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STATUS OF FAILED FPV APPLICANTS AFTER THEIR REFUGEE REVIEW TRIBUNAL HEARING

- Here is the relevant section from the Senate Estimates, Legal and Constitutional Committee, 4 November 2003:

Senator KIRK—At what stage in the appeal process would a refugee or a TPV holder lose their right to work and to Medicare? I wonder if you know at what point those benefits are suspended.

Mr Illingworth—Their status as a temporary protection visa holder will continue throughout the processing of their further protection visa application. If they are refused their further application by the department, there is no change to their status. They would be able to apply for a review while still being a TPV holder. It would only be if the RRT eventually affirmed a department refusal that those entitlements would cease and their status as a TPV holder would come to an end.

Senator KIRK—So it is only really when there is a final decision that those—

Mr Illingworth—Throughout the merits review process, their status remains that of a TPV holder.

Senator KIRK—That remains the case as well if there is an appeal to the Federal Court?

Mr Illingworth—No. Once the merits review process is concluded, they cease to be a TPV holder. But they still are able to obtain bridging visas in the normal course of events to pursue litigation, should they wish, on the same basis as any other person who has their PV refusal affirmed by the tribunal.

Senator KIRK—What are the other services or benefits that are lost in the event that an application is unsuccessful?

Mr Illingworth—Once an application is finally determined post RRT, I understand that the restrictions on accessing work rights are not automatic. Essentially, once they have got to that point the person should be either in litigation if they think they have a basis for that challenge or leaving. The

normal approach of the legislation is that, where a person reaches that point, they should be departing the country or would be liable for detention and removal.

Senator KIRK—So at that point in time they lose all rights.

Mr Illingworth—At that point in time they would be, as would any other protection visa applicant or visa application who reached that point in the process, expected to depart because they would have no lawful basis on which to remain. If they were to mount litigation then there are avenues there that apply to others who are in litigation also to obtain bridging visas on certain conditions and to remain in the community lawfully while they pursue that litigation.

- What do TPV Holders need to do?

(The following information is provided by RILC).

DIMIA are encouraging FPV applicants at the RRT to lodge a 1005 form prior to a decision being made by the RRT on the application:

Why?

Once the RRT decision is made (before notification, generally), the XC visa ceases to be in effect.

A Bridging Visa A (BVA) (which the applicant would have been granted were it not for the XC being granted instead) comes into effect.

The BVA mentioned above:

(a) does not have work rights etc; and

(b) will only be in effect for 28 days (plus 7 days if applicable) from notification (as opposed to date of decision).

The purpose of lodging the 1005 before the RRT decision is made is so that the applicant may be granted a BVA with work rights (that is, change of condition on BVA) which would be effective from time of RRT decision.

If the applicant seeks review in the Federal Court or makes a Ministerial request, he/she will be eligible for a BVE. DIMIA were unclear as to what was intended vis-a-vis retention of work rights at this point. So, the general position for BVE holders in this position would appear to apply, unless we are otherwise notified or there is a change on the law. (It is not clear whether DIMIA are intending to implement a similar process as for the ET clients, where there is, effectively, a fast-tracking of the 'personal consideration' of the Minister to trigger access to work rights.)

- RCOA asked DIMIA to provide a fact sheet or some form of official information on this issue. Here it is:

A TPV allows the holder to work in Australia. TPV holders who have made a further PV application have also been granted a Bridging Visa. As most TPV holders made their further protection visa application more than 45 days after arriving in Australia, their bridging visa does not allow them to work in Australia.

In the event that a further PV application is refused, and the refusal is upheld by the RRT, the Bridging Visa will come into effect and remain valid for 28 days after the RRT makes its decision. So that work rights on the Bridging Visa can be considered it is essential that TPV holders complete a Form 1005, requesting permission to work, and lodge this with the Department as soon as possible, and in any event before the RRT makes its decision. Form 1005 is available on the DIMIA website.

The request for permission to work is only relevant to the Bridging Visa that is in effect for 28 days after notification of the RRT decision. If a former TPV holder requests the Minister's consideration under s.417 or applies for Judicial Review, they will need to apply for another Bridging Visa in relation to that action.

See http://www.immi.gov.au/facts/68tpv_further.htm & <http://www.immi.gov.au/faq/general/general07.htm>