PEOPLE AND PLACE

MANAGING THE COST AND SCALE OF FAMILY REUNION: CURRENT DILEMMAS

Bob Birrell

Growth in the numbers of family reunion migrants, especially those with low-skilled, poor and non-English-speaking backgrounds, has prompted Government attempts to slow the intake. So far the politics of the situation have meant such attempts have met with limited success. The implications are explored in this article.

It is to be hoped that the recent debate engendered by Pauline Hanson has helped close off further references to racial questions in the debate about immigration. Meanwhile, the more mundane detail of immigration planning has received relatively little notice. The Prime Minister has insisted that the race issue should not close off discussion about immigration policy. However, in reality, the fervent denunciation of Ms Hanson's targeting of Asian migration has made it more difficult to review migration issues rationally. The recent 7 November Senate debate which led to the rejection of a number of Coalition measures designed to manage the Family Reunion flow better was notable both for the moral intensity the opposition parties and independents brought to the issue and their unwillingness to look carefully at the settlement cost and skill issues.

FAMILY REUNION: THE DEMOGRAPHIC AND SETTLEMENT BACKGROUND

Immediate family reunion (mainly spouses, fiancé(e)s, dependent children and parents) has doubled since the early 1980s to reach 48,700 in 1995-96. These numbers do not include the spouses and children who accompany principal applicants entering Australia as migrants. They are limited to relatives brought here by an Australian resident sponsor. In the case of spouses they include 'new' marriages and 'old' marriages, as where a migrant re-unities with a spouse originally left behind. The doubling is largely due to the establishment of substantial migrant communities in Australia with social ties to impoverished or politically insecure countries marked by strong emigration 'push pressures'. These include Indochina, China, Hong Kong, the Philippines, the Indian subcontinent, Fiji, the Lebanon, the former Yugoslavia and much of Eastern Europe. Members of these communities have shown a high propensity to sponsor relatives or to return to the homeland to find a marriage partner. One consequence is a sharp increase in the number and proportion of family reunion migrants with limited English and low skills.

The former Labor Government took some action to 'manage' the resultant family reunion flow. It introduced a Balance of Family ruling affecting parents in 1989, a requirement that sponsors of parents sign an Assurance of Support (AOS) incorporating a prepaid bond and

non-reimbursable health charge (in 1992), a requirement that spouses sponsored on-shore initially receive a two-year temporary entry visa pending proof of the bona-fides of the marriage, and a restriction on access to some social security allowances (unemployment, parenting and sickness) during the first six months of residence in Australia (in effect since January 1993).

Nevertheless, the number of immediate family (or Preferential Family) visas has continued to climb, largely because no action was taken to control the main growth point, that is, off-shore spouses and fiancé(e)s. By March 1996 (when Labor lost office) any Australian resident could sponsor a spouse or fiancé(e) regardless of the time of arrival of the sponsor in Australia and regardless of his or her capacity to provide for the partner once here. Nor were the bona fides of the marriage rigorously tested. Indeed, during 1995-96 only six per cent of all spouse applications were rejected, though, in the case of Vietnamese applicants the percentage was closer to one third. In addition, the Australian sponsor was not required to make any contribution to the partner's settlement costs (such as English language or job skill training and welfare benefits). Sponsors had to promise to provide for their partners, but only for the first year in Australia. Only in about six per cent of cases (in 1994-95) did overseas officers use their power to require the sponsor to sign a formal Assurance of Support if they thought he or she had limited resources. However, even in such cases, there was no requirement for any bond to accompany the AOS (as with parents).

There is no doubt that the settlement costs deriving from the family reunion program have been significant, mainly because of high welfare utilisation rates.[1] Duncan Kerr the current Labor shadow for the Department of Immigration and Multicultural Affairs (DIMA) portfolio has stated that 'studies consistently show that, after a reasonable period of settlement, migrants have a lower uptake of unemployment payments than Australian born residents'.[2] This is incorrect. As of mid-1966 the proportion of the Australian-born and overseas-born workforce in receipt of Job Search and Newstart Benefits (at around nine per cent) was identical, at 8.7 per cent. But when age distribution is taken into account, the Australian-born rate is much lower. This is because of the much higher proportion of the Australian-born workforce aged in the twenties, that is, the major 'unemployment prone' years. Even more to the point, the unemployment benefit recipient rates for the major birthplace groups entering under the family reunion program are generally way above the Australian-born level. As of mid-1996 the rate for the Indochinese-born workforce (most of whom have been resident in Australia for more than a decade) was about 26 per cent and the Lebanese about 22 per cent. Rates for the recently-arrived migrants from these countries are double these levels.[3]

