Combatting fraud as a disincentive of an unintended economic migrant: A comparative review of the direct Turkish model and the indirect Australian model

Sherene Ozyurek
Rodger Fernandez

Abstract
Under the new Turkish Law on Foreigners and International Protection (Article 54) represents a rapid deterrent approach as the consequences of fraud are implemented within 30 days. In contrast to the Turkish approach, Public Interest Criteria 4020 used in Australian law implies a lengthy process that may take up to two years. A quantitative analysis of retrospective data (2010-2014) of the Australian Migration Review Tribunal substantiated the notion that in contrast to the Turkish model, the Australian model is used as a procrastinating tool to the advantage of unintended economic migrants to remain in Australia.

Keywords: Australian Public Interest Criteria 4020; combatting fraud; migration review tribunal; Turkey’s foreigners and protection law; unintended economic migrants

Introduction

As Turkey has moved from being a source country to a country of immigration, lawmakers seemingly have identified the need to combat fraud in migration. Its new framework has distinct similarities to the Australian model, a country which has been shaped by immigration but has shifted its policy alignment towards a protective objective. In this paper we comparatively review policies in determining effective measures for migration governance in relation to combatting fraud to effectively deter unintended economic migrants in both countries.

Turkey’s new framework takes a holistic approach to identifying the fraud, focusing on the resulting visa permit or residency permit granted, whereas Australia’s approach focuses on scrutiny of individual documentation that are

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fraudulent, provided in support of the visa application. Where Turkey and Australia do take the same approach is that they both adopt the concept of “bans” after detection of fraud, Turkey tackles fraud with an immediate action for removal with swift review measures whereas Australia’s approach entails a lengthy review that can take up to two years until a decision is finally determined.

Under Article 54 of the Law on Foreigners and International Protection (“Law No. 6458”), (Republic of Turkey Ministry of Interior Directorate General of Migration Management [RTMIDGMM], 2013)1, which came into effect in April 2014, a removal decision may be issued against foreigners who use false information and fraudulent documents in procedures concerning entry into Turkey. The foreigner, or his or her legal representative may appeal to the administrative court against the deportation decision within fifteen days and applications to the court is concluded in fifteen days and the decision of the administrative court on the issue is final (RTMIDGMM, 2013, p. 30).2

In contrast, the Public Interest Criteria 4020 (“PIC 4020”) otherwise known as “the Fraud Principal”, was introduced in April 2011 (Migration Regulations 1994 (Cth), Schedule 4, PIC 4020; Select Legislative Instrument No. 13, 2011)3 into Australian Migration Law which was later amended to specifically deal with identity fraud in 2014 (Migration Amendment Regulation 2014 (Cth), (Measures No. 1) Select Legislative Instrument No. 32, 2014).4 The policy decision surrounding PIC 4020 was to significantly increase the level of integrity in visa applications by providing a strong disincentive to those considering giving, or causing to be given, a bogus document or information that is false or misleading in a material particular, or in recent amendments, not providing their true identity. The applicant is subsequently banned for three years from applying for another visa (Commonwealth Consolidated Regulations, 2011).5 However, in the time their applications are being processed (up to 3 years in some cases), they are able to build up working experience and earn money and can then rely on this experience in their future applications for permanent residency via the General Skilled Migration (“GSM”) pathway.

Evidence will be provided to support such a proposition and to indicate that the misuse of PIC 4020 as an unintended pathway for an unintended economic migrant could be partly attributed to the lengthy processing times. In addition, it will be argued that the inclusion of the “Fraud Principal” into Australian Migration Law has not been an effective tool to combat unintended economic migrants, as it is not supported by other policies in the

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2 Law on Foreigners and International Protection No. 6458, Article 53(3).
3 Migration Regulations 1994 (Cth), Schedule 4, PIC 4020; Select Legislative Instrument No. 13, 2011.
4 Migration Amendment Regulation 2014 (Cth), (Measures No. 1) Select Legislative Instrument No. 32, 2014.
5 Migration Regulations 1994 (Cth), Schedule 4, item 4020(2).

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migration program, as demonstrated in the Turkish model, but rather is used as a procrastinating tool to remain in Australia. In this paper, therefore, the authors endeavour to provide an insight into previous attempts to combat fraud to understand future effectiveness of the recent changes in both Turkey and Australia, given that the effects of recent changes in 2014 are still in progress.

