

# The Consideration of Refugee Rights in Australia in its Role in Reaching the Policy Aims of Integration

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## Abstract

*This paper examines Australia's adoption of a Safe Haven Enterprise Visa (SHEV) in 2014 for unauthorised maritime arrivals, or asylum seekers who arrived by boat. This new model allows the asylum seeker, if found to be a genuine refugee, temporary protection with the potential of permanency through the pathway of other existing visa streams in Australia's Migration framework. This visa provides the asylum seeker the right to study or work in regional Australia. Subsequently, if the applicant holds this visa for three and a half years, the applicant is then eligible to apply for any other available visas within the Australian Migration framework for which they satisfy the relevant criteria. This, in practice, resolves a number of issues; protection obligations and skilled labour shortages in certain areas of the country and is argued to assist, consequently, in the issues of integration. The paper will examine the development and progress of this new model, which adds another criterion for asylum seekers for their pathway for permanency through their skill base to be used in the receiving country, namely Australia. The use of their skills can assist in the perception of contribution to Australia whilst also assisting the asylum seeker in integrating within Australia.*

**Keywords:** *Australia's Safe Haven Enterprise Visa, Pathway for permanency for asylum seekers, Integration.*

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# Entegrasyonun Politika Amaçlarına Ulaşmada Avustralya'daki Mülteci Krizinin Ele Alınması

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## Öz

*Bu makale deniz üzerinden yetkisiz bir şekilde gelenler ya da botla gelen sığınmacılar için 2014 yılında Güvenli Sığınma Girişimi Vizesinin (SHEV) kabul edilmesini inceler. Bu yeni model sığınmacıya, eğer gerçek bir mülteci ise, Avustralya'nın Göç çerçevesindeki mevcut diğer vize akımlarını izleyerek kalıcılık ihtimali olan geçici koruma imkânı verir. Söz konusu vize sığınmacıya Avustralya'da okuma ve çalışma hakkı verir. Ardından başvuru sahibinin bu vizeye üç buçuk yıl sahip olması durumunda, başvuru sahibi Avustralya Göç çerçevesi bünyesinde ilgili kriterlerini karşıladığı mevcut diğer vize türlerine de başvurma hakkı kazanır. Uygulamada bu, koruma yükümlülükleri ve ülkenin belirli alanlarındaki vasıflı işgücü eksikliği gibi birçok sorunu çözmektedir ve sonuç olarak entegrasyon konusunda karşılaşılan sorunları desteklediği ileri sürülmektedir. Bu makale kabul eden ülkede, yani Avustralya'da kullanılmak üzere yeteneklerine dayanılarak kalıcılığa giden yolda sığınmacıların karşısına yeni bir kriter çıkaran bu yeni modelin gelişimini ve ilerleyişini inceleyecektir. Yeteneklerinin kullanımı sığınmacıyı Avustralya'ya entegrasyonu hususunda desteklerken Avustralya'ya katkıda bulunma algısını destekleyebilir.*

**Anahtar Kelimeler:** Avustralya'nın Güvenli Sığınma Girişimi Vizesi, Sığınmacılar için kalıcılığa giden yol, Entegrasyon.

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## **BACKGROUND AND METHODOLOGY**

In 2014 Australia introduced significant reforms in their Refugee program, with the focus of this paper examining one of those changes, the introduction of the Safe Haven Enterprise Visas (Australian Government-Federal Register of Legislation- Migration and Maritime Powers Legislation Amendment, (Resolving the Asylum Legacy Case-load) Act, 2014). This visa provides a pathway to permanent residency for unauthorised maritime arrivals based on principles that encourage integration in a community, namely work or study.

In examining the introduction of the Safe Haven Enterprise Visa (“SHEV”), it is important to consider the historical background of Australia’s refugee framework to provide context of the changes in 2014. This paper will therefore provide a quantitative analysis of the changes in the refugee framework over the past 15 years, within a discussion on major refugee holding countries.

A specific quantitative analysis of the role of Australia’s history of accepting and resettling refugees will then be explored. Based on that analysis, the paper will raise the notion that three modulating factors, namely, the historical background of the host country, its proximity to troubled regions and its political environment, may have contributed to the changing role of a hosting country in resettlement of refugees over the past 15 years.

