

COMMON LEGAL QUESTIONS ON IMMIGRATION



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Who are illegal migrants?

Anyone in Australia who is not an Australian citizen and does not have a valid visa is "an unlawful non citizen" or what is referred to as an illegal migrant. Generally, all persons in Australia who are not citizens must have a visa.

What is a bridging visa?

A bridging visa is one that gives **temporary** lawfulness to someone, who would otherwise be an illegal migrant or an unlawful non-citizen. It is a **temporary** measure given to someone either making arrangements to leave the country or waiting for a review process of an application for a substantive visa to be finalised.

By its very nature, a bridging visa is issued only in Australia. It is not a "substantive visa".

What is a substantive visa?

Any visa other than a bridging visa or a criminal justice visa. Common examples of substantive visas are - temporary visitor visa, student visa and visas for permanent residents such as those issued under the family migration program, economic migration program, refugee and humanitarian program, special eligibility or independent category.

What are the classes of bridging visa?

The five major classes of bridging visa are:

1. A - usually granted to those who have lodged an application for another substantive visa in Australia while they still held a substantive visa, that is, while their substantive visa was still valid.

As the bridging visa is granted before the expiration of the substantive visa, at a time a further application for substantive visa is lodged, the bridging visa will come into effect only when the first substantive visa expires.

2. B - usually granted to holders of Bridging visa A, who are to travel overseas while the application for substantive visa is being processed. It is the only bridging visa that gives the holder the right to re - enter Australia. This visa unlike the other bridging visas attracts an application fee.

3. C - usually granted to those whose substantive visa has expired but voluntarily lodge an application for a substantive visa before they get caught.

4. D - There are two subclasses:

* **Prospective applicant (Schedule 2, subclass 040)**

usually granted to those who by - pass immigration clearance and have been at large in Australia for at least 45 days.

* **Non applicant (Schedule 2 subclass 041) -**

usually granted to those who present themselves to the DIMA either as unlawful, do not want or are unable to make an application for a substantive visa and there is no officer available to interview them to ascertain whether they may be granted a bridging visa E.

Bridging visa D is normally granted only for 5 working days. Holders are generally not entitled to work.

5. E - There are two subclasses:

Schedule 2 (subclass 050 Bridging visa - general)

- * granted to those who have been detected as unlawful and are making arrangements to leave
- * those who have made or about to make
 - an application for a substantive visa in Australia, but no longer hold a substantive visa
 - merits review or judicial review of a decision to refuse a substantive visa before :
 - IRT (Immigration Review Tribunal)
 - RRT (Refugee Review Tribunal)
 - AAT (Administrative Appeals Tribunal)
 - or those whose appeal to the Minister have not been acted upon.

Schedule 2, Subclass 051 Bridging visa, (Protection visa applicant)

- Usually granted to those who have by - passed immigration clearance and have lodged an application for a protection visa and under special conditions such as "boat people".

For how long is the Bridging visa valid?

Generally, if a bridging visa granted on the basis that an application for a substantive visa is lodged, it is valid until 28 days after the applicant is notified of the decision of the Department of Immigration and Multicultural Affairs (DIMA) or the Appeals Tribunal, respectively, or until the applicant withdraws his application for a substantive visa.

If a bridging visa E is granted on the basis that there was failure to make a decision within two working days (what is called a "**Deemed grant**", the visa is valid only for:

- * 5 working days or
- * 14 days, if a ticket to depart is shown to DAMA within the first 5 working days.

Once the substantive visa is granted, the bridging visa is terminated.

If an applicant appeals to the Minister or applies for judicial review, one should apply for another bridging visa:

- * Those appealing to the Minister are normally granted a bridging visa E.
- * Those applying for a judicial review are normally entitled to a further bridging visa A, if they held a bridging visa A or B at the time of application for judicial review.

Are bridging visa holders entitled to work?

Before 1 July 1997, applicants for protection visa who lodged their application while their substantive visa was still valid were automatically granted a bridging visa A with permission to work.

From 1 July 1997, protection visa applicants who have been in Australia for 45 days within the previous 12 months are no longer granted permission to work, unless the Department has not decided on their primary application within 6 months from lodgement.

Applicants for substantive visas **other than protection** visa are being granted **bridging visa A** with the same right to work as they had on their expiring substantive visa or substantive visa upon entry to Australia.

Holders of bridging A visa who are restricted to work may be granted an unrestricted permission to work under certain conditions.

Bridging visa C and E do not normally carry a permit to work but may be granted under separate application under certain conditions.

Bridging visa D holders are generally not entitled to work.

What is a protection visa?

A person seeking a protection visa is one seeking to be determined as a "refugee".

Definition of a refugee under the United Nations Convention:

"Owing to a well founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his habitual residence, is unable or owing to such fear, is unwilling to return to it."

Why is an application for protection visa commonly referred to as bridging visa?

In the past, many applicants who were not qualified to apply for other substantive visas or who could not afford to pay the lodgement fee for other substantive visas, lodged an application for protection visa. That application carried with it an application for bridging visa A with permission to work, as temporary measure to legally remain and work in Australia

Because of apparent abuse of this practice, the Migration Regulations has been amended from 1 July 1997. From this date, not all applicants for protection visa are automatically granted permission to work. They may be granted bridging visa A only if they lodge their application within 45 days from arrival or stay in Australia within the 12 months immediately preceding the application, provided they hold a substantive visa.

From 1 July 1997, a \$1,000.00 post application fee for the RRT review of a decision to refuse a protection visa is payable within 7 days of notice of the decision by the Refugee Review Tribunal, affirming the decision of DIMA that the applicant is not a refugee.

Before considering to lodge an application for protection visa, first discuss all your options to remain or migrate to Australia, with a reputable solicitor or registered migration agent, to avoid potential negative effect on your future visa applications.

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*This article is of a general nature and should not be accepted as authoritative legal advice. For specific inquiries, please contact **Imelda Argel and Associates on phone (02) 9699 3072** who will take into account each client's particular circumstances.*