

DO YOU PASS THE HEALTH TEST?

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If you are applying for a visa to Australia, you may be required to pass medical examinations (health criteria) before your visa can be granted depending on the classification of the visa you are applying for. It is irrelevant that you intend to pay for the treatment yourself, or that you have health insurance cover, or that you will not actually use the identified health care or community services. If you are required to meet the health criteria, and you are overseas, your medical examinations will usually be carried out by a panel doctor at medical centres accredited by the Department of Immigration and Citizenship (DIAC). If you do not meet the required level of health standard, after examination by the overseas panel doctor, your case will be referred to a Medical Officer of the Commonwealth (MOC) for decision. If you are in Australia the medical examinations are administered by the “Medicare Health Solutions” (formerly Health Services Australia).

The health criteria requires that:

“The applicant:

(a) is free from tuberculosis; and

(b) is free from a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community; and

(c) is not a person who has a disease or condition to which the following subparagraphs apply:

(i) the disease or condition is such that a person who has it would be likely to:

(A) require health care or community services; or

(B) meet the medical criteria for the provision of a community service

during the period of the applicant's proposed stay in Australia;

(ii)provision of the health care or community services relating to the disease or condition would be likely to:

(A) result in a significant cost to the Australian community in the areas of health care and community services; or

(B) prejudice the access of an Australian citizen or permanent resident to health care or community services;

regardless of whether the health care or community services will actually be used in connection with the applicant”

A “significant cost” in (c)(ii)(A) is not formally defined in the migration law or regulation, but the current DIAC policy is that if the cost is at least AUD 21 000, it is regarded as significant. If you are applying for temporary visa, this cost will be for the entire duration of the visa. If you are applying for a permanent visa, this cost will be for a 5 year period, but if you are 75 years or older it will be computed over a 3 year period. Notwithstanding the costs which can be identified with reasonable certainty beyond those periods may be included in the computation.

Examples of treatments that would “prejudice the access of an Australian citizen or permanent resident to health care or community services” in (c)(ii)(B) include organ transplants, treatments requiring blood/plasma products, and radiotherapy for malignancy.

Specific medical conditions

Tuberculosis

If you have Tuberculosis (TB) the decision on your visa will generally be suspended until your treatment is completed. If you are an applicant outside Australia (offshore) with active TB, you will not be granted a visa until after you have successfully completed TB treatment. If you are an applicant within Australia (onshore), you will normally be required to remain on your bridging visa until after your TB treatment is completed and you are no longer infectious. If you have inactive TB, you may be granted your visa but may be asked to comply with a health undertaking to report for follow up medical check ups as a condition of the visa.

HIV/AIDS

Those infected with HIV/AIDS may still be granted a visa where the standard cost of treatment is not unreasonable and undue; a health waiver may also be available depending on the type of visa applied for e.g. partner visa.

Eye Conditions

If you have an eye condition or disease requiring treatment, such as age-related macular degeneration, you may not be able to meet the health test where the cost to the government is likely to be found excessive. But if you have glaucoma, or if you require a corneal graft or a complex cataract operation, you may still be able to pass the health test, provided treatment costs are below the threshold.

Health Waiver

Generally, failure to meet the health test because of your condition or disease may be waived in certain classes of visa; such as offshore humanitarian visas, onshore skilled visas, family visas; if the Minister is satisfied that that the visa grant would be unlikely to result in undue cost to the Australian community or undue prejudice to access to health care and community services of an Australian or permanent resident.

Mental Health Issues

In December 2010, the Migration Review Tribunal decided to waive the failure of an applicant to meet the health test because of moderate intellectual impairment. The Tribunal put weight the fact that the applicant would be provided with pro-bono tutoring, training and psychological assistance from family and experts while in Australia; and therefore the treatment would not result in significant cost to the Australian community.

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.

She is the author of TIPS on GSM visas, the recipient of the inaugural NSW FAWAA (Filipino- Australian Women's Achievement Award) for her outstanding achievements in corporate practice and entrepreneurship, and the University of the Philippines Alumni Association (NSW Chapter) Achievement Award for law and community service. More information is available at www.iargel.com.au. You can contact the author by email at info@iargel.com.au or by fax at (+612) 9699 3210 or by appointment at Suite 41, Ground Floor, 61-89 Buckingham St. SURRY HILLS NSW 2010.