



COVERSHEET

Minister	Hon Andrew Little	Portfolio	Immigration
Title of Cabinet paper	Extending the Refugee Family Support Category to Afghan evacuees	Date to be published	15 September 2023

List of documents that have been proactively released

Date	Title	Author
July 2023	Extending the Refugee Family Support Category to Afghan evacuees	Office of the Minister of Immigration
19 July 2023	Extending the Refugee Family Support Category to Afghan evacuees DEV-23-MIN-0145 Minute	Cabinet Office

Information redacted

YES

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Some information has been withheld for the reason of international free and frank opinions.

In Confidence

Office of the Minister of Immigration

Cabinet Economic Development Committee

Extending the Refugee Family Support Category to Afghan evacuees

Proposal

- 1 This paper seeks agreement to extend eligibility under the Refugee Family Support Category (RFSC) to Afghan evacuees who supported New Zealand in Afghanistan and were subsequently granted residence following the Taliban takeover.

Relation to government priorities

- 2 The proposals in this paper support our priorities to improve the wellbeing of New Zealand citizens and residents and their families and demonstrates our ongoing commitment to support Afghan nationals who supported New Zealand.

Executive Summary

- 3 Following the Taliban takeover in 2021, the Government evacuated, and resettled in New Zealand, Afghan nationals and their immediate families who supported the New Zealand Defence Force, New Zealand Aid Programme and other New Zealand agencies in Afghanistan [CAB-21-MIN-0323]. Since the evacuations, over 1,700 people have arrived in New Zealand and over 1,400 Afghan nationals have been granted residence under the bespoke Afghan Emergency Resettlement Category.
- 4 As resident visa holders these Afghan nationals can, where otherwise eligible, support their partners, dependent children and parents to come to New Zealand. However, despite having similar backgrounds and settlement challenges as refugees and protected people this cohort are unable to access the Refugee Family Support Category (RFSC). The RFSC facilitates the successful resettlement of refugees and protected people resident in New Zealand by providing them with an opportunity to sponsor family members who do not qualify for residence under any other category.
- 5 To support their successful resettlement in New Zealand, I am seeking Cabinet agreement to extend eligibility to the RFSC to those Afghan nationals granted residence (including partners and dependent children) due to their links to supporting New Zealand agencies. This aligns with previous Cabinet decisions to extend access to the RFSC to Afghan interpreters and their partners and dependent children [EGI-15-MIN-0146] and demonstrates our ongoing support to those who supported New Zealand in Afghanistan.
- 6 I note that there is considerable demand under the RFSC, and this extension in eligibility would increase that demand. I recommend communications material developed to support any announcement on this decision be clear about likely timeframes for accessing this category to manage expectations. I also recommend that

work is undertaken on whether a further increase to the annual places (which recently doubled from 300 to 600) under the RFSC is warranted following the evaluation which currently underway (scheduled to conclude in late 2024/early 2025).

- 7 Subject to Cabinet's agreement, I will certify new immigration instructions to give effect to the decision as soon as practicable.

Background

- 8 In response to the Taliban takeover, on 16 August 2021, Cabinet agreed in principle to [CAB-21-MIN-0323]:

8.1 the deployment of New Zealand Defence Force assets and/or personnel to assist with the extraction of nationals and approached Afghan citizens subject to operational deployment decisions by Australia and other countries and;

8.2 that Afghan nationals may be considered for resettlement in New Zealand if they:

8.2.1 worked directly with the NZDF, NZ Police, MFAT or other New Zealand agencies during the Provincial Reconstruction Team period (2000-2013) or since, or were employed by third parties who worked alongside these agencies; and are able to be verified by those agencies;

8.2.2 provided material assistance to the Inquiry into Operation Burnham and can be verified by relevant parties;

8.2.3 there are reasonable grounds to believe that the safety or well-being of the individual or their immediate family has been put at risk from their association with New Zealand in Afghanistan, and that no other partner government (e.g. US, Canada) would bear greater responsibility for their welfare; and

8.2.4 this would apply to individuals or/and their immediate nuclear family only.