The costs of accommodating parents are especially high. The inflow of parents has increased despite the Balance of Family, AOS and bond requirements noted above. These requirements have diminished claims for settlement assistance during the initial two years in Australia, but about half of these parents subsequently access Federal welfare assistance, either through unemployment benefits if below the pension age or via the special benefit allocated to those not residentially eligible for the pension (ten years residence) if in the pensionable ages.[4]

Once the ten-year requirement is reached these parents then move on to the old-age pension. Unlike older migrants from most major Western European source countries (particularly the UK) those from poor countries like China and Vietnam do not bring portable pension entitlements with them. And as with the spouse flow, the trend in parent arrivals is strongly towards poorer source countries like China.

Table 1

[Table 1] details the pattern of parent visa applications. The impact of the 1990 Balance of Family regulation in 1990 is clear. But its impact is diminishing. Also, the recent increase is not just a PRC phenomenon. Only 2,092 of the 8,342 applications in 1994-95 were from PRC parents and 3,107 of the 10,154 in 1995-96. Since the rate of rejections has been running at about 10 per cent, the prospect by early 1996 was of further growth in parent visa numbers.

The ramifications of growth in the Preferential Family category came to a head during 1995-96 when, halfway through the program year, the Labor Government had to admit that an unanticipated surge in applications had caused a blow out in the overall program numbers. As a consequence the Government sharply cut the skilled component of the program in order to avoid overshooting its overall 1995-96 program target.

Table 2

[Table 2] details the major off-shore components of Preferential Family migration (where most of the expansion occurred) during the period 1993-94 to 1995-96. It also indicates the share of PRC visas in this growth.

The sudden escalation of applications from China reflected the completion of the 1 November 1993 category evaluations. These resulted in 26,980 pre-Tien an men arrivals receiving permanent residence by mid-1995, another 12,777 post-Tien an men arrivals gaining permanent residence during 1995 and 1996 through Category 816 (for those who had applied for Asylum after mid-1989) and a further 1,572 under Category 818 (for the higher educated who did not meet the requirements of the other two categories). All 41,329 of these new residents were given the immediate right to sponsor all Preferential Family category relatives, including parents. Normally there is a two year residence requirement for parent sponsorships. In the case of the pre-Tien an men arrivals most of those already married when entering Australia were subsequently allowed to bring spouses and children to Australia (they are included in the 26,980 figure above). The 1995-96 increase in spouse visas from China thus largely reflected the reuniting of spouses and children with applicants who had been successful under visa categories 816 and 818.

The surge in the Preferential Family intake resulting from the 1 November 1993 regularisation does not mean that the overall increase is a one-off phenomenon. It is true that applications from China have began to subside, as the initial 'reuniting' phase slows. It appears that most of the Chinese-Australians currently sponsoring spouses are unmarried

persons linking to 'new' partners. Any decline in Chinese sponsorships is likely to be compensated (in a year or two) by the steady underlying increase in the number of relatives sponsored from other posts, particularly those which fit the 'push' category outlined above. These include Fiji, the Lebanon, India, Pakistan and Sri Lanka.

THE COALITION GOVERNMENT RESPONSE

On 23 May 1996 the Government introduced legislation to extend the existing restriction on access to welfare benefits from six months to two years and to broaden the range of benefits affected to cover essentially all benefits (including Additional Family Payments). On 3 July the Government announced its intention to reduce the Preferential Family program to 36,700 for 1996-97 (from an actual visa allocation of 48,720 in 1995-96). It also indicated an intention to cap those Preferential Family categories where it held the authority to act (fiancé (e)s, working-aged parents and other Preferential Family), and to introduce new, more restrictive migration regulations which would impact on visa applications received after the 3 July announcement. The Government also indicated that it would introduce legislation to give it the power to 'cap and queue' visa applications for aged parents and spouses and to require those applying on de facto spouse grounds to establish that their relationship extended for at least two years prior to the visa application.

The most important of these new regulations were a tougher Balance of Family ruling for parents which required more than half of the children to be resident in Australia (instead of at least half as in the old ruling), the requirement that all sponsorships for Preferential Family applicants be accompanied by an AOS and bond (as for parents), the requirement that sponsors be citizens and an extension of the two-year temporary residence visa provision to spouses sponsored off-shore.

