

## **Do you meet the balance of family test for a parent visa?**

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Generally, an essential issue which you must satisfy at the time of making an application for a parent visa is whether you meet the balance of family test. The purpose of the test is to determine how extensive your links are to your children in Australia compared to your other children in other countries.

You will meet the balance of family test if either: at least half of your children live in Australia (for example, if you have five children, at least three of your children must be living in Australia); or if more of your children live in Australia than in any other country (for example, if you have five children and two of your children are living in Australia, each of your other children must be living in different countries).

For the purpose of this test, “partner” refers to a spouse or de facto partner. The children that will be counted include: your children; children of your current partner; and you or your partner’s stepchildren from former partners, if the step-children are under 18 and you or your current partner have a legal responsibility to look after the child.

Children who will not be counted are: children who are dead; children born by your partner from a relationship with another person while still in a relationship with you; children removed from your sole care and control by court order, adoption, or some other law, excluding marriage; children living in countries where they suffer persecution or human rights abuse; children living in another country where it is not possible for them to reunite with you; or children living as registered UNHCR refugees in UNHCR camps.

For the purpose of this test, your children will be regarded as living in Australia if they have Australian citizenship or permanent residency, *and* they live permanently in Australia or have the intention of living in Australia indefinitely.

The importance of meeting the balance of family test was demonstrated in a case decided by the Migration Review Tribunal of Australia (MRTA) in August 2010, where the parent visa was refused because the applicants had four children, one living in the UK, one living in the USA, one living in Scotland and one living in Australia. The MRTA concluded that this meant that the balance of family test was not satisfied and that the visa would not be granted.

*This information is of a general nature and should not be taken as authoritative legal advice for specific cases. Australia has a scheme that requires persons who give immigration assistance to be registered as migration agent. The writer, Atty. Imelda Argel is a practising migration solicitor and a registered migration agent in Sydney, Australia. She is a Solicitor of the Supreme Court of New South Wales, the High Court of Australia, an Attorney at law in the Philippines and in the State of New York, USA. Her Registered Migration Agent no. is 9682957.*

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