- 9 Following these decisions, the then Minister of Immigration agreed to establish a residence category to facilitate the resettlement of Afghan nationals as agreed by Cabinet and a comprehensive and unprecedented cross-Government operation to evacuate and resettle in New Zealand those eligible was undertaken.

- 10 As well as organising and funding travel and visas, extensive settlement and welfare support was provided on arrival to this cohort. This was a unique policy which reflected that we had a special obligation to assist this cohort, particularly those who faced a real risk of persecution because of their linkages to New Zealand.

- 11 Since the initial evacuations, over 1,700 people have arrived in New Zealand from Afghanistan, however, a number of those were already New Zealand citizens and residents so did not need to apply for residency. As of 6 February 2023, 1,463 people were approved residency under the bespoke category.

Afghan evacuees currently have pathways to support immediate but not wider family to come to New Zealand

There are existing immigration pathways for family members of residents

- 12 As noted above, many of those evacuated were accompanied by their immediate families. However, for those that were unable to do so there are existing immigration categories that this cohort could use to reunite with select family members. Those granted residence can support their partners and dependent children to come to New Zealand, subject to meeting the eligibility requirements.
- 13 Those eligible will also be able to access the Parent Category. However, in order to be eligible to sponsor a parent under the Parent Category, sponsors must be New Zealand citizens or residents who have been resident here for at least three years, so Afghan evacuees will not yet be able to access this pathway. There are also income requirements and restricted numbers (which means there may be long wait times) which may impact this cohort's ability to sponsor their parents under this category.

The Refugee Family Support Category (RFSC) allows for wider family reunification for refugees

- 14 In addition to general family immigration pathways noted above, refugee pathways explicitly provide for wider family reunification. Having the ability to reunite with family is particularly important for refugee and humanitarian pathways to support successful settlement for those who can often have complex settlement needs (for example, mental health and trauma). Wider family reunification for this cohort also acknowledges that this cohort have been forcibly displaced from their homes (and sometimes families) and may be resettled in a country very unlike their home.
- 15 The main immigration pathway to support this wider family reunification is the RFSC, which facilitates successful resettlement by providing those eligible with an opportunity to sponsor family members who do not qualify for residence under any other category.
- 16 The RFSC provides 600 places per year¹ for people who were granted residence on the basis of being a refugee, protected person or Afghan Interpreter (or their partner or dependent child) to sponsor a family member and their partner and any dependent children to gain residence in New Zealand.
- 17 Priority is given to those who have no other close family members in New Zealand (except dependents) – Tier One sponsors. Those who already have family in New Zealand – Tier Two sponsors, are only invited to apply if there are sufficient places available once all Tier One applications have been made. Tier Two is currently closed so no registrations are currently able to be made.
- 18 Successful sponsors can sponsor one eligible family member and their partner and dependent children. More information on the RFSC, including who is eligible to sponsor and be sponsored and the two-tier registration system, is included at Annex One.

¹ This was doubled from 300 places from 1 July 2022.

As Afghan evacuees have not been recognised as refugees, they are not eligible for the RFSC

- 19 While they shared many of the same characteristics as refugees (such as a fear of persecution), Afghan nationals evacuated and granted emergency visas and subsequently residence, as part of this one-off category are not eligible to sponsor further family under the RSFC as they have not been recognised as refugees in New Zealand. As residence class visa holders, they are not legally able to make a claim for recognition as a refugee or protected person under the Immigration Act 2009.

