

## Filipino Migrants Forum

### Failure of Spouse Visa Applications on “Character Grounds”

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Many Filipinos who arrive in Australia on a tourist visa apply for a protection visa or “refugee visa”. A bridging visa A allows the visa holder to obtain a tax file number and to work. It is normally granted to those who apply for a refugee visa, within 45 days after arrival in Australia. The bridging A visa takes effect upon expiry of the tourist visa.

However, the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) has seen this as a scheme for many Filipinos to gain entry to the work force. Thus the decision to refuse the protection visa application is now usually given in a matter of weeks, often before the bridging visa A, removing the “no work” condition could take effect.

After the visa refusal, the visa applicant would have only 28 days left either *to appeal* the decision refusing the refugee visa application or *to leave* Australia. Appeals to the Refugee Review Tribunal and Appeals to the Minister are decided in a matter of months. Hence it is not advisable for any Filipino to apply for a refugee visa if the reason is to bid time for further stay and to work.

Indeed no refugee visa has been granted in recent times. To succeed, claims of being a refugee must be based on “*well-founded fear of persecution because of race, religion, nationality, membership of a particular social group, or political opinion. race, religion, nationality, membership of a particular social group, or political opinion*”.

There are long term disadvantages affecting future visa applications in case of false or fabricated claims of being a refugee. DIMIA requires all spouse visa applicants to pass the character test and therefore even if the applicant later on finds a spouse, there will be difficulties in obtaining a successful spouse visa. Moreover, because an application for visa has been refused and there is no existing substantive visa, the spouse visa applicant will have to apply outside Australia.

In determining the character test, a clearance certificate from the National Bureau of Investigation (NBI) is only one of the requirements. The visa applicant’s *past and present general conduct* are taken into account in assessing character.

Many spouse visa applicants who have applied for protection visa based on false or fabricated claims have been refused. The fact that such fabricated statements may have been suggested or made by a migration agent is not a defence. Even if the subsequent spouse visa application is based on genuine, continuing and exclusive relationship, many of those who have applied for protection visa were refused on character grounds.

## **DISCRETION TO WAIVE**

Notwithstanding, it does not necessary mean that if a visa applicant applied for protection, a subsequent visa will fail. If there were no false statements or fabrication of circumstances of claiming to be a refugee, the subsequent visa application could still succeed. If the applicant does not pass the character test due to false claims, additional evidence of rehabilitaton, recent good conduct or reformed character should be provided for the decision maker to exercise discretion to grant the visa, despite false and misleading statements in the protection visa application.

The three primary considerations taken into account by the decision-makers of DIMIA in exercising the discretion to grant the visa, even if a non-citizen does not pass the Character Test are:

- the protection of the Australian community, and members of the community;
- the expectations of the Australian community; and
- in all cases involving a parental relationship between a child or children and the person under consideration, the best interests of the child or children.

Although as a general rule, the existence of a child f the spouse visa applicant who is an Australian citizen will prevent the refusal of visa of character grounds, this was not so in the recent case of *Chheang (2003) AATA 254 (18.03.03)*.

At the 7th NATIONAL CONFERENCE of the Filipino Communities Council of Australia (FILCCA) held in November 2002 at the Gold Coast Queensland, resolutions were passed with the view to assist spouse visa applicants who have been refused visa on character grounds. Many of them are still in the Philippines and have been separated from their spouse in Australia since the year 1999. The relevant resolutions are quoted as follows:

“WHEREAS, a number of partner visa applications lodged by Filipinos have been refused on character grounds due to false claims of being a refugee in previous visa applications despite genuine spouse relationships;

WHEREAS, in many cases, the applicants were not aware of the claims alleged by unscrupulous migration agents nor were advised of the consequences of such false claims;

WHEREAS, many Filipinos have been separated from their Australian spouses for more than three years, without hope of ever reuniting again and this separation for an indefinite period is putting a strain on genuine spouse relationships;

WHEREAS, it is accepted that DIMIA may impose a penalty as a general deterrent to prevent others from committing similar false allegations however, it should also consider a humanitarian solution and preserve the sanctity of the family unit, by making it possible for the spouses to live together in Australia;

RESOLVE, to request the DIMIA to consider say, re-entry ban for realistic period or reasonable fine as penalty to partner visa applicants under the above circumstances;

RESOLVE, that after compliance with the penalty, the DIMIA officer shall grant the partner visa provided that all other visa requirements have been satisfied.

*Readers of the Philippine Community Herald Newspaper are invited to send their comments in support or against to "The President, Filipino Migrants Forum" c/o Imelda Argel & Associates, Solicitors & Attorneys, by email at [info@iargel.com.au](mailto:info@iargel.com.au) or by fax at (+612) 9699 3210 or by post to Suite 33, Level 4, 61-89 Buckingham St. SURRY HILLS NSW 2010.*

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