

Can you apply for another visa in Australia after your visa application has been refused or cancelled?

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Section 48 of the **Migration Act 1958** limits further applications by a non-citizen whose visa has been cancelled, or whose application for a visa has been refused. The legislation states the following:

Section 48. *Non-citizen refused a visa or whose visa cancelled may only apply for particular visas*

- (1) A *non-citizen* in the *migration zone* who:
- (a) *does not hold a substantive visa; and*
 - (b) *either:*
 - (i) *after last entering Australia was refused a visa, other than a refusal of a bridging visa or refusal under section 501, 501A or 501B, for which the non-citizen had applied (whether or not the application has been finally determined); or*
 - (ii) *held a visa that was cancelled under section 109 (incorrect information), 116 (general power to cancel), 134 (business visas), 137J (student visas) or 137Q (regional sponsored employment visas);*
- may, subject to the regulations, apply for a visa of a class prescribed for the purposes of this section, but not for a visa of any other class.*

Thus, a person can apply again for one of the following visa classes, but not for a visa of any other class:

- Territorial Asylum (Residence) (Class BE);
- Border (Temporary) (Class TA);
- Special Category (Temporary) (Class TY);
- Bridging A (Class WA); Bridging B (Class WB); Bridging C (Class WC); Bridging D (Class WD); Bridging E (Class WE); Bridging F (Class WF); and Bridging R (Class WR);
- Resolution of Status (Temporary) (Class UH);
- Resolution of Status (Residence) (Class BL);
- Child (Residence) (Class BT);
- Return Pending (Temporary) (Class VA).

Section 48A of the Act specifies that non-citizens who were refused **a protection visa** may not make further application for protection visa.

Thus, a non-citizen who, while in the migration zone, has made one or more applications for a protection visa and the grant of the visa has been **refused** may not make a further application for a protection visa while in the migration zone. This means

that the person has to leave Australia and apply for a protection visa from overseas. Moreover, a non-citizen in the migration zone who held a protection visa that was **cancelled** may not make a further application for a protection visa while in the migration zone. However, **Section 48B** specifies that a Minister may by determine that section 48A does not apply to prevent an application for a protection visa made by the non-citizen when he thinks it is in the public interest to do so.

Notwithstanding, s 48 does not apply if you still have a valid substantive visa after your visa is refused or cancelled in which case, you may still apply for another visa under certain circumstances.

This information is of a general nature and should not be taken as authoritative legal advice for specific cases. 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, Attorney at law in the Philippines and in the State of New York, USA. Her Registered Migration Agent no. is 9682957. More information is available at www.iargel.com.au

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