I am seeking Cabinet's agreement to extend access to the Refugee Family Support Category so they can reunite with wider family

- 20 As many of these Afghan nationals left family behind and may have limited ability to sponsor family members under existing pathways (particularly at this stage), there have been several calls to expand access to family reunification pathways, such as the RFSC for this cohort. This has included calls from the Women's International League for Peace and Freedom who noted in particular the impact the current settings would have on parents (mothers specifically) and wider family, who are often integral to the family unit.
- 21 As noted above, this cohort share many characteristics with refugees, notably the fear of persecution, in this case, due to their linkages to supporting New Zealand in Afghanistan. There is precedent for expanding access to the RFSC for 'refugee like' cohorts. In 2015, Cabinet agreed to extend access to the RFSC (on the same basis as refugees) to Afghan interpreters and their dependants² [EGI-15-MIN-0146 refers]. As part of this decision, Cabinet noted that some Afghan interpreters without family were struggling with settlement, and many had concerns for the safety of members of their families.
- 22 As with expanding access to Afghan interpreters, allowing Afghan evacuees access to the RFSC would demonstrate our ongoing commitment and support of those who supported New Zealand in Afghanistan.³ It would also support those Afghan nationals to settle well in New Zealand, particularly those who currently have no family in New Zealand.
- 23 I note that Afghan evacuees would be eligible for the same level of support as other RFSC visa holders. While this is not the same level of support as initial Afghan evacuees were provided, I consider that this is appropriate given that this cohort will have family members to support their settlement (unlike the initial Afghan evacuees).

I note that expanding eligibility for the RFSC will increase demand in an already oversubscribed category and may raise equity concerns

² In 2012, Cabinet agreed to the settlement in New Zealand of 44 Afghan interpreters and their dependants [CAB Min (12) 37/11 and CAB Min (12) 44/28]. As a result of this, 44 Afghan interpreters and 96 dependants were granted permanent residence in New Zealand by the Minister of Immigration under section 72 of the Immigration Act 2009.

³ Applicants would have to meet a number of requirements in addition to having an eligible sponsor, including relating to identity, health and character.

- 24 There is considerable demand under the RFSC and expanding access to Afghan evacuees is unlikely to provide immediate or quick access to family reunification for many of this cohort.
- 25 Of the 1,463 evacuees granted residence, 232 were the sole applicant on their residence application, meaning (unless they have subsequently used other immigration pathways to reunite with family) they may not have family in New Zealand. This means that so long as they meet other eligibility criteria, they could register under Tier One of the RFSC as soon as eligibility was expanded to this group.
- 26 However, while ability to register would be relatively quick for those with no or only dependent family, it will, given demand, take considerable time for this to result in these family members being able to come to New Zealand⁴. INZ officials estimate it may take two to three years for new applications to be allocated and decided within the current annual cap.⁵ There are also significantly more people eligible for Tier One following the increase in the Refugee Quota from 750 to 1500 and the Community Organisation Sponsorship Pilot (CORS) being eligible to sponsor under RFSC, which is likely to increase waiting times for applications. Increasing to this Afghan evacuees will further add to the demand for places.
- 27 1,231 of those with residence were included in an application with multiple people, meaning they are more likely to have family in New Zealand and therefore (unless the family are all dependents) would not qualify under Tier One. They would instead have to wait for Tier Two to reopen to submit a registration. There is significant demand for Tier Two eligibility. By way of example, Tier Two last reopened in November 2017 and was only open for three days (receiving around 6,000 registrations with a quota of only 300 annually at that time).
- 28 Based on the current number of annual places under the RFSC and the existing number of people in the Tier Two queue (approximately 4,500), there is no realistic possibility of Tier Two reopening in the coming years.⁶
- 29 While it may take a while for some to access this category, I consider that so long as expectations regarding timeframes are managed, it is more desirable to provide this cohort with the opportunity to sponsor their wider family members than them currently having no pathway to do so.
- 30 I note that including more people in the eligibility for Tier One also means that those who have been waiting in the Tier Two queue for a considerable period of time will face further delays to access this category. However, this is in line with the purpose of the RFSC's tiered system to prioritise quicker access to family reunification for those who have no, or only dependent, family members in New Zealand. I also note that applicants are prioritised based on whether they are eligible for Tier One or Tier Two.

⁴ There also remains challenges in supporting and organising travel from Afghanistan. While commercial flights have now resumed, there still remains logistical challenges such as those with a lack of valid documentation.