The Government introduced these regulations to the Parliament on 1 October 1996. Since they were regulations (and not primary legislation) they took effect immediately (subject to the possibility of being 'disallowed' in the Senate) and thus applied to all applications received since the 3 July announcement date. The Government has also proclaimed its 1996-97 capping levels. These are indicated in

Table 3

[Table 3] along with the notional outcomes which the Government needs for the other Preferential Family categories if it is to achieve its 1996-97 Preferential Family program target.

The planning figure of 36,700 figure represents a major reduction. But its attainment is uncertain because of the Government's difficulties in getting its proposed new legislation and regulations through the Parliament.

POLITICAL REACTIONS

1. Restrictions on welfare for recently-arrived migrants

The Coalition Bill to restrict access to welfare benefits was mild in comparison to the legislation passed through the United States Congress and signed by President Clinton just prior to the 1996 presidential election. The US legislation debarred the payment of any Federal welfare payments to migrants until they became citizens (applications can be made after five years). In addition, should a migrant receive assistance from state or local governments such governments are empowered to sue the sponsor for repayment. Nevertheless, the Coalition welfare Bill has excited considerable opposition. It was initially dispatched to a Senate Committee. The resulting inquiry recommended that the legislation be passed, but with dissenting reports from Labor and the Democrats. Labor agreed to accept the two year extension, but argued that it should be limited to labour market payments. The Democrats took the more radical stance of opposing any restriction on migrants' access to welfare payments on the grounds that there should not be 'differing standards for some members of the community and not for others - particularly when such distinction is based upon a person's country of origin'[5]

The two year 'Waiting Period' legislation passed the Senate on 28 November but in heavily amended form. It will only affect unemployment benefits and sickness benefits. The knocking out of Special Benefits is especially important because the Government has estimated that about 30 per cent of those affected by the waiting period for unemployment and sickness benefits will access the Special Benefit.[6] This high rate partly reflects the Government's difficulty in implementing the tough Special Benefit assessment rules it announced earlier in 1996.[7] Other potentially costly losses include a provision removing the exemption from the waiting period for spouses joining established marriages where the Australian sponsor has already resided here over the required waiting period.

This Senate's action may become the trigger for a double dissolution of Parliament. It thus promises to become highly controversial. The Government claims that the combination of lost savings from the welfare benefits removed from the original proposals (particularly parenting and family allowances) will cost $227 million over four years, plus another $107 million for the Special Benefit payments noted above. However, in reality it will be far less because in December 1996, with the support of the Labor Party, the Government's proposal for a two-year temporary-entry visa for all spouses and fiancé(e)swas passed. As a result, those affected will be precluded from all social welfare benefits, including Austudy and access to education at local fees, because such benefits require permanent residence. Those on Temporary Entry visas can only claim Medicare and if the relationship breaks down or the partner dies a Special Benefit.[8]

The only exception is where a spouse brings in a child, or has a child in the first two years of residence here. If so, the Australian resident male partner will be able to access family payments. The mother, however, will not be able to claim the Parenting Allowance. These restrictions on Temporary entrants will remove at least 25,000 of the settler arrivals hitherto most likely to claim welfare assistance during their first two years residence in Australia.

2. Regulations for family reunion control

The proposed regulations requiring an AOS and accompanying bond for all Preferential Family applicants, the citizenship requirement for sponsors, and the tightening of the Balance of Family test for parents were all rejected by the Senate on 7 November 1996.

The 7 November debate was notable for the high moral tone expressed by those opposed to the changes. Senator Bolkus, who led for Labor, argued that a generous family reunion program was a key component of Australia's allegedly successful 'inclusive' settlement policies. In his view, to impose financial restrictions on marriage partners is both to undermine this inclusive policy and to discriminate against less affluent (often NESB) sponsors. As Bolkus put it:

Are you trying to keep kids separated from their parents? Are you trying to artificially keep parents separated from their adult children? I am sure the department has been driven to this by a policy from the Prime Minister (Mr Howard), a policy driven by pollsters and a policy which demands of him to beat the migrant as much as he can. What is the impact of it? You are going to separate families.[9]

For Bolkus and most others opposing the legislation, the implicit assumption was that any support for family reunion controls was tantamount to falling behind the Hanson banner. Thus there could be no rational analysis about whether family reunion should remain an unfettered right even in the face of significant expansion in the numbers arriving and the associated settlement costs. In addition, the Democrats, Greens, and Independents, all of whom opposed the regulations, approached the issue from a humanitarian perspective, the central notion of which was that it is cruel to separate Australian residents from their immediate family. Senator Harradine's position was typical, and crucial, since if he had not voted against the regulations they would not have been disallowed. The final vote was 33 for the disallowance motion and 31 against. Support from Senator Harradine would have tied the disallowance motion and thus led to its loss, since its proponents needed a majority to achieve disallowance. Senator Harridine started from the proposition that 'there ought to be more migrants'. More fundamentally, he argued that:

The bonds of marriage and family are the foundations of any civilised society...I feel that to do what this measure is going to do - that is, to keep husbands and wives and parents and children separated - is not appropriate ... for a civilised country which acknowledges that marriage and family are the basic foundation of a civil society.[10]

Not surprisingly, Harradine was scathing about the proposal to toughen the Balance of Family ruling which in effect meant that families with two siblings would require both to be resident in Australia before parents could be sponsored.