Subsequently, both qualitative and quantitative analysis will be used to examine the new framework adopted by Australia in their adoption of a new SHEV in 2014. Australia’s introduction of this law, whilst only initially provides temporary protection, if Australia owes protection obligations to the applicant, does provide a pathway to permanent residency through any of the non-protection streams available in Australia’s Migration framework.

The pathway to permanent residency is based on the requirement that the refugee studies and/or works in regional areas for a minimum of three and a half years out of the temporary 5 year validity period the

visa is granted for. Once they satisfy this criterion, they are then eligible to apply for other non-protection visas if they satisfy the additional criteria for the particular visa they wish to apply for. This, in practice, aims to resolve a number of issues; protection obligations for boat arrivals, skilled labour shortages in certain areas of the country whilst also facilitating integration of the refugee in Australia. The framework addresses the issues of integration through employment and study which has been argued is an important key indicator for integration (OECD/ European Union, 2015; Refugee Council of Australia, 2017).

The paper will examine the development and progress of this new SHEV model, where asylum seekers' skills can assist in the perception of contribution to Australia whilst also assisting the refugee in integrating within Australia via the platform of their skill base.

## GENERAL BACKGROUND

Since 2000, the number of refugees worldwide has remained relatively stable at around 15.7 million and were mostly hosted by developing countries (see Figures 1 & 2) – (*Data Source: UNHCR, 'UNHCR Projected Global Resettlement Needs 2014'*).

*Fig 1. Major Refugees-hosting countries in 2012*

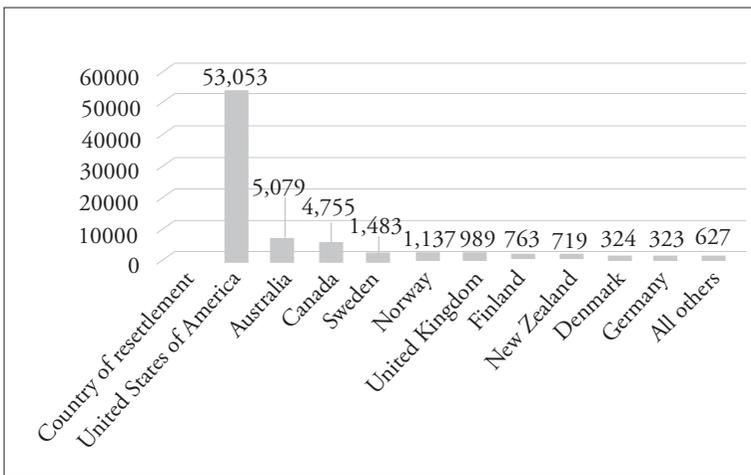
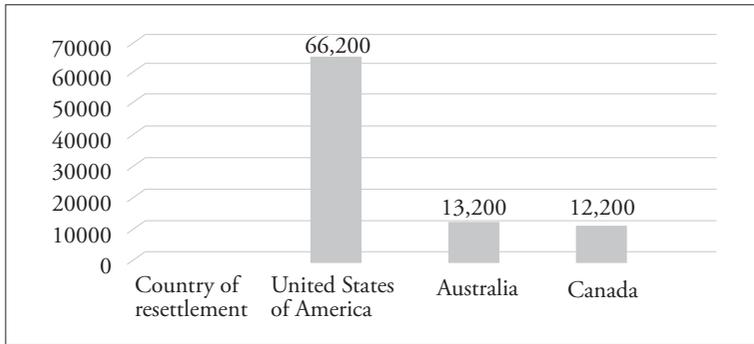


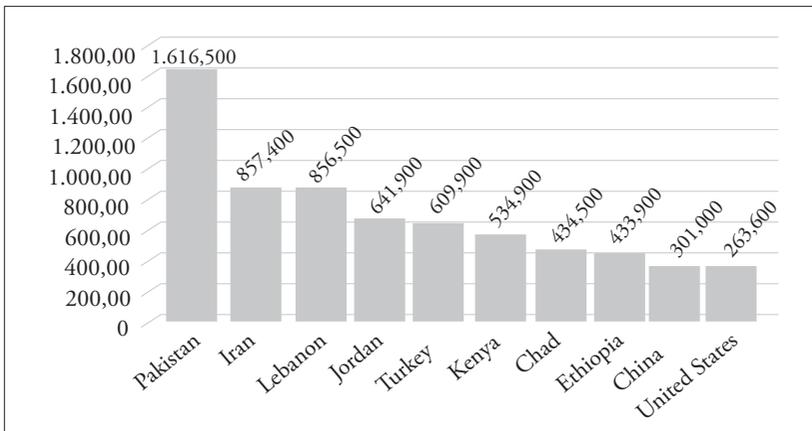
Fig 2. Top three resettlement countries in 2013



