

Filipino Migrants Forum

Can you sponsor more than two spouses in your lifetime?

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The *Migration Act 1958* and the various Regulations made under that Act, notably the *Migration Regulations 1994* provide for different classes of visas, including spouse visas.

In order to prevent abuse of the partner migration provisions there are several limitations to spouse visas. Based on *Regulation 1.15A* and *Regulation 1.20J* of the Regulations the following sponsorship limitations exist:

- If the sponsor has already sponsored one other person as a spouse, fiancé or interdependent partner, a second sponsorship cannot be approved until at least five years after the lodgement of the first visa application
- The sponsorship provisions permit only 2 partner sponsorships in a lifetime

However, the requirements of regulation 1.20J may be waived if ‘*compelling circumstances*’ exist. Under current policy, compelling circumstances among others include:

- the applicant and their sponsor have a child who is a dependent child of each of them
- the death of the previous partner
- the previous spouse abandoning the sponsor and there are children involved requiring care and support
- if the new relationship is longstanding

Every aspect of the sponsor’s circumstances is relevant to the existence of compelling circumstances. While no definitive list can be given, some general aspects that may be particularly important are:

- the nature of the hardship/detriment that would be suffered (by the sponsor) if the sponsorship were not approved
- the extent and importance of the ties the sponsor has to Australia, and the consequential hardship/detriment that would be suffered if the sponsorship were not approved

The precedent

In a case decided by the Migration Review Tribunal in 2006, the Tribunal decided in favour of the sponsor for a spouse visa. In this case, the sponsor had already successfully sponsored two other persons to Australia in 1992 and 2000, and therefore the application of her current husband for a permanent residence on spouse grounds was refused by DIAC.

However, the couple lodged application for review with the Tribunal with reference to the existence of compelling circumstances. The couple argued that their relationship was long standing and they would plan to build a family.

The findings of the Tribunal in overturning the visa refusal were as follows:

- *The Tribunal is satisfied that the sponsor has grown up in Australia and all of her immediate family including her parents and all of her siblings reside in Australia.*
- *The Tribunal is satisfied that given her strong ties to Australia, she would suffer hardship if the sponsorship was not approved and she was obliged to reside in Lebanon with the visa applicant.*
- *The Tribunal is satisfied that given these circumstances, then compelling circumstances exist.*

Accordingly, the Tribunal decided that the visa applicant meets clause 309.222.

This information is of a general nature and should not be taken as authoritative legal advice for specific cases. The writer, Atty. Imelda Argel is a practicing Filipino lawyer 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, Attorney at law in the Philippines and in the State of New York, USA. Her Registered Migration Agent no. is 9682957. More information is available at www.iargel.com.au

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