

Filipino Migrants Forum

ARE YOU A VICTIM OF FAMILY VIOLENCE?

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In cases where non citizens lodge partner visa applications on the basis of marriage, de facto relationships or interdependent (same sex) relationships with Australian citizens or permanent residents, most applicants are first granted two year temporary visas to test if their marriage is genuine, exclusive and continuing.

At the end of the two year period from lodgment of the partner visa application, the permanent residence would normally be granted after submission of evidence that they are still in a partner relationship with their sponsors.

But what happens when the partner is a victim of “violence” committed by the sponsor and the relationship breaks down before the two year waiting period is over? Many abused partners or spouses feel trapped, believing that they have to endure the violent relationship because it would be the only way to receive permanent residence in Australia, but this is not so.

The Department of Immigration and Citizenship (DIAC) will consider the grant of permanent residence where the spouse or a dependent is the victim of family violence, to avoid a situation where partner temporary visa holders remain in the relationship because of fear of visa cancellation or not being granted permanent residence.

What is Family Violence?

From 15 October 2007, the meaning of “domestic violence” has changed and is now equated with “family violence”. Under the revised definition in Reg 1.23(2)(b) of the Migration Regulations, “family violence”, previously referred to as “domestic violence”, is “conduct, whether actual or threatened, towards the alleged victim, that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety”.

How does this change the determination of claims of domestic violence?

In our article published in September 2003, domestic violence included psychological and emotional abuse such as-

- Public humiliation and criticism
- Display of intimidating anger;
- Economic deprivation, such as not allowing the person access to money for his personal needs;

- Social abuse, like not allowing the person access to friends, family or medical care;
- Threatening to or abducting or confining the person.
- Harassing or keeping under surveillance
- Threatening to cause personal injury to a person

However, the Federal Court decision referred to in our article on domestic violence published in April 2006, in effect amended the scope in that there must at least be the threat of *physical* violence, if not actual violence for domestic violence to have taken place. This was mainly because of fear by the Court that to include psychological abuse would broaden the meaning of domestic violence to something that Parliament never intended.

Does the current definition of “domestic violence” now include emotional abuse and psychological violence?

The Migration Regulation now refers to “family violence” rather than domestic violence and family violence refers to “conduct, whether actual or threatened”. This leaves room for the courts to change their view.

Thus the recent change in the definition of domestic violence to family violence in the Migration Regulations provide hope to victims of psychological abuse without acts or threats of physical acts of violence, to obtaining their permanent resident visa.

This information is of a general nature and should not be taken as authoritative legal advice for specific cases. Australia has a scheme that requires persons who give immigration assistance to be registered as migration agent.

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