Due to recent world conflicts and the fact that most asylum seekers and refugees do remain in their region of origin in the hope that they will be able to return to their home country as soon as possible, the share of refugees hosted by neighbouring developing countries rose to more than 87% in 2013 (UNHCR, *Global trends 2013*).

Consequently, the burden of assisting the world's asylum seekers and refugees actually falls to some of the world's poorest countries (see Figure 3) – (Data Source: UNHCR, *Global trends 2013*).

Fig 3. Major refugees-hosting countries-End 2013

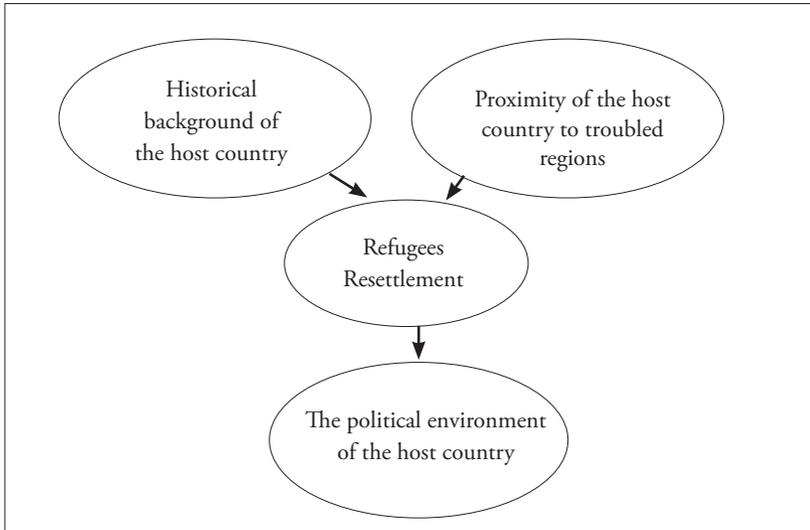


As shown in Figure 3, in 2013, Pakistan was host to the largest number of refugees worldwide, followed by Iran, Lebanon, Jordan and Turkey (UNHCR, *Global trends 2013*). The data in Figure 3 was analysed prior to the escalation of the conflict in the Syrian Arab Republic that gave rise to millions of refugees and due to the proximity factor, Turkey is currently hosting the highest number of asylum seekers and refugees (Skribeland, 2016).

## **MODULATING FACTORS THAT IMPACT ON THE HOST COUNTRIES TO HOST REFUGEES**

It is possible to raise the notion that the *quantitative differences* in the role of each country in hosting refugees over the years was shaped by certain modulating factors proposed in Figure 4.

*Fig 4. Factors that influence the ability of host countries to resettle Refugees*



**Firstly**, the historical background of a host country could impact on its role in hosting refugees. Australia is one of the classical countries of immigration, meaning a new nation which has been built through colonization and immigration over the last two centuries. Such histor-

ical background could partly explain why Australia's intake of refugees was initially greater.

**Secondly**, the proximity to a troubled region is an important factor considering that most asylum seekers and refugees actually remain in their region of origin in the hope that they will be able to return to their home country as soon as possible. Based on this notion, and in view of the remoteness of Australia from the recently troubled regions like Syria, it would be understandable that Australia's intake of refugees over the recent years has not increased.

**Thirdly**, the political environment and the current state of affairs in politics in the host country and whether or not the main political parties are in agreement on decisions pertaining to refugees is a complex modulating factor that would impact not only on Government's decisions to host refugees but also on its willingness to embrace and integrate those refugees within its own population.

The possible impact of these factors on the role of Australia as a host country and the introduction of new frameworks governing rights and pathways of refugees will be explored below.

