

## **CAN “TNTS” APPLY FOR ANOTHER VISA TO AUSTRALIA?**

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All non-citizens of Australia are required to hold a visa to travel to, enter and stay in Australia. A non-citizen, who does not have a valid visa, is unlawful.

### **What do you mean by “valid visa”?**

A valid visa is a permission to allow the visa holder to travel to, enter and stay during the validity period or to remain in Australia up to a certain date or indefinitely. It is not a work permit. A visa may or may not entitle the holder to work. Usually, the visa approval is shown in the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) records and can be accessed electronically (via computer). It is usually marked on a label affixed to the passport but it is not always necessary to evidence it in the passport.

### **There are four major types of visa:**

- *Permanent visa*- entitles the visa holder to migrate or remain in Australia permanently. Examples are spouse visa, skilled independent and skilled Australian sponsored visa.
- *Temporary visa*- authorises the visa holder to stay in Australia temporarily, subject to certain conditions. Examples are tourist visa, student visa, working visa or business long stay visa.
- *Protection visa*- maybe temporary or permanent for persons who have been granted a refugee status (Note that no Filipino has been granted this visa in recent times and one should avoid applying for this visa because of serious consequences)

*Bridging visa*- confers lawful stay to a person who would otherwise be unlawful. A *bridging visa A* is usually given when you apply for any substantive visa (such as spouse visa, carer visa, protection visa) in Australia provided your substantive visa (such as tourist or student visa) has not yet expired at the time you apply.

**If your relative’s visa expired and is still in Australia, he could avoid being brought to the Detention Center (at Villawood) by applying for a bridging E visa under certain conditions.**

Visa applicants who previously overstayed but who left Australia voluntarily even if they may have been detected, may apply for certain classifications of permanent resident visa, without any ban or exclusion period. Thus, generally, they can apply for a spouse visa or skilled permanent resident visa, if they meet the criteria.

The Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) is the government agency that implements the Migration law. The Australian Embassy in Manila has a DIMIA section, which assesses certain visa applications.

The assessing officer of the Australian Embassy has the discretion to grant or refuse the visa depending on how the applicant is able to demonstrate ability to meet the criteria of the visa applied for and whether a ban applies to the applicant.

Generally, a visa applicant who left Australia on a bridging A or B visa, does not face a ban on making an application to return to Australia. But those who departed from Australia with a bridging C, D or E visa or who were detained or *removed* for other reasons, will have to wait for *12 months* from removal from Australia before applying for the skilled permanent resident visa and are banned *for 3 years before* they apply for *temporary* visa, even if they left voluntarily.

Removal is when DIMIA makes the departure arrangements and pays for the departure, from the detention centre. Persons who have been detained but made paid arrangements for departure, may not be affected by the ban if they were released and not detained prior to their departure.

If their visa was cancelled, or they were the subject of a deportation order due to a crime or criminal conduct, they face a *permanent* ban.

### ***DIMIA's discretion***

The Department of Immigration, Multicultural and Indigenous Affairs has the discretion to waive ban or exclusion period due to

- (i) compelling circumstances that affect the interests of Australia; or
- (ii) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; justify the granting of the visa within 12 months after the removal.

An example of compelling circumstances in subsequent spouse visa applications include a child who is an Australian citizen, pregnancy or illness of the Australian sponsor which requires assistance of the visa applicant.

### **To be granted any visa, the visa applicant must**

- not be a risk to Australian national security.
- not prejudice relations between Australia and a foreign country;
- not have outstanding debts to the Commonwealth
- be able to settle in Australia without difficulty

Those who have applied for a protection visa and appealed to the Refugee Review Tribunal (RRT) but whose visas were subsequently refused are liable to pay a \$1,000 post application fee to the RRT. If they apply for any other visa, they must first pay the \$1,000 fee plus interest if any otherwise their application will fail. Other debts that must be paid include costs of detention and removal from Australia, unpaid tax, repayment of social security benefits if they were not entitled to, student charges for former overseas students.

### **Visa conditions**

Generally, there are visa conditions imposed in the visa approval. You can be removed or detained when caught *in breach* of the visa condition even if your visa has not yet expired. For example, when you work while on a tourist visa wherein the condition states, “No work” or in case of student visas, when you work more than 20 hours per week where your visa condition states, “Work limitation –20 hours per week”.

When there is a visa condition of “No further stay”, generally, it means you cannot apply for a spouse visa without going overseas, even if you have a genuine spouse relationship with an Australian citizen or permanent resident.

It is suggested that you consult a competent and honest solicitor who is registered and experience in migration cases if you are in this situation to facilitate your return, and so that you can prepare your spouse visa application prior to leaving Australia.

### **IMELDA ARGEL**

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*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 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, an Attorney at law in the Philippines and in the State of New York, USA. Her Registered Migration Agent no. is 9682957*

Atty Imelda Argel will conduct skilled migration seminars in Manila and in London this September. Readers of Philippine Star can register on 812 1833 or 867 4026.