



Can you apply for another visa whilst in Australia?

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As a general rule, if you are in Australia and have applied for a substantive visa (visa other than a bridging visa) which has been refused or if your visa has been cancelled, you may not apply for another substantive visa whilst you are in Australia because of the bar under section 48 of the *Migration Act 1994 (Cth)*. Subject to certain exceptions, to apply for another substantive visa you must leave Australia and lodge your new visa application whilst you are outside Australia. This is to prevent applicants extending their stay in Australia by continuously lodging new visa applications after a visa is refused or cancelled.

Recently, the Australian government amended section 48 of the Migration Regulations. As from 14th of September 2009, a new exception to the general rule applies to those applying for spouse and partner visas (based on de facto, same sex or opposite sex partner relationship). Under the amendment, if you have been refused a visa whilst in Australia and are eligible to apply for a spouse or partner visa, you may lodge your visa application whilst you are in Australia, if the visa which was refused or cancelled was:

- (a) not a spouse or partner (same sex or opposite sex) visa and
- (b) the refusal was not based on character grounds provided in section 501 of the *Migration Act 1994 (Cth)*.

To apply for a spouse or partner visa, your sponsor must be an Australian citizen, Australian permanent resident or eligible New Zealand citizen, 18 years of age or over, otherwise, your spouse or partner's parent or guardian, will act as the sponsor. You must be the spouse or (same sex or opposite sex) de facto partner of your sponsor, except, if your sponsor is the parent or guardian of your spouse or partner. You must be able to provide evidence of your marriage or de facto relationship.

You may include a dependant child who is in Australia in your visa application and your dependent will also be able to stay in Australia while your application for a spouse or partner visa is being processed. Under normal circumstances, you will be granted a bridging visa A which will entitle you to work full time until a decision is made on your visa application.

If your relationship ceases after lodgement of your visa application, due to the death of your sponsor, it is necessary to show that had it not been for the death, your relationship would have continued and that you have made either close business, cultural or personal ties with Australia, before your visa can be granted.

If your relationship ceases due to family violence against you or your dependant child by the sponsoring spouse or partner, your visa application will generally be granted.

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.