Given the tone of the debate, the Government is unlikely to gain the Senate's acceptance for its most recent legislative initiative, which seeks the power to cap and queue all immigration categories (notably spouses and aged parents) which the Government does not already hold.

The legislation in question was introduced to the Parliament on 16 October. The outcome for another proposal, also introduced on 16 October, to require a two year cohabitation period prior to visa applications for de facto spouses is uncertain.

ALTERNATIVE VIEWS

There is an alternative and more pragmatic way of looking at the family reunion process. For many relatives coming from poorer or politically unstable countries, the movement is more about family relocation than family reunion. For people desperate to move, one solution is for a family member to gain a foothold in a first world country and then to sponsor other family members or community members as spouses, parents or siblings. The recent Chinese flow illustrates the point. Some 40,000 seized the opportunity to move to Australia as 'students' when offered it by a naive Australian Government in the late 1980s. In reality, most were seeking residence in Australia, as their subsequent refusal to honour their original visa commitment to return home when their visas elapsed showed. These 'students' are the most direct beneficiaries of the Senate's vote, since as shown above, they have proved to be most active recent sponsors of spouses and parents.

The situation of the Chinese also illustrates the merits of some (but not all) of the Government's proposals. We know that many are still struggling to establish themselves here. Is it unreasonable to require a few years as permanent residence here before giving permission to sponsor a dependent spouse or parent? The Labor shadow immigration spokesman, Duncan Kerr, has argued citizenship should not be used as the mechanism for this delay. He has a point. Citizenship ought to reflect real choice. But this argument does not preclude requiring a period of settlement adjustment before a migrant exercises his or her family reunion 'rights'.

However, if the Government re-submits its regulations it would do well to exempt those in 'old' marriages from its residence requirement or capping provisions. On the other hand, for those wanting to return for a 'new' partner, it is reasonable to require some delay and in particular to insist that the sponsor show that he or she is capable of looking after the spouse once here. If a sponsor cannot afford a $3,000 bond this is prima facie evidence he or she is not able to do so. The urgency of ensuring sponsors can provide for their relatives is all the more evident now that Labor has agreed to extend the waiting period on access to unemployment benefits to two years. It follows that the Party ought to be willing to ensure that the sponsor can provide for partner during this period.

The crucial point is that the grant of permanent residence status in Australia is a privilege conferring major benefits to the recipient, especially if this recipient comes from a poor society. It allows access to the accumulated wealth and benefits of Australian society without any contribution from the sponsored person (or from the sponsor if recently arrived). These benefits include access to 510 hours of English training, free to immediate family arrivals and currently costed by the Government at $5,500. But, more fundamentally, the family member subsequently has access to the full range of Australian education, welfare, job training and other benefits of permanent residence.

In the case of parents, the long term cost to the Australian taxpayer of permanent residence is large. True, the Government's decision to cap the working-aged parent intake will reduce their numbers, but will not stem the increase in retirement-aged parents. Against the costs of state assistance to provide for these parents, we have the alleged dislocation of families. But even in the case of the two-child family one sibling would still normally be resident at 'home' and therefore, if the parents migrate, they would be leaving that child behind. In addition, there is the severe social dislocation associated with bringing aged parents into a completely different culture, where they are often totally dependent upon the son or daughter in Australia.

Judgements on these issues should seek to balance the humanitarian case for family reunion against the cost factors indicated. I have some sympathy for Senator Bolkus's argument that financial requirements like bonds discriminate against the poor. If the numbers involved were few, the cost factor would not rate as a serious offsetting factor. But the numbers are large. In the case of spouses and fiancé(e)s, about one quarter of all marriages in which Australians were involved in 1995-96 included a migrant partner not holding permanent residence status in Australia. There are currently many more Vietnamese, Lebanese and Chinese Australians returning 'home' for 'new' partners than drawing on partners from their own or any other community in Australia. The incentives to do so are obvious. Such is the attraction of residence in Australia (especially in a context where other avenues to migration are largely closed) that the Australian party can take 'the pick of the crop', sometimes, according to anecdotal evidence, including a dowry. When such marriages lead to large numbers of non-English-speaking and low skilled entrants (in the case of the Vietnamese - predominantly female sewers) serious downstream settlement costs tend to follow.

