

## CHARACTER TEST FOR AUSTRALIAN VISAS

All applicants for an Australian visa are required to pass the character test. A clearance certificate from the National Bureau of Investigation (NBI) is not sufficient. A person's *past and present general conduct* are taken into account in assessing good moral character.

Present general conduct which could constitute “not of good moral character” includes continual evasion or non-payment of debts or bills or activities indicating contempt or disregard for the law or for human rights.

Past general conduct which will be taken into account in deciding “good moral character” include removal or deportation from Australia or other countries or undecided criminal charges, even acquittal or criminal offence or charges where there has been no conviction recorded.

Filipinos intending to visit Australia must examine the visa label attached to their passport. They must not arrive in Australia on a tourist visa if their intention is to work because usually a “no work” condition is imposed by the Australian Department of Immigration and Multicultural Affairs. There are very limited cases where Filipino tourists are allowed to apply for a change of visa or visa condition upon arrival.

Filipinos must also avoid applying for protection visa or claiming “refugee status” because 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*”.

This definition of a “refugee” was adopted by the Australian government based on the definition at 1951 United Nations Convention relating to the Status of Refugees, as amended by the 1967 Protocol.

**Indeed, in recent times, no Filipino citizen is known to have been granted a permanent resident visa based on claims of being a refugee.**

A bridging visa A which will allow the visa holder to obtain a tax file number and to work 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.

Note however, that the decision to refuse the protection visa application may be given in a matter of weeks, sometimes even before the bridging visa A could take effect. In such case, the visa applicant would have only 28 days left either *to appeal* the decision refusing the refugee visa application or *to leave* Australia.

False or fabricated statements of circumstances regarding grounds of persecution are recipes for failure to pass the character test. They are regarded as indicative of “*not of good character*”. In many cases, subsequent visa applications of persons who previously applied for a change of visa from a tourist visa to a protection visa or refugee status (for the purpose of obtaining a bridging visa A and a temporary work permit) were refused because of fabricated statements in support of the refugee visa application.

Note that the fact that such fabricated statements may have been suggested or made by a migration agent is not a defence. It is fact that many subsequent visa applications including spouse visas based on genuine, continuing and exclusive relationships were refused on character grounds.

### **DISCRETION TO REFUSE OR CANCEL**

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 provided additional evidence is provided to show good character or reformed character.

The decision-makers of the Department of Immigration and Multicultural Affairs have the power to exercise the discretion to refuse or cancel a visa, if a non-citizen does not pass the Character Test. There are three primary considerations:

- 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.

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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.*

Our law firm Imelda Argel & Associates, Solicitors & Attorneys, will be conducting education seminars on “Migration of Professionals and Skilled Workers to Australia and Practical Tips in Obtaining a Temporary Working Visa to Australia” to be held this month in Manila, Vigan City and San Fernando, La Union. For enquiries on the seminar, contact Cita of Fajardo Law Office on (02) 810 9595 / 810 1490 or Kathleen Estepa on (077) 728 2100 or visit our website on [www.iargel.com.au](http://www.iargel.com.au).