

FAMILY VIOLENCE AND VISAS

OVERVIEW

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.

This law also may apply for dependents of some permanent skilled visa applications listed below.

This is complex law and you should get legal advice urgently.

PARTNER VISAS AND DV

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 with sponsor ends before you get a 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 and the relationship would have continued if the partner had not died.

Which visa holders does it apply to? - partner visas

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 or
- applied for a partner visa offshore and have come to Australia anytime since lodging that application.

They also apply to dependents on a dependent child (445) visa.

What must be proved?

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

- 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 usually is:

- that DHA must be notified; It is best to get legal advice first
- If the sponsor notifies DHA of the breakdown, then the Department usually sends the visa applicant a 'Change of circumstances' letter giving 28 days to respond
- DHA then checks the genuineness. They may ask for more evidence.
- 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 Review Tribunal to look at the case anew. There are fees and time limits that apply, so you should get legal advice urgently.

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 profiles, evidence of attending social events together, joint travel, phone and email records, statutory declarations, or statements from family and friends.

Proving family violence

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.*

It is not only physical violence. Other types of mental and emotional abuse can be family violence.

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

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 specific professionals about the family violence, 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.

NON-PARTNER VISAS AND DV

Some permanent skilled visas and DV

Family violence law might also apply for the permanent skilled and family visas listed below.

A person may be able to get a permanent visa if:

- they are a dependent of a primary applicant for one of the below visas,
- and** they are in Australia, or have been in Australia since the visa application was lodged
- and** they experienced family violence from the primary applicant,
- and** the primary applicant is granted their visa, or is refused their visa on family violence grounds.

This is complex law and legal advice is needed. The visas these family violence rules can apply to are:

Business Talent (subclass 132);	National Innovation (subclass 858).
Employer Nomination Scheme (subclass 186);	Skilled Regional (subclass 887);
Regional Sponsored Migration Scheme (subclass 187);	Business Innovation and Investment (subclass 888);
Skilled Independent (subclass 189);	Remaining Relative (subclasses 115 & 835);
Skilled Nominated (subclass 190);	Carer (subclasses 116 & 836);
Permanent Residence (Skilled Regional) (subclass 191);	Parent (subclass 103);
Pacific Engagement (subclass 192);	Contributory Parent (subclass 143);
	Aged Parent (subclass 804);
	Contributory Parent (subclass 864).

Other visas

If a person is on some other type of visa not mentioned above and suffers family violence then the visa options to stay in Australia would include: extend their current visa; or apply for some other skilled or family visa; or apply for a protection (refugee) visa if they fear return to their home country. This is complex and legal advice is needed.

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 our online referral form.

This is legal information, not advice. See a lawyer or migration agent for legal advice.

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