## **SPECIFIC BACKGROUND - AUSTRALIA AS A HOST COUNTRY**

Australia has a long history of accepting refugees for resettlement and over 800,000 refugees and displaced persons, including thousands during and immediately after World War II, have settled in Australia since 1945. Australia is also one of only about 20 nations worldwide that participate formally in the UNHCR's resettlement program and accepts quotas of refugees on an annual basis (Phillips & Spinks, 2013a&b). In 2013, under this program, Australia accepted the second largest number of refugees (including refugees and other humanitarian entrants) for resettlement in the world (13,200) after the USA (66,200) and Canada ranked third after Australia (12,200) (UNHCR, 2013), see Figure 2.

It is important to take into account the total population and refugees' population in Australia as this information could impact on intake of refugees by the host country. UNHCR, 2015, demonstrates that as in May 2015, the number of refugees in Australia were 35,582 with a total population of 24,415,000. Therefore, the percentage Refugees per total population is 0.15%. This is important as it impacts on "additional benefits available to refugees" in view of the host country share of refugees and its obligations towards its own citizens.

In 2013 and in a dramatic step, the then Liberal Government began its campaign to "Stop the Boats" through its Operation Sovereign Borders policy (Parliament of Australia, 2013). This policy reinforced the controversial offshore processing regime by providing that an asylum seeker who arrived in Australia after the 1 January 2014 by boat, would not be settled in Australia but instead would be resettled in a third country if they were found to require protection (Parliament of Australia, 2013). Since the introduction of this policy, it has been reported Australia has not received any boat arrivals from 1 January 2014 (Phillips, 2014).

However, Australia was then in a position where they were required to manage the existing boat arrivals which are termed in Australia as 'Unauthorised Maritime Arrivals ("UMA")' who had already entered Australia and were subject to processing for their Refugee claims (s5AA of the Migration Act (Cth) 1958). It should be noted that any temporary protection provided to UMA's were repealed on 9 August 2008, re-introduced by the *Migration Amendment (Temporary Protection Visas) Regulation 2013* on 18 October 2013 and then disallowed and removed on 2 December 2013.

This led to the introduction of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*, which brought in many reforms including introducing the definition of a Refugee within Australia's domestic law under the Migration Act 1958, rather than relying on the definition found under Article 1A of the UN Convention relating to the status of Refugees (UNHCR-Convention and protocol relating to the Status of Refugees, 1951).

In addition, it *reintroduced* the concept of Temporary Protection, through the adoption of a Temporary Protection Visa (“TPV”) and *introduced* a new temporary visa framework under the SHEV. The TPV and SHEV were only available to boat arrivals who were seeking protection and entered Australia between 13 August 2012 and before 1 January 2014, with these dates reflecting the majority of the case load of boat arrivals who were still to be processed and were in Australia. This group is referred to as the ‘legacy caseload’ (Australian Government-Federal Register of Legislation- Migration and Maritime Powers Legislation Amendment, (Resolving the Asylum Legacy Caseload) Act, 2014). In managing the legacy caseload, UMA’s who fell within this group could apply for either a TPV or a SHEV visa only once they were invited to apply by the Minister of Immigration and Border Protection (S46A of the Migration Act (Cth) 1958).

Given the extensive changes, this paper will focus the discussion on the introduction of the SHEV visa only, including the rights it provides to refugees as demonstrated in the table below (Migration Regulations (Cth) 1994, Schedule 2, Subclass 790 & AGDIBP, 2015a & b).

<b>Safe Haven Enterprise visas</b>
<p><b>Eligibility:</b></p> <p>A refugee could be eligible for a SHEV if they arrived in Australia illegally by boat between the 31 August 2012 and 1 January 2014, and invited to apply for a SHEV and lodge a valid application with at least one family member declares an <b>intention to work and/or study in regional Australia, and</b> are assessed as engaging Australia’s protection obligations, and meet other requirements, such as health, security and character checks.</p>
<p><b>How long will the regulation allow the refugee to stay?</b></p> <p>A SHEV will allow a refugee to stay in Australia <b>for five years.</b></p>
<p><b>What will the regulation allow the refugee to do?</b></p> <p>A SHEV will allow a refugee to work or study and have access to Medicare, social security benefits job matching and short-term counselling for torture or trauma where required. Adult SHEV holders will have access to the Adult Migrant English Programme and children will be able to go to school.</p>

**Obligations for work or study:**

Work must be: lawful, paid, in a regional area that is included in the SHEV programme, and full-time, part-time, temporary, casual, seasonal or a combination of these.