⁵ There are currently 123 unallocated Tier One residence applications that will be assigned prior to any new ones. This is on top of around 190 applications assigned to a Case Officer. The total of these residence applications contains over 1200 people.

⁶ It would take approximately eight years to process the 4,500 currently in the Tier Two queue. This is assuming there are 600 places a year and no Tier One places. However, it is likely that only a small proportion of the 600 places will be left over outside of Tier One each year.

They are not prioritised based on need within each category (applications are considered in chronological order).

I note other groups would like access to wider family reunification pathways and this decision could raise equity concerns

- 31 There are several groups in New Zealand, including many recent migrants, who would also like the ability to sponsor family members to receive residence in New Zealand (including those not eligible under the Parent Category).
- 32 Expanding the RFSC to Afghan evacuees may raise questions of equity with those groups and may lead to continued or increased calls for a similar change for other cohorts. There may be discontent among other communities whose families are experiencing human rights violations in their country of origin, but who are unable to be brought to New Zealand (I understand that this was recently flagged by stakeholders in relation to the extension of the 2022 Special Ukraine Visa, which is a temporary visa and these visa holders are not recognised as refugees⁷).
- 33 However, I consider that, in line with decisions taken for Afghan interpreters previously and the unique obligation New Zealand has to support this cohort, there is a precedent and justification for expanding eligibility to this cohort specifically, especially given the characteristics they share with refugees. Because of this, I consider that risks related to this proposal are minimal. However, it will be important to manage expectations or concerns with immigration stakeholders through careful messaging about why eligibility was expanded to this cohort specifically.

I am recommending further consideration be given to the number of places available under the RFSC subject to the ongoing evaluation

- 34 I am not recommending an increase to places under the RFSC at this time, despite the significant demand for this category.
- 35 Places under the RFSC were doubled from 1 July 2022 from 300 to 600 places. Alongside this, additional support has been funded under this category to cover the cost of sponsor registration fees, application fees, immigration levies and the coordination and cost of medical assessments and flights. Following these changes, an evaluation of the RFSC is underway that will consider the recent increase in places and additional support.
- 36 I note that expanding this category would have fiscal implications and may have implications on infrastructure (notably housing). Given this, and the ongoing evaluation, I recommend that consideration of increasing places under the RFSC is considered alongside the outcome of the evaluation (scheduled to conclude in late 2024/early 2025). By then, the impact that expanding the category to Afghan evacuees had on demand would also be clearer, and this could then be considered as part of the standard budget process.

Exclusion of minors from the RFSC

⁷ I note that Ukrainian New Zealanders are able to sponsor wider family to come to New Zealand under the 2022 Special Ukraine Visa and that officials are currently considering the future of this policy including whether a residence pathway is warranted for this cohort.

- 37 Minors are excluded from the RFSC, and this exclusion will also carry over to the proposed extension to Afghan evacuees. I am not proposing to review or amend the wider RFSC settings at this time.
- 38 This exclusion reflects that minors should not be expected to take on sponsorship responsibilities, [REDACTED] Free and frank opinions [REDACTED]
[REDACTED]
- 39 I understand that approximately 16 minors arrived in New Zealand as part of the evacuations, either unaccompanied or separated from their parents/guardians. I understand that all of these minors are currently in care.
- 40 Given this number is so low, I consider the best way forward for this cohort is to take a case-by-case approach to consider whether parents or other family members should come to New Zealand [REDACTED] Free and frank opinions [REDACTED]. This process would ensure that best interests of the children are considered, consistent with our international commitments. It would also be faster than RFSC, which as previously noted would result a two to three year wait.

Financial Implications

- 41 There are no financial implications that arise from this paper. As noted above, I have asked officials to further consider the current per annum places under the RFSC following the conclusion of the evaluation, which is underway, in light of new demand that may be created by these decisions, and may, if warranted seek funding for an increase in places.

