanent visa if you prove:

- you experienced family violence during the relationship or

- there is a child of the relationship where both parents have ongoing responsibilities for the child or

- the sponsoring partner dies.

Which visa holders does it apply to?

These exceptions apply mostly to visa applicants who have lodged valid partner visa applications. This means visa applicants who are:

- on a temporary visa subclass 309 obtained offshore or an 820 onshore or

- on a bridging visa granted when they lodged a partner application or

- on another temporary visa but they must have lodged a valid application for an onshore Partner visa or

- on a fiancée visa, and they must have already married.

They also apply to dependents on a Global Talen visa (subclass 858) and dependent child (445) visas.

What must be proved?

To get permanent residence based on family violence, DHA must be convinced that:

- the partners had a genuine and continuing married or de facto relationship committed to a shared life together to the exclusion of all others, before it broke down, and

- the applicant experienced family violence during the relationship.

You must also pass health and character checks before the visa is finally granted.

Process if the relationship breaks down

If the relationship breaks down before permanent residence, the process is:

- that DHA must be notified; It is best to get legal advice first

- DHA then sends a change of circumstances letter giving 28 days to respond

- DHA then checks the genuineness

- If satisfied with genuineness DHA then checks for family violence (or for the other exceptions - child of the relationship or death of the partner)

- if DHA decides there is no family violence they refer it to an 'Independent Expert'.

If DHA refuses the case, there are review rights to the Administrative Appeals Tribunal to look at the case anew. There are fees and time limits that apply.

Proving a Genuine relationship

DHA must consider all the circumstances of the relationship including financial and social aspects, nature of the household, and of the commitment to each other.

This means getting evidence of things like rent, power bills, bank accounts, any joint purchases or loans, declaring relationship to Tax Office and Centrelink, marriage or children's birth certificates, social media profile, evidence of attending social events together, joint travel, phone and email records, statutory declarations, or statements from family and friends.

Proving family violence

To prove family violence you need migration legal advice as this can be complex.

Family violence in migration law is *actual or threatened conduct towards you or your family member or property that causes you to have good reason to fear for your wellbeing or safety.*

Family violence can be proved by *'judicial evidence'* - a Domestic Violence Protection Order (where papers have been served) or a criminal violence conviction.

It can also be proved by *'non-judicial evidence'* - either two reports from family violence professionals plus a statutory declaration from the applicant; or a joint court undertaking by the applicant and sponsor about an allegation of violence against the sponsor.

There is no requirement that the relationship broke down because of family violence.

Legal Help

The Refugee and Immigration Legal Service (RAILS) works across all of Queensland to assist visa applicants experiencing family violence. Contact RAILS by phone or online referral form.

www.rails.org.au   admin@rails.org.au   (07) 3846 9300

Family Violence Workers' Role

Family violence workers have an important role in the visa legal process. They can help provide evidence of family violence and ensure good communication with legal advisors.

Clients often have limited evidence as their partner may control access to documents and because of social isolation and lack of legal advice. Often the sponsoring partner has lodged the application and evidence to DHA.

There are tight timelines when someone is escaping an abusive relationship. Once notified, DHA will send a 28 day letter to respond. Another 28 days may be obtained, but further extensions may be hard to get.

Workers must be careful not to advise about migration law. It is a crime to give *immigration assistance* if you are not a registered migration agent. They are allowed to pass on information about the visa process but not give substantial explanation or advice about it.

Good collaboration with legal and family violence workers is vital.

Which professionals can give evidence of family violence?

If *'judicial evidence'* such as a court Domestic Violence Protection Order cannot be obtained then '*non-judicial evidence'* may be needed.

'*Non-Judicial evidence'* under the Migration Regulations requires at least two reports or statutory declarations from people from different professions:

- medical, police or child welfare reports or statutory declarations

- social worker, psychologist or counsellor statutory declarations

- women's refuge or family violence crisis centre report on the agency's letterhead.

Professionals 'non-judicial' family violence assessment

Family violence in migration law requires actual or threatened conduct towards the visa applicant or family member or property, which causes the victim to have good reason to fear for their wellbeing or safety.

Courts have suggested that a 'therapeutic relationship' with the applicant, rather than for example what could be formed from just one session, is needed before being able to form an assessment of family violence.

When doing an assessment it would be not enough to restate the victim's account of violence. Practitioners must be very specific about their observations, the evidence, and their opinion.

There must be a link to the Migration Act definition of family violence, that is, that *the violence must have caused the victim to fear for or be apprehensive about their personal safety.* This needs to be stated.

To satisfy the law they should be confident in saying 'In my opinion family violence has occurred'.

The alleged perpetrator must be the sponsor.

If the professional doesn't think there is the required family violence then they should say so.

There is no requirement that the relationship broke down because of family violence. But usually this is the case.

The two reports are usually about the applicant but they can relate to different victims (for example, one could be about the partner of the alleged perpetrator and another about their dependent child).

The statutory declaration and any attachments must be signed and witnessed by a person authorised to witness statutory declarations.

Legal advisors should check the declarations to ensure they satisfy the regulations if there is family violence.

A legal representative should develop the applicant's statutory declaration to give a detailed account of the nature and genuineness of the relationship and the violence.

This is legal information, not advice.

See a qualified migration agent/lawyer for legal advice.