



Are you in a de facto relationship?

By Atty. Imelda Argel, Bachelor of Laws (UP), Master of Laws (University of Sydney)

Under current Migration legislation, if you are a citizen of a country where there is no divorce (for example, The Philippines, Malta), you can apply for a de facto partner visa even if you are still legally married to your spouse provided you are permanently separated with your former spouse under certain conditions. You can also be in a de facto partner relationship with a person of the same sex (gay or lesbian), even if you were previously married to a person of the opposite sex.

The interdependent visa which applied to same sex couples was abolished on 1 July 2009 but its provisions were integrated into the de facto partner visa provisions. Thus, you can apply for a visa based on a de facto relationship with a person of the same sex provided you are sponsored by your de facto partner who must be either an Australian citizen, permanent resident or eligible New Zealand citizen. You must be both over 18 years of age, have a mutually exclusive, genuine and continuing relationship, live together or do not live separately and apart on a permanent basis, and are not close relatives.

Generally, your de facto relationship must have existed for at least 12 months immediately before the date of visa application. Exceptions include, de facto relationships which have been registered under an Australian state law, existence of compelling and compassionate circumstances (e.g. having a dependent child from the relationship), or illegality of de facto relationship in the country wherein you usually resided in the 12 months prior to making the visa application.

You must address **four aspects** in proving your de facto relationship:

- (1) **Financial aspects.** – Submit documents of joint ownership of real estate, car or major household appliances, joint loans or mortgages, joint bank accounts, and power of attorneys.
- (2) **Nature of the household.** - demonstrate joint responsibility for the care and support of children, shared responsibility for housework, living arrangements, joint residential leases and rental receipts, joint utilities accounts, and letters addressed to either or both partners at the same address.
- (3) **Social aspects.** Show evidence that you represent yourselves to other people, to government authorities and commercial agencies that you are a couple, statutory declarations from friends and family recognising the de facto relationship, joint participation in activities (sports, cultural, social, religious) and joint travel.

(4) Mutual long term commitment to each other. Show companionship, emotional support from each other, knowledge of each others' personal background and family situation, or anything to indicate that you intend for the relationship to be long term.

“Living together” does not necessarily mean that you live together at the same address but it would be very difficult to prove that there is a genuine de facto relationship if this is the case.

If you are applying for a permanent visa, Business skills visa, General Skilled Migration visa, or a Partner visa, your de facto relationship must have existed at least 12 months prior to the date of visa application, otherwise six months is regarded as reasonable time for a de facto relationship to exist. Exceptions to the 12 month rule are registration of de facto relationship under an Australian state law, existence of compelling and compassionate circumstance such as having a dependent child from the relationship or illegality of de facto relationship in the country where you usually resided in the 12 months prior to making the visa application.

What if you had overstayed your visa and do not have the above documentary evidence to prove your de facto relationship? See a good registered migration agent!

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 migration solicitor 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 the author of TIPS on GSM visas, the recipient of the inaugural NSW FAWAA (Filipino- Australian Women's Achievement Award) for her outstanding achievements in corporate practice and entrepreneurship, and the University of the Philippines Alumni Association (NSW Chapter) Achievement Award for law and community service. More information is available at www.iargel.com.au. You can contact the author by email at info@iargel.com.au or by fax at (+612) 9699 3210 or by appointment at Suite 41, Ground Floor, 61-89 Buckingham St. SURRY HILLS NSW 2010.