Study must be: physically attending a course of study accredited by the Australian Qualifications Framework and full time.

**The SHEV pathway:**

One benefit of the SHEV is that a refugee might be eligible to apply for other substantive visas later on if they meet these requirements if, for at least three and a half years (or 42 months) while on a SHEV, a refugee has been: employed in regional Australia and not receiving certain social security benefits or enrolled in full-time study in regional Australia, or a combination of the above.

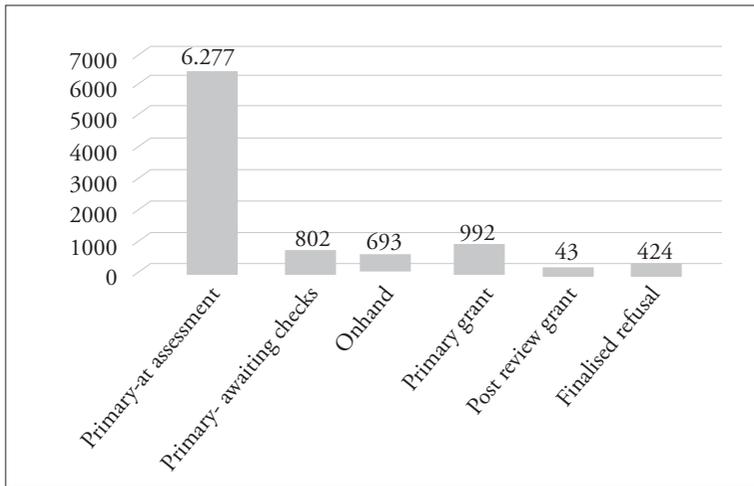
From the qualitative assessment above, it is apparent that if the refugee was granted a SHEV, they could only work in specified regions (Australian Government-Federal Register of Legislation-.Migration Regulations (Specification of Regional Areas for Safe Haven Enterprise Visas) Instrument 2017/014 - IMMI 17/014). These are restricted to regional Australia, which attracts predominantly jobs in the agricultural sector. Therefore it could be argued that Australia is using this model to reach policy objectives in both the humanitarian and labour schemes whilst also facilitating integration of the refugee in Australia. It is also apparent that the Australian model provides additional benefits to refugees through this visa as it provides a pathway to permanent residency not available through for TPV holders. This could be due to the low intake of refugees and the low percentage to the total population. Furthermore, some of the concepts involved in providing additional benefits to refugees could be partly attributed to strategically implemented views embraced by a remote country like Australia, thus basing its policies on the possible view that the refugees could remain in Australia and not returning to their homeland.

**SHEV Processing status:** In March 2016, the Refugee Council of Australia estimated some 2000 people have applied for SHEVs and

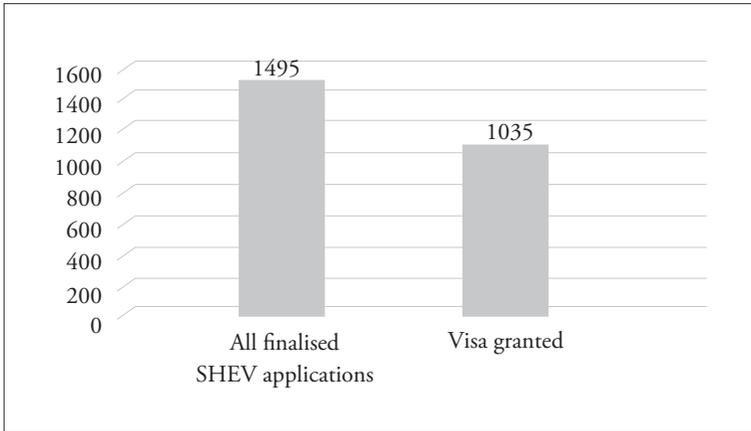
only around 20 visas have been granted (0.2% of those lodged). This slow start for SHEV was claimed by the Government to be due to a delay in Australian states in joining the process combined with the lengthy processing times (Hasham, 2016). However, recently another Territory confirmed its participation in the program and two other states expanded the areas the SHEV holder could be located. (Australian Government-Federal Register of Legislation-Migration Regulations (Specification of Regional Areas for Safe Haven Enterprise Visas) Instrument 2017/014 - IMMI 17/014).