Furthermore and in view of the evolving nature the immigration law in both countries, it is worth noting that the authors will continue to undertake further analysis to compare the effectiveness of Turkey’s and Australia’s models subsequent to the implementation of the new laws in each country that were introduced in 2014.

Methods
In this study, sociological and empirical approaches were undertaken in relation to examining the effectiveness of the migration law in Turkey (Article 54 of the Law on Foreigners and International Protection) and Australia (Public Interest Criteria 4020, the Fraud Principal) to combat fraud and unintended economic migrants. Both Turkey’s new framework “that takes a holistic approach to identifying the fraud, focusing on the resulting visa permit or residency permit granted” and the Australian’s approach “that is more focused on scrutiny of individual documentation that are fraudulent, provided in support of the visa application” were analysed via literature reviews and in some instances via case study reviews. In addition, a quantitative approach to analyse retrospective data (2010-2014) produced by the Australian Government Migration Review Tribunal (“MRT”), caseload statistics data presented over a 4 year period (one year prior to the introduction of the Fraud Principal and 3 years afterwards) was also undertaken (Australian Government, Migration Review Tribunal and Refugee Review Tribunal Annual Report 2013-14 & Australian Government Migration Review Tribunal [AGMRT], MRT-RRT Caseload Reports 2010-2014).6

The focus of this inquiry is on economic migrants (skill linked migrants), however, since the introduction of policy changes impacts on different interlinked migration sectors, a comparative analysis was included to encompass the Partner visa sector.

Results and discussion
The current analysis of retrospective data (2010-2014) (Australian Government Migration Review Tribunal, MRT-RRT Caseload Reports [AGMRT], 2010-2014)7 provides a background of the inefficiencies of the Australian model in comparison to the practicality of the current Turkish model that combats fraud in alignment with all policies of the migration program and

6 Migration Review Tribunal caseload statistics (2010 – 2014)
7 Ibid.
not “in isolation”, an important variable that contributes to the reported ineffectiveness of the Australian model.

Public Interest Criteria 4020 (“the Fraud Principal”) was introduced in April 2011 into Australian Migration Law (Migration Regulations 1994 (Cth), Schedule 4, PIC 4020; Select Legislative Instrument No. 13, 2011). However it was amended to specifically deal with identity fraud in 2014. The policy decision surrounding PIC 4020, therefore, was to significantly increase the level of integrity in visa applications by providing a strong disincentive to those considering giving, or causing to be given, a bogus document or information that is false or misleading in a material particular, or in recent amendments, not providing their true identity.

The intended pathway for economic migrants, including Turkish incoming migrants is through the General Skilled Migration (GSM) scheme. This paper will focus on the unintended pathway and consequential burden on the migration program through the unintended use of the Fraud Principal.

PIC 4020 (the Fraud Principal) was initially introduced into Australian Migration Law affecting specifically the GSM program in April 2011 (Migration Regulations 1994 (Cth), Schedule 4, PIC 4020; Select Legislative Instrument No. 13, 2011). This was a response to the lack of effective refusal provisions in the legislation on the basis of providing fraudulent documents in relation to work experience, a necessary requirement for any visa criterion in the GSM scheme.

The pathway for GSM, particularly for students, including students of Turkish origin, at the time the PIC 4020 was introduced, required a skills assessment, which, depending on the occupation, required a component of practical work experience. This work experience was hard to obtain by recent graduates during their studies as they had yet to attain their qualification. This difficulty, unfortunately, led to the facilitation of false documents in relation to work experience, consequently resulting in an extraordinary number of students having their visa’s cancelled, which led to a three year ban on any temporary visas (Migration Regulations 1994 (Cth), Schedule 4, PIC 4020; Select Legislative Instrument No. 13, 2011). It is noted that Turkey adopts a similar approach in cancellation, however also extends the consequence of cancellation to possible removal (RTMIDGMM, 2013, p. 14).

