

Can I stay in Australia after separation? Family law, family violence and visas

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For some people, separation is not only an emotional and financial challenge. It may also create uncertainty about their visa status, their ability to remain in Australia, and the future arrangements for their children.

Visa status can create significant difficulties for victim-survivors who are trying to leave an abusive relationship while also maintaining lawful immigration status.

Where family law, family violence and migration issues overlap, the answers are rarely straightforward. Understanding your options early can be critical.

How does separation affect my visa in Australia?

Some people assume that the end of a relationship automatically means they will lose their right to stay in Australia. However, separation does not automatically affect every visa.

Whether that is true depends on a number of factors, including:

- the type of visa you hold;
- whether a visa application is already in progress;
- whether children are involved;

- whether family violence has occurred; and
- whether there are alternative visa pathways available.

The answer for someone who holds permanent residency may be very different from someone who holds a temporary visa.

Separation can have serious consequences for your visa status in Australia, particularly if your visa was granted based on your relationship. The key points to remember are:

- most partner and dependent visas rely on a continuing relationship with your sponsor;
- you must notify the Department if your relationship ends;
- exceptions apply for family violence and other matters.

Migration advice is essential for anyone concerned that their separation will impact their visa status.

Why visa status matters during family law proceedings

In family law matters, visa status can affect important decisions about:

- where children will live;
- overseas travel;
- relocation requests;
- parenting arrangements;
- employment opportunities; and
- long-term plans for the future.

For example, a parent whose visa is approaching expiry may be facing very different pressures to a parent who has permanent residency or Australian citizenship. These issues often become relevant when negotiations or parenting proceedings begin.

Does family violence give me a right to stay in Australia?

Some people hold a misunderstood belief that experiencing family violence automatically creates a right to stay in Australia.

Unfortunately, immigration law is not that simple.

Some visa applicants may be able to rely on family violence provisions within Australia's migration framework. These provisions can assist certain applicants whose relationships have broken down because of family violence.

However, eligibility depends on the specific visa involved and individual circumstances.

The existence of family violence does not automatically guarantee a visa outcome.

Because every migration pathway has different requirements, obtaining specialist advice as early as possible is essential.

Can I stay in Australia if we have children together?

The involvement of children often adds another layer of complexity.

Many parents are surprised to learn that having a child in Australia does not necessarily provide a parent with a visa pathway, and a child born in Australia is not automatically an Australian citizen (this can be dependent on both parents' visa statuses).

Questions that frequently arise include:

- Can I remain in Australia if my relationship ends?
- Can I move overseas with my child?
- What happens if the other parent objects?
- Will the Family Court allow relocation?
- How does my visa status affect parenting arrangements?

These questions require careful consideration of both family law and migration law.

Family violence and parenting arrangements

Where family violence has occurred, parenting issues can become particularly sensitive.

The Court's primary concern is the best interests of the child. Concerns about safety, the child's relationship with each parent, and practical living arrangements may all become relevant.

At the same time, a parent's immigration situation may affect the options realistically available to them.

A person may, for example, wish to return to their country of origin where they have family support, accommodation and employment opportunities. If the child has another parent in Australia, relocation may become a significant legal issue.

Does an intervention order affect my visa?

An intervention order can have consequences beyond the family law system.

A final intervention order is a civil order, not a criminal conviction. This means that the making of a final intervention order does not automatically result in a person failing Australia's visa character requirements. However, it can still become relevant when the

Department of Home Affairs assesses a person's character. In some circumstances, the Department may consider allegations of family violence, court findings, intervention orders and other conduct that raises concerns about community safety.

Also, while a final intervention order itself is a civil matter, breaching an intervention order is a criminal offence.

If a person is charged with or convicted of breaching an intervention order, this may have much more serious implications for their migration status and could be relevant to any character assessment undertaken by the Department.

A team approach often works best

When family law and immigration issues overlap, it is rarely enough to look at one area of law in isolation.

A parenting proposal that appears sensible from a family law perspective may create difficulties from a migration perspective. Equally, a visa strategy may affect decisions about parenting arrangements and future living arrangements.

For this reason, coordinated advice can be extremely valuable.

How Emera Family Law can help if separation affects your visa

At Emera Family Law, we understand that a separation can affect every aspect of a person's life.

We assist clients with parenting disputes, family violence matters and family law proceedings, and where migration issues arise, we are willing to work collaboratively with migration practitioners to ensure our clients receive comprehensive advice.

If you are concerned about your visa status, your children, or your future in Australia following separation, obtaining advice early can help you make informed decisions and avoid unnecessary complications.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.