In February 2017, statistics produced by the Refugee Council of Australia (RCA) (2017) showed the current SHEV processing status and the data showed that the number of applications reached 6277 (see Figure 5-Data Source: RCA, Fast Tracking Statistics, 2017). More importantly, of all finalised applications, approximately 70% of the applications resulted in the grant of a visa (see Figure 6 - Data Source: RCA, Fast Tracking Statistics, 2017).

Fig 5. SHEV Processing Status (January 2017)



*Fig 6. SHEV visa granted of all finalised applications (January 2017)*



While SHEV processing status is improving with over 1000 refugees being granted the visa, the questions that need to be asked are; would those refugees be able to secure employment and what are the obstacles facing those refugees that were granted a visa to start studying or to find employment.

It is very early to predict whether the SHEV initiative will achieve its goals or not. In saying that, there are legitimate concerns that could be raised to question the long term outcomes of this initiative. A recent report by the Centre for Policy Development (CPD) (2017) identified five principal barriers to newly arrived refugees finding jobs: limited English, a lack of work experience, poor health, a lack of opportunities for women and having only been in Australia for a short amount time.

The authors based their view on the fact that only 17 per cent of humanitarian migrants are employed after 18 months in Australia due to the fact that the jobs available require higher-level skills and since only 17 per cent of humanitarian migrants arrive in Australia with post school qualifications, migrants are under-represented in occupations that are expected to grow strongly, such as professionals

and managers and are largely over-represented in occupations where growth is negative (CPD, 2017).

The abovementioned report could raise concerns that barriers do exist that could hamper the success of SHEV model. The concerns raised by the CPD (2017) are in agreement with the earlier findings from a survey of the literature by the RCA (2010) that identified barriers to employment of refugees to include, English language, cultural understanding and the lack of targeted services. Furthermore, such concerns are in agreement with a prior report by Australian Government, Department of Employment (2016) that raised the notion that it will become increasingly difficult for humanitarian migrants to secure work as the demand for low skill labour falls.

On the other hand, it is important to note here that the SHEV initiative has two main components, namely work or study in regional areas that are in need of such resources to fulfil work and student vacancies in these regions. A previous study by McDonald-Wilmsen et al., (2009), investigated a prior initiative aiming at resettling refugees in regional Australia that raised the notion that such initiatives “have the potential to provide benefits to refugees and host communities if care is taken to ensure a well-planned, well-integrated and well-resourced approach”. The authors also emphasised on the importance that “policies and strategies need to be based on a holistic approach that recognises and supports both humanitarian and regional development objectives.” It is therefore possible to predict that the SHEV initiative could succeed if both the refugees and the host regional communities are supportive to each other and are working together to achieve the long term goals of the SHEV initiative to the benefits of the host communities and the refugee. This may be achievable as Australian states opt into this program at their choice and are not forced to participate.

If adequate resources and well planned and integrated processes were undertaken, the SHEV initiative will not only provide protection but also opportunities for work and study and it is a superior policy decision over and above the TPV as it leads to important outcomes

apart from simply covering Australia's protection obligations. Outcomes like resolving skilled labour shortages and better integration of refugees and their children to the benefit of both the Australian society and the refugees themselves and the certainty, if they are eligible, of permanency in Australia.

## **Conclusion**

Australia's introduction of SHEV offers an innovative practical solution to its protection obligations and skilled labour shortages in certain areas of the country. The motivations to reach its aims using a working model to reach humanitarian, labour skills shortages and integration policy objectives, aims to provide improved working conditions and allow social integration, which will benefit not only the refugees themselves but also labour markets and the economy. In summary, the introduction of the SHEV aims to resolve a number of issues including protection obligations and skilled labour shortages in certain areas of the country and is argued to assist, consequently, in the issues of integration.

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