

Filipino Migrants Forum

IS YOUR REMAINING RELATIVE ELIGIBLE FOR PERMANENT RESIDENCE?

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Remaining relative visas are permanent resident visas designed to allow sponsorship by Australian citizens, permanent residents or eligible New Zealand citizens of their last remaining relative overseas or to allow an applicant to change status whilst in Australia on another class of visa.

Eligibility for each of these visa classes is very restrictive. The terms used in the criteria have strict technical meanings which must be understood and evidenced to avoid visa refusal. An assurance of support is also required in all cases.

To qualify, the visa applicant must be a *brother or sister*, including step brother/sister or an adult *child* or adult step child of the sponsor and must establish that they satisfy the definition of a “remaining relative”.

The current definition of “remaining relative” in the Migration Regulations requires that the **visa applicant and spouse**, if married, must either:

- (a) have no near relatives living outside Australia; **OR**
- (b) have no more than 3 overseas near relatives ; do not usually reside in the same country as any overseas near relatives, and not have had contact with any overseas near relative within a reasonable period.

The first category in this definition is the one most commonly used, for obvious reasons. But note that the spouse must not also have near relatives living outside Australia.

An overseas near relative under the second category is a parent, brother, sister, and non dependent child (including step relatives) who is not an Australian citizen or permanent resident and is not usually resident in Australia.

Given the definition of “overseas near relative”, claims under the second category are more difficult to prove and would certainly be subject to detailed interview of the applicant and possible checking of any claims made in this respect. Definitions of “contact”, “usually resident” and “reasonable period” must also be checked prior to lodgment of application.

All applicants, whether applying in Australia or overseas, are required to meet the usual health and character criteria.

Each require sponsorship by an appropriate relative who is “settled”, usually resident in Australia and is over the age of 18. A limitation on sponsorship is that if the sponsor has previously sponsored/nominated a person who was subsequently granted a visa on the basis of being a remaining relative or was himself or herself granted a visa on the basis of being a

remaining relative then the application can not be approved.

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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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