



Appendix F: Bridging visas

- 1.1 There are currently some 56 000 people lawfully in the community on bridging visas. While on a bridging visa, a person may remain in the community for a specified time or until a specified event occurs. The vast majority of those on a bridging visa are working through immigration processes, whether at the stage of primary application, merits review, judicial review or ministerial intervention. As those processes are progressed, cases will be resolved either by visa grant, voluntary departure, or the person becoming liable for removal.¹
- 1.2 The use of detention during the process of resolving these clients' immigration status has declined significantly. In the last three years, the percentage of unlawful non-citizens located and then taken into detention by the Department of Immigration and Citizenship (DIAC) has halved to 15 per cent.² While the Act requires the detainment of an unlawful non-citizen, DIAC's policy is that, where it is appropriate and safe to do so, the granting of a bridging visa should be considered prior to detaining a person.
- 1.3 Bridging visas may be granted with conditions attached such as:
- a requirement to report to DIAC at regular intervals
 - to live at a specified address and notify DIAC of a change in address
 - to pay the costs of detention or make arrangements to do so (see chapter 5), or

1 Department of Immigration and Citizenship, supplementary submission 129f, p 15.

2 Department of Immigration and Citizenship, *Annual report 2007-08* (2008), p 8.

- to lodge a security bond, generally between \$5000 and \$50 000.³
- 1.4 Bridging visas may also be granted with restrictions on the following:
- work rights
 - study rights, and
 - access to Medicare.
- 1.5 However for those persons who taken into detention at arrival or at some later point, bridging visas are only granted in a limited range of circumstances.⁴ Table F.1 outlines the criteria for these visas.
- 1.6 Offshore entry persons are prevented by subsection 46A(1) of the Act from lodging a valid visa application, including an application for a bridging visa. This includes 'boat people' who enter Australian waters, are intercepted in the excised zone and taken to Christmas Island for processing.⁵
- 1.7 Under section 72(1)(c) of the Migration Act, the Minister can determine that an otherwise ineligible person is eligible to apply for a bridging visa if:
- that person has been in immigration detention for more than six months since lodging a protection visa application without a primary decision having been made, and
 - the Minister considers a determination to be in the public interest.
- 1.8 The power is personal to the Minister and its exercise is non-compellable. Since the conferral of this power in 1994, only four persons have been released from detention under the exercise of this power.⁶

3 Kamand S et al, *The immigration kit* (2008), 8th ed, The Federation Press, p 197; Phelan L, Mercy Refugee Service, *Transcript of evidence*, 7 May 2008, p 20.

4 Department of Immigration and Citizenship, supplementary submission 129d, p 9.

5 The only venue for the grant of a bridging visa for offshore entry people is under subsection 46A(2) of the Migration Act, whereby the Minister may exercise the power to allow a valid application to be made if he/she considers it to be in the public interest.

6 Taylor S, 'Immigration detention reforms: A small gain in human rights', *Agenda* (2006), vol 13, no 1, pp 56.

Table F.1 Bridging visa categories available to people in immigration detention

Category	Criteria	Number of people in community holding this visa as at 30 June 2008
Bridging visa E (BVE) - subclass 050	Available to certain unlawful non-citizens in three general circumstances. They are: <ul style="list-style-type: none"> - to provide lawful status to an unlawful non-citizen arranging to depart Australia; or - to provide a lawful status to a non-citizen who is pursuing a claim of one kind or another to remain in Australia; or - to provide lawful status to an unlawful non-citizen in criminal detention, including a person in remand or a person serving a custodial sentence, so that immigration detention is unnecessary for the duration of the criminal detention. 	5923
Bridging visa E (BVE) - subclass 051	Available to unauthorised arrivals applying for a protection visa who have either been refused immigration clearance or who have bypassed immigration clearance and come to notice within 45 days of entering Australia and satisfy at least one of the following criteria: <ul style="list-style-type: none"> - are less than 18 years of age or more than 75 years of age - have a special need based on health or torture or trauma, in respect of which a medical specialist appointed by immigration has certified that the non-citizen cannot be properly cared for in a detention environment - are the spouse of an Australian citizen, permanent resident or eligible New Zealand citizen. Applicants must meet health criteria.	2
Bridging Visa R - Removal Pending (RPBV)	Enables the release, pending removal, of people in immigration detention who have been cooperating with efforts to remove them from Australia, but whose removal is not reasonably practicable at that time. This visa can only be applied for on written invitation of the Minister. Applicants must pass the character test and be assessed by ASIO as not being a risk to security.	16

Sources: Department of Immigration and Citizenship, supplementary submission 129f, pp 27-28; supplementary submission 129d, p 9; Migration Regulations 2.20A; Kamand S et al, Immigration Advice and Rights Centre, *The immigration kit (2008)*, 8th ed, The Federation Press, p 177. Certain persons in immigration detention may also be eligible for a Bridging Visa F, available to a person who is of interest to the police in relation to offences involving people trafficking or sex slavery. While people in detention can be eligible for Bridging Visa E (general), most of the people holding this visa will not, in fact have come from immigration detention, as this visa is usually granted as an alternative to detaining someone who is making arrangements to depart the country or pursuing visa applications or appeal processes.