Legislative Implications

- 42 There are no legislative implications which arise from this paper. However, the proposal in this paper requires an amendment to immigration instructions. Immigration instructions are the rules and criteria for the grant of visas and entry permission to New Zealand and are set out in the Immigration New Zealand Operational Manual. Section 22 of the Immigration Act 2009 authorises the Minister of Immigration to certify immigration instructions.
- 43 Subject to Cabinet's agreement, I will certify new immigration instructions in line with the decisions taken.

Impact Analysis

Regulatory Impact Statement

- 44 As no changes to legislation are required for this policy change, the regulatory impact requirements do not apply to these proposals.

Climate Implications of Policy Assessment

- 45 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 46 The proposals in this paper will benefit Afghan nationals who supported New Zealand in Afghanistan. Having the ability to reunite with family is particularly important for refugee and humanitarian pathways to support successful settlement for those who can often have complex settlement needs (for example mental health and trauma).
- 47 It is proposed that there will be no further increase to the RFSC at this time. This means that there will be no broader implications for New Zealanders related to increased demand for services or increased pressure on infrastructure. However, it will impact those already waiting for Tier Two by creating further delays should those newly eligible for Tier One apply.

Human Rights

- 48 The Ministry of Business, Innovation and Employment considers that the proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. Allowing for family reunification pathways also supports our international obligations and commitments including under the International Covenant on Civil and Political Rights.

Consultation

- 49 This paper was prepared by the Ministry of Business, Innovation and Employment. The Ministries of Foreign Affairs and Trade, Social Development and Defence; the Ministry for Ethnic Communities; the Department of Prime Minister and Cabinet; The Treasury and Oranga Tamariki were consulted.

Communications

- 50 Subject to Cabinet agreement, I will develop communications material with officials to ensure those affected are aware of the changes and are supported to make registrations. I note, in order to manage expectations, communications material will need to be clear on:
- the likely timeframes for family reunification under this pathway; and
 - the level of support that is provided under the RFSC compared to the unprecedented level received by Afghan evacuees. I note it is proposed this cohort be included in the New Zealand Refugee Resettlement Strategy in the paper *Refreshing the Refugee Resettlement and Migrant Settlement strategies* also being considered by Cabinet so officials could monitor their settlement journey and identify and address any challenges.

Proactive Release

- 51 This paper will be proactively released in line with the Cabinet Office circular Proactive Release of Cabinet Material: Updated Requirements [CO (18) 4].

Recommendations

The Minister of Immigration recommends that the Committee:

- 1 note that in response to the Taliban takeover in August 2021, the Government evacuated, and resettled in New Zealand, Afghan nationals and their immediate families who supported the New Zealand Defence Force, New Zealand Aid Programme and other New Zealand agencies in Afghanistan[CAB-21-MIN-0323];
- 2 note that residence was offered to those eligible as outlined in **recommendation 1**;
- 3 note that the Refugee Family Support Category (RFSC) supports successful resettlement of refugees and protected persons by providing them with an opportunity to sponsor family members who do not qualify for residence under any other category;
- 4 note that those granted residence as per recommendation 1 have not been recognised as refugees in New Zealand and as residence class visa holders, are not legally able to make a claim for recognition as a refugee or protected person meaning they are not eligible for the RFSC;
- 5 note that Afghan evacuees are likely to share similar resettlement challenges as refugees;
- 6 note that Cabinet previously agreed that eligibility for RFSC (on the same basis as refugees) be extended to the Afghan interpreters and their dependants, who were resettled in New Zealand [EGI-15-MIN-0146];
- 7 agree that eligibility for the RFSC (on the same basis as refugees) be extended to those granted residence as per recommendation 1 (including partners and dependent children);
- 8 note that, if recommendation 7 is agreed, those with no or only dependent family members will be able to register to sponsor family members (one opportunity only) for residence in New Zealand straight away, while those with family members already in New Zealand will have to wait for Tier Two of the RFSC to reopen for registration which is not expected to be for a number of years based on current numbers;
- 9 note that minors are excluded from the RFSC, and this exclusion will carry over to the proposed extension to Afghan evacuees;
- 10 note that the approximately 16 unaccompanied minors that arrived in New Zealand as part of the Afghan evacuations will be managed on a case-by-case basis to consider whether parents or other family members should come to New Zealand;

- 11 note that an evaluation of recent changes to the RFSC is currently underway and that the Minister of Immigration may report back to Cabinet if a further increase to annual places is required following that evaluation.

