

## **Filipino Migrants Forum**

### **CAN YOU HAVE YOUR VISA CONDITION 8503 (NO FURTHER STAY) REMOVED?**

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Condition 8503 of Schedule 8 of the Migration Regulations 1994 states that:

*“The holder will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa, while the holder remains in Australia”*

This condition is mandatory on all sponsored family visitor visas. Where the Department of Immigration and Citizenship (DIAC) has concerns that the visa applicant may overstay his or her tourist visa or other temporary visa, it will impose said condition, in the exercise of its discretion, to minimise the non return rate of temporary visa holders.

The effect of this condition is that the visa holder may not apply for another visa except for a bridging visa or protection visa while in Australia and cannot remain longer in Australia beyond the period authorised by the visa. This bar applies to any visa application outside Australia while the visa holder is in Australia and therefore, the visa holder must first depart from Australia before he or she can apply for any other visa.

Before receiving the visa grant, the visa applicant will usually be required to sign a declaration stating that he or she understands the consequences of having a “8503 condition” on the visa. Having had the knowledge that this condition will be imposed, the visa holder cannot later on claim that he or she did not know that such a condition was imposed.

#### **Limited Grounds for Waiver of Condition 8503**

It may be possible for a visa holder in Australia to request that condition 8503 be waived due to a change in circumstances, where the condition was placed on a visa in the exercise of discretion but not where that the imposition of that condition was mandatory. A DIAC officer will look at a number of things in determining whether a waiver may be granted, such as, why condition 8503 was imposed on the visa and how certain conditions under the relevant Migrations Regulations are met.

The request for waiver must be in writing and must show that:

- Since the person was granted a visa, certain circumstances have developed that:
  - Is beyond the control of the person

- Has resulted in a major change to the person's circumstances, which is "compelling and compassionate" in nature

There is no specific definition of what is meant by "compelling and compassionate" but some examples include:

- Unfitness to travel
- Death or illness of a family member
- Natural disasters in the applicant's home country
- War or civil unrest in the applicant's home country

If an applicant is successful in obtaining a waiver on condition 8503, then he or she can apply for another visa without having to leave Australia. However, if the applicant is not successful in obtaining a waiver it may be possible to make further waiver requests if the applicant can provide new evidence or information regarding his or her circumstances.

Any decision by DIAC not to waive the condition will be final and cannot be subject to review by the Migration Review Tribunal.

*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. She is also the recipient of the inaugural NSW FAWAA (Filipino-Australian Women's Achievement Award) for her outstanding achievements in corporate practice. . More information is available at [www.iargel.com.au](http://www.iargel.com.au)*

*Readers of the Philippine Community Herald Newspaper are invited to send their comments 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 41, Ground Floor, 61-89 Buckingham St. SURRY HILLS NSW 2010.*