

Domestic Violence and Immigration



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Cherie Wright, Senior Solicitor, Fragomen, on 10 February 2014. This webinar can be downloaded for free at www.asklois.org.au/webinars/past-webinars.

This fact sheet covers:

- What are the family violence provisions in Migration law?
- The law and required evidence
- Definition of family violence
- Which visas do the provisions apply to?
- Who must the alleged victim be?
- Where can victims seek immigration help?

What are the family violence provisions?

- Usually, to obtain permanent residence, a woman on a temporary partner visa in a relationship with an Australian sponsor must demonstrate the relationship is genuine and continuing. The family violence provisions exist so a woman does not have to remain in an abusive relationship to be eligible for certain visas or permanent residence where the relationship has broken down
- Family violence provisions are set out in Division 1.5 of the *Migration Regulations 1994* (Cth)

The law and evidence

- Division 1.5 of the Migration Regulations requires the applicant to provide evidence that they, or a member of their family unit, have suffered family violence
- The evidence required depends on whether an Australian court has found that family violence has occurred

Evidence for judicially determined claims

Where the family violence claim has been determined by a court, the applicant must provide:

- Court injunction under the Family Law Act
- Australian court order
- Conviction against the sponsor (the perpetrator of the violence)

Evidence for non-judicially determined claims

1. Joint undertaking made by a court (this is uncommon) OR
2. Statutory declaration from alleged victim and at least two of the following documents:
 - Medical, hospital or discharge report detailing physical injuries or treatment for mental health
 - Police report, record of assault or witness statement
 - Report or statutory declaration by a child welfare authority or child protection authority officer
 - Letter or assessment report made by a women's refuge or family/domestic violence crisis centre
 - Statutory declaration made by a member of Australian Association of Social Workers or a registered psychologist who has treated the alleged victim or a family consultant or a family relationship counsellor or a school counsellor or principal

Definition of family violence

In the Migration Regulations (Reg 1.21), family violence is defined as:

Conduct, whether **actual or threatened**, towards:

- **the alleged victim, or**
- **a member of the family unit of the alleged victim, or**
- **a member of the family unit of the alleged perpetrator, or**
- **the property of the alleged victim, or**
- **the property of a member of the family unit of the alleged victim, or**
- **the property of a member of the family unit of the alleged perpetrator,**



that causes the alleged victim to **reasonably fear for**, or to be **reasonably apprehensive about**, his or her own **wellbeing or safety**.

The victim

This table provides some guidance as to how the definition of family violence applies to each relevant visa subclass. In the case of Partner visas, the victim of violence does not need to be the visa applicant. It can also be the visa applicant or sponsor's child as we just saw previously in the definition.

Partner (subclass 100) (permanent visa)	<ul style="list-style-type: none">• Primary visa applicant;• member of sponsor's family unit;• member of primary applicant's family unit included in the application• a member of the primary applicant's family unit who was granted a s/c 309 visa by ministerial intervention at the same time as the primary applicant.
Dependent Child (subclass 445) (temporary visa)	<ul style="list-style-type: none">• Dependent child of a visa holding parent who has asked that their case be considered under the s/c 100 or s/c 801 visa family violence provisions.
Partner (subclass 801) (permanent visa)	<ul style="list-style-type: none">• Primary visa applicant; or• dependent child of the primary applicant or sponsor.
Partner (subclass 820) (temporary visa)	<ul style="list-style-type: none">• Primary visa applicant;• dependent child of the primary applicant or sponsor; or member of primary applicant's family unit included in the application• (only if the primary applicant holds, or has held a Prospective Marriage visa).
Distinguished Talent (subclass 858) (permanent visa)	<ul style="list-style-type: none">• Secondary applicant who is the partner, member of the family unit or a dependent child of the non-dependent visa holder.

Which visas?

The family violence provisions currently apply to the following visa subclasses:

- Partner (subclasses 100, 801 and 820)
- Dependent Child (subclass 445) in the Extended Eligibility class
- Distinguished Talent (subclass 858)

Existing applicants for the now ceased subclasses 826/ 814, 845, 846, 851 (lodged before 9 Aug 2008), 855, 856, 857 and 858 visas are also eligible.

What should you do if your client is affected by the family violence provisions?

- The family violence provisions are complex and immigration advice should be sought.
- If a victim of family violence has been treated at a hospital, they should obtain a copy of the hospital records of the treatment.
- If a victim of family violence suffers visible injuries, good quality colour photographs should immediately be taken of the injuries so that they can be provided to the Department.

Immigration advice for family violence victims

- **Immigration Advice and Rights Centre Inc.** (02) 9279 4300 (9-5pm)
- **Salvos Legal** (02) 8202 1555
- **National Association of Community Legal Centres:** www.nacclc.org.au