Authorised for lodgement

Hon Andrew Little

Minister of Immigration

Annex One: Overview of Refugee Family Support Category eligibility

Who can sponsor family members under the RFSC?

For the purpose of RFSC, an 'eligible sponsor' is a New Zealand citizen or resident who:

- was granted a residence class visa in New Zealand on the basis of:
 - their status as a refugee⁸ or protected person⁹; or
 - being an Afghan interpreter; or
 - being the partner or dependent child of an Afghan interpreter who accompanied that Afghan interpreter to New Zealand; and
- has not sponsored any other principal applicant who has obtained a resident visa in New Zealand under RFSC (or Refugee Family Quota); and
- is in New Zealand; and
- is aged 18 years or over; and
- meets the requirements for an acceptable sponsor as set out in immigration instructions.

Two tier registration system

The RFSC has a two-tiered system which prioritises places for those with no or only dependent family members in New Zealand.

Tier One registrations are pulled first – in the order they entered the queue until the available places are met. If the places available annually under RFSC are not filled by people included in Tier One registrations selected from the queue, registrations required to fill the remaining places will be selected from the Tier Two queue.

If the places available annually under RFSC are not filled by people included in Tier One registrations and the registrations in the Tier Two queue are insufficient to fill the remaining quota of places, INZ will call for Tier Two sponsors to submit registrations.

Tier One requirements:

- has no other 'family member' who is eligible for residence in New Zealand under any other category of residence instructions and either;
- has no 'immediate family' living lawfully and permanently in New Zealand or
- is the 'sole carer' of a dependent relative¹⁰ or dependent relatives in New Zealand and has no other 'immediate family' living lawfully and permanently in New Zealand apart from the dependent relative who is under care.

⁸ For the purpose of RFSC, 'refugee' means a person who was granted a residence class visa in New Zealand under residence instructions by virtue of being either a mandated or quota refugee (people determined to be refugees by the UNHCR before arrival in New Zealand; or a successful applicant under the Community Organisation Refugee Sponsorship category; or a Convention refugee (people recognised as refugees by the New Zealand Government under the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees).

⁹ For the purpose of RFSC, 'protected person' means a person who was granted a residence class visa in New Zealand under residence instructions by virtue of being recognised as having protection status in accordance with New Zealand's obligations under the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; or 1966 International Covenant on Civil and Political Rights.

¹⁰ For Tier One sponsorship purposes, a sponsor will be considered to be the sole carer of a dependent relative or relatives in New Zealand if they have the primary responsibility for the day-to-day care of a dependent relative or relatives in New Zealand, on an ongoing basis. Note: A dependent relative can be a sponsor's partner, parent, child, grandparent, grandchild, uncle, aunt, nephew, niece or adult sibling.

Tier Two requirements:

- has ‘immediate family’ in New Zealand
- has no other ‘family member’ who is eligible for residence in New Zealand under any other category of residence instructions
- has been a New Zealand citizen and/or the holder of a residence class visa for at least three years immediately preceding the date the registration form for RFSC sponsor is lodged and
- in each of the three 12-month portions within that three-year period has spent a total of 184 days or more in New Zealand.

Who can be sponsored under the RFSC?

A Tier One sponsor can sponsor their parent, grandparent, grandchild, uncle, aunt, nephew, niece, adult sibling or adult child, and that person's partner and/or dependent children for a resident visa.

A tier two sponsor can sponsor their parent, adult sibling, adult child, or grandparent (if that grandparent is the sponsor's legal guardian¹²), and that person's partner and dependent children for a resident visa.