

Can you be granted a health waiver?

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In a recent case wherein I represented a client who was diagnosed with chronic myeloid leukemia, the Migration Review Tribunal (MRT) granted a health waiver despite the assessment of the Medical Officer of the Commonwealth (MOC) of the likely cost to the Australian community of \$250,000.00.

As a general rule, if one fails the health criteria, all fail. Thus, if you or a member of your family unit who may or may not be included in your visa application has a medical condition that will require a significant cost, your visa application will likely be refused. The current threshold to determine significant cost is \$35,000.00.

Notwithstanding, if you are applying for certain visas such as, Partner, Child, Parent, Business Long Stay, Onshore Skilled Employer Nomination Scheme (Temporary Transition Stream Only), Regional Sponsored Migration Scheme (Temporary Transition Stream Only), you may provide submissions to justify the grant of a health waiver, and if successful, DIAC may still grant your visa.

Thus, even if Medical Officer of the Commonwealth (MOC) provides an opinion after medical examinations, that your medical cost or that of your family member is likely to result in significant cost, the DIAC Minister or his delegate, may waive the requirements of the health criteria, provided you satisfy all other criteria for the grant of the visa applied for and the Minister is satisfied that the granting of your visa would be unlikely to result in:

(i) *undue* cost to the Australian community; *or*

(ii) *undue* prejudice to the access to health care or community services of an Australian citizen or permanent resident.

Matters which you must address in your submission for a health waiver, include:

1. Skills or qualifications you have, that would be likely to contribute to Australia and/or the area where you reside or propose to reside.
2. Your capacity to mitigate the potential costs and/or level of prejudice of access that the Medical Officer of Commonwealth (MOC) has indicated is associated with your or your family member's health condition.
3. Impact of your health condition on your ability to work.
4. Your established links to Australia, through family, extended periods of residence or community, professional or economic ties.

5. Factors preventing you from returning to your own country or to another country.
6. Family members who are dependent on you. If the family members with health condition will not be migrating to Australia with you, arrangements you have in place for their care, and the likelihood of them ultimately applying to migrate to Australia.
7. Other circumstances, including any compassionate or compelling factors that you believe should be taken into account when deciding whether a health waiver is warranted in your or your family's case.

In case your visa is refused because you do not meet the health criteria but you could have lodged a health waiver submission with DIAC for the visa subclass you applied for, and your visa was refused solely on ground of not satisfying the health criteria, you may still appeal the decision and lodge your health waiver application with the Migration Review Tribunal (MRT), as I did on behalf of our client.

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.

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