The introduction of PIC 4020 was to combat fraud at the initial application stage. In theory, PIC 4020 worked as a parallel to the cancellation provision

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8 Migration Regulations 1994 (Cth), Schedule 4, PIC 4020; Select Legislative Instrument No. 13, 2011.
9 Migration Amendment Regulation 2014 (Cth), (Measures No. 1) Select Legislative Instrument No. 32, 2014.
10 Migration Regulations 1994 (Cth), Schedule 4, PIC 4020; Select Legislative Instrument No. 13, 2011.
11 Ibid.
12 Law on Foreigners and International Protection No. 6458, Article 16.
and extended the ban to both temporary and permanent visas. However, the ineffectiveness of PIC 4020 was highlighted in a case study of two registered Australian migration agents who sold a “three-year working visa”, which in reality, were only encouraging onshore international graduate students with no alternative pathways to lodge applications onshore for GSM which would ultimately be refused due to the lack of work experience (McKenzie & Baker, 2014).

The reason they were three-year visas is that the time to process the application through the Immigration Department and to then review the decision at the MRT equated to an average of three years (McKenzie & Baker, 2014). The fishing for alternative pathways for an economic migrant is not uncommon, however, the introduction at the time when students were applying for these “three-year working visas” was the same time these graduates would be rejected on PIC 4020 and consequently faced a three-year ban. PIC 4020, therefore, clearly did not provide a disincentive to apply.

This unintended pathway would be particularly attractive with students who had no alternative pathway, such as Turkish students (other than in a postgraduate level) who are subject to stricter evidentiary requirements in their initial student visa application stage as they are viewed as a higher risk in not abiding by their student visa requirements (Australian Government, Federal Register of Legislative Instruments, 2014).

Data analysis showed that while the migration planning numbers for GSM stream over the period from 2011 to 2014 were consistent, there was a substantial increase of reviews at the MRT with an increase of 580% of applications lodged at the MRT for GSM in 2012 and a further 120% increase over 2013 (a total increase of 700% compared to 2011) (see Figure 1) (Source: AGMRT, 2010-2014).

Such a considerable increase in MRT lodgements for GSM in 2012 (shown in Figure 1) could be mainly attributed to the introduction of PIC 4020. What is concerning, is in addition to PIC 4020 not realising its disincentive intentions, it has only added to the issue of lengthy processing times (Figure 2) (Source: AGMRT, 2010-2014) and subsequently the misuse of this as a pathway for an unintended economic migrant (AGMRT, 2010-2014).

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14 Ibid.
17 Ibid.
The case study as demonstrated in McKenzie & Baker (2014), therefore, is representative of the attitude of applicants in relation to PIC 4020, when an unintended economic migrant is faced with no alternative pathways.

**Figure 1.** MRT lodgements – skill linked refusal

<table>
<thead>
<tr>
<th>Year</th>
<th>Lodgements</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013-2014</td>
<td>2000</td>
</tr>
<tr>
<td>2012-2013</td>
<td>4000</td>
</tr>
<tr>
<td>2011-2012</td>
<td>3000</td>
</tr>
<tr>
<td>2010-2011</td>
<td>1000</td>
</tr>
</tbody>
</table>

**Figure 2.** Timeliness of decisions, Average calendar days from lodgement

In July 2013, the 485 visa in the general skilled migration program was changed to include graduate work and post study streams, providing that if a student studied a bachelor degree or higher they do not require a skills assessment nor an occupation off a skills list if they obtained their first student visa after 5 November 2011 and therefore provided a pathway for a certain group (Australian Government, Department of Immigration and Border Protection [AGDIBP], 2011). 19 Therefore, such changes could have resulted in

19 Australian Government, Department of Immigration and Border Protection [AGDIBP], 2011.
the limited observed drop in GSM refusal to 340% in 2014 (as shown in Figure 2). However, all of the remaining students not in this sector still required a skills assessment, experience and an occupation off a skills list and were left in the same position (AGDIBP, 2011).20

Secondly, in the same year, the alternative pathway for GSM was also stagnated by the introduction of an “invite system” based on a points test, which most graduates after completing their studies did not have enough points to even lodge an expression of interest to be invited to apply, again due to their inability to attain practical work experience during their studies or attain a visa that would allow them to, after their studies (Migration Amendment Regulation (Cth) 2012 (No. 2)).21

**Figure 3.** Skill linked as a % of total migration program

![Skill linked as a % of total migration program](image-url)