In these circumstances some slowing down of the process, particularly the requirement of an assessment of the Australian sponsor's capacity to provide is legitimate. Similarly, it is appropriate that the Government require a serious test of bona fides for the claimed family relationship. Labor's declared willingness to pass the two year temporary entry visa provision for spouses, which involves an assessment of whether the marriage is 'genuine and continuing' before a permanent visa is granted is welcome. The Government's two year cohabitation proposals for de facto spouses deserves a similar response.

Australia is unique in allowing permanent residence on de facto spouse grounds. Not even Canada has such a provision. The de facto provision provides a relatively responsibility-free route - since the relationship can easily be abrogated once permanent residence has been gained. Currently, when DIMA officers make judgements about the 'genuine and continuing' nature of de facto relationships they are only expected to take into account whether the partnership has been in existence for six months. The Government's legislation will make it mandatory that the partnership has lasted at least two years. About 30 per cent of on-shore spouse applications are on de facto grounds (though a smaller percentage off-shore). There is evidence that the de facto provision was abused during the 1980s[11] - though less so in the 1990s when DIMA introduced its current two year temporary entry requirement for on-shore spouse applications. Nevertheless, it is an anomaly that, at the time when the Government

has capped fiancé and working-aged parent visa numbers, there is no limitation on the number of de facto spouse visas issued. The two year relationship criteria will at least ensure that those who benefit from this generosity provide solid evidence of a 'continuing' partnership.

Similar arguments about balancing family reunion 'rights' with settlement cost considerations can be applied to the proposal to give the Government the option of 'capping and queuing' spouse and aged-parent visa applications. The United States Government already employs such powers. The US system provides for a quota on the number of spouses and children of permanent resident aliens (those who do not hold citizenship). As of January 1995 there was a waiting list of 1,138,544 for access to this 2A Preference quota, mainly affecting applicants from Mexico, Haiti and other Latin nations.

UNFINISHED BUSINESS

How will these legislative ups and downs affect the Government's targeted reduction in the Preferential Family to 36,700 for the program year 1996-97? When implemented, the two-year Temporary Entry provision for spouses and fiancé(e)s is likely to deter some applications because it will cut off recent arrivals from important Australian benefits, particularly Austudy and access to Australian education on local terms. However, given the 'push pressures' cited earlier, it is doubtful whether non-access to welfare benefits over a two year period will weigh heavily against the long term benefits of residence here. Nor would the requirement of an AOS and bond (if it been passed). The citizenship requirement would have bit hardest because it directly precluded the large numbers of Chinese, British and Malaysians (and some others) who do not hold Australian citizenship (the last because Malaysia does not permit dual citizenship) from sponsoring their relatives.

DIMA has indicated that there was a 16 per cent reduction in Preferential Family applications over the first quarter of 1996-97. This probably reflects the impact of the 3 July announcements, which though subsequently disallowed, would probably have been regarded as the new law by most potential applicants. The prospect is that those deflected are now likely to apply. Additional spouse applicants are also likely from applicants affected by the capping of fiancé visas (which will stop further visas being issued for this category early in 1997). This implies that the Government may have difficulty limiting the intake to the notional levels cited in Table 3.

However, the Government has signalled to officers that it intends to change the balance in assessing Preferential Family applications from the 'facilitative' approach which marked the Bolkus era to one emphasising the 'integrity' of the assessment process. To this end it is currently introducing tougher administrative procedures for the assessment of spouse claims. Previously, officers relied primarily on documentation to judge the bona fides of the marriage, notably proof of the marriage itself. Under the new rules, officers will be expected to ask for more extensive documentary evidence, and at 'high risk' posts require a most applicants to present for an interview. These new procedures are expected to lead to a higher proportion of rejections and some slow down in the rate of processing applications. In these

circumstances the visa program for the Preferential Family categories may be achieved for 1996-97.

Further controversy seems inevitable, especially if the Government acts to implement the 'cap and kill' powers provided by Section 39 of the Migration Act. The Prime Minister has already stated that if this was required in order to reach the Government's targets, then it would take such action. However, to utilise these powers the Government appears to need the passage of some enabling regulations through the Parliament. The opposition parties may refuse to oblige. The saga continues.

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