As a result and despite the changes in GSM program, the data in Figure 1 still showed a substantial 340% increase in MRT lodgement cases in 2014 compared to 2011, with the consistent variable being PIC 4020 despite the numbers in migration planning staying consistent (see Figure 3) (Source: AGMRT, 2010-2014).22

It is interesting to note that while all these changes took place in GSM, another stream, namely, the Partner visa, where the PIC 4020 principal came into effect in 2013, showed an increase of 160% rate of refusal (Figure 4) (Source: AGMRT, 2010-2014).23 That was the biggest increase in the last five years and happened at the same time GSM stream got stagnated, regardless of whether the PIC 4020 was introduced as a disincentive in the stream or not. It is worth noting here that the migration planning numbers were also

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20 Australian Government, Department of Immigration and Border Protection [AGDIBP], 2011.
21 Migration Amendment Regulation (Cth) 2012 (No. 2), Explanatory Statement, Select Legislative Instrument No. 82, 2012.
23 Ibid.
consistent during these years in this stream (Australian Government, Department of Immigration and Border Protection [AGDIBP], 2015a).  

This supports the hypothesis that PIC 4020 does not provide a deterrent for unintended economic migrants from seeking alternative pathways. It relates back to the case study as demonstrated in McKenzie & Baker (2014), that unintended economic migrants are looking at pathways regardless of the ultimate consequence and Partner visas have one of the highest processing times second to GSM to enable the applicant to work while their visa was getting processed and during review (AGDIBP, 2015b). It is noted that Turkey also takes a strong stance on the unintended use of the Partner visa pathway based on false premises which consequence is also removal (RTMIDGMM, 2013, p. 23).  

**Figure 4.** The fraud factor impacted on skill linked and partner visas

Further analysis has shown that since the introduction of PIC 4020 and over the period from 2011 to 2014, the MRT has affirmed 75% of the total skill linked refusal cases to be based on a refusal under PIC 4020 (Figure 5) (Source: AGMRT, 2010-2014).  

This further strengthens the merit of the proposition that the sharp increase of skill-linked lodgments of MRT reviews over that period was mainly attributed to the introduction of the PIC 4020 (AGDIBP, 2014). Furthermore, the system set up for GSM does not support the disincentive aim of PIC 4020. This current permanent pathway for GSM is based on a

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24 Department of Immigration and Border Protection, Migration program statistics (2015a).
26 Law on Refugees and International Protection No. 6458, Article 36.
points test and provides points based on work experience in Australia for a 10 year period. Secondly, one year of work experience in Australia provides the same number of points for three years of overseas experience, three years of experience in Australia equates to five years overseas (Commonwealth Consolidated Regulations, 2012).  

**Figure 5.** MRT refusal, data from April 2011 to June 2014

Therefore, even if the applicants are banned for three years, by the time their applications are processed due to the inefficiencies of the Australian model, they can obtain experience and money in the processing period, which can then be relied on in their future applications for permanent residency via the GSM pathway. Therefore, in theory, the applicants still see themselves in a better position, having gained the experience, being banned for three years and then being able to apply after that, in comparison to facing no ban, gaining no experience, no wealth and not being able to apply within the same time frame. Hence, the system set up for GSM does not support the disincentive aim of PIC 4020. Therefore, in comparison, the Turkish approach of a possible ban of up to five years and no points system which is applied in the same circumstance may be a more effective long-term deterrent (RTMidGMM, 2013, p. 5).  

**What does the future hold?**

Australia and Turkey implemented changes in 2014 to take more measures to combat fraud. However, statistical analysis of MRT caseload statistics of retrospective data (2010-2014) produced by the Australian Government clearly supports the proposition that the PIC 4020 does not deter unintended

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29 Migration Regulations (Cth) 1994, Schedule 6D.  
30 Law on Foreigners and International Protection No. 6458, Article (9)(3).
economic migrants but rather is a procrastinating tool to allow GSM applicants to obtain experience for both short-term and long-term gain on their pathway to permanent residency. It can be predicted that the immediate consequential approach of the Turkish model of removal is the underlying variable to each countries’ future success in combatting fraud as it removes the unintended pathway that unintended economic migrants are able to access through the Australian model.

References


Migration Regulations 1994 (Cth), Schedule 4, PIC 4020; Migration Amendment Regulations (2011 Measures No. 1), Select Legislative Instrument No. 13, 2011.
26 Indirect and direct models of combating fraud


