



Immigration Advice and Rights Centre Inc.

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APPLICATIONS FOR REVIEW AT THE MIGRATION REVIEW TRIBUNAL*

(Reflects law as at 1 July 2009)

HOW CAN THE MIGRATION REVIEW TRIBUNAL HELP YOU?

The Migration Review Tribunal (“MRT”) is an independent review body and can help you by reconsidering your case and making a finding in relation to it. The MRT has the power to:

- overturn or remit a decision
- substitute another decision
- return the case to the Department of Immigration (“Department”) for reconsideration, or
- affirm the original decision.

Generally the MRT will either:

- “affirm” a decision of the Department – ie agree with the decision of the Department (ie the appeal is unsuccessful) or
- “remit” a decision of the Department – ie disagree with the decision of the Department and require the Department to reconsider the case on the basis of the MRT’s findings (ie the appeal is successful).

The MRT must follow immigration law. Therefore, it does not have the power to grant a visa where the applicant does not meet all requirements for that visa.

WHO CAN APPLY FOR REVIEW AT THE MIGRATION REVIEW TRIBUNAL?

An application for review at the MRT can be made by the following people:

- a person in Australia who applied for a visa in Australia and that visa was not granted by the Department
- a person in Australia who has had their visa cancelled (unless it is cancelled automatically, eg some student visas, or because of character grounds)
- a person in Australia whose application to have the cancellation of their visa revoked has been refused
- a person who sponsored or nominated another person’s visa application, made outside Australia, where sponsorship or nomination is a criterion for the visa and the visa has been refused
- a sponsor or nominator for a visa application made outside Australia where that sponsorship or nomination was a criterion of the visa – except for resident return visas and visitor visas where only a parent, spouse, child, brother or sister of the visa applicant may apply for review
- a person who was granted a subclass 309 or 310 visa overseas prior to being refused a subclass 100 or 110 visa within Australia and is in Australia at the time of lodging the review application

* IARC does not guarantee the accuracy of any information contained in this information sheet. It contains general information and is not a substitute for legal advice

- a person whose application for approval as a standard business sponsor or a pre-qualified business sponsor has been rejected
- a person whose application for renewal of their approval as a pre-qualified business sponsor has been refused
- a person who is in immigration detention due to a decision to refuse or cancel a Bridging Visa
- a person whose approval as a business sponsor has been cancelled under section 137B of the Migration Act
- a business sponsor whose application for approval of a nomination of an activity has been refused
- an employer whose application for approval of a nominated position has been rejected
- the visa application in relation to a decision relating to lodging a security for compliance with visa conditions
- organisations whose application for approval as an approved professional development sponsor has been refused
- approved professional development sponsors who have been given a notice under subregulation 1.20Q(2) of the Migration Regulations, and
- organisations whose approval as an approved professional development sponsor has been cancelled.

The MRT cannot review:

- a decision to cancel a visa if the cancellation occurred when the visa holder was outside Australia
- a decision to refuse to grant or to cancel a visa on the grounds that a person is not of good character, or
- a protection visa application – these are reviewed by the Refugee Review Tribunal.

HOW DO I APPLY?

Applications for review must be in writing (on approved form M1, which can be downloaded from the MRT website) and be lodged with the MRT with the \$1400 application fee (unless exempted or waived). The application form is not considered to have been lodged until the fee is received by the MRT. If you are applying for a fee waiver you must apply for the fee waiver at the time you lodge your application for review. If the request for a fee waiver is refused, your application will be considered invalid unless you pay the fee within the time prescribed by the MRT.

Applications can be lodged at any office of the MRT by hand or by post. Applicants for review of a bridging visa decision who are in immigration detention can also lodge their review application by fax. In these cases there is no review application fee. All other review applicants in immigration detention can lodge their review application by fax or by giving it to an immigration officer at the detention centre or at an airport and paying the application fee (unless it is waived). Applications by a person in immigration detention should be made on form M2.

WHO SHOULD APPLY?

If the visa applicant or holder is in Australia then they are the person who should apply for review. If the visa applicant is overseas, then in most cases the Australian sponsor, nominator or family member makes the application for review. In some cases the visa applicant must be in Australia in order to apply for review (eg where they applied for an onshore visa while in Australia).

The business sponsor or employer must apply for review in relation to business sponsorship and employer nomination decisions.

If family members had made a combined visa application, their applications for review can be combined on one application form and only one application fee is payable.

WHEN DO I APPLY?

The MRT cannot accept an application which is lodged outside of the time limits. This is very strictly enforced and there are **no exceptions**. Therefore you **must** ensure that you lodge your application for review within the permitted time period.

You do not need to have all your evidence ready at the time of lodgment. You can submit the application form and application fee within the time period and provide further evidence (eg statements, documents etc) later.

If you were handed a decision by an officer of the Department or received it by fax you must apply for review within the next:

- 2 working days for the review of:
 - a refusal to grant a bridging visa, and any related decision to require a security as a result of which you are being held in immigration detention
 - a cancellation of a bridging visa as a result of which the former visa holder is being held in immigration detention.
- 7 working days for the review of:
 - a refusal to grant a visa (other than a bridging visa) where the applicant is in immigration detention
 - a cancellation of a visa other than a bridging visa
 - a decision not to revoke the cancellation of a visa
- 21 calendar days for the review of:
 - decisions to refuse to grant visas, where the visa was applied for and can be granted in Australia and the visa applicant is not in immigration detention
 - decision to refuse to grant a subclass 100 or subclass 110 visa in relation to a visa application made outside Australia, but where the decision was made when the visa applicant was in Australia and was the holder of a subclass 309 or subclass 310 visa, and the visa applicant is not in immigration detention
 - decisions in relation to business sponsorships, professional development sponsorships or nominated positions, and security decisions (where the applicant for review is not in immigration detention)
- 70 calendar days for the review of:
 - decisions to refuse to grant a visa in relation to a visa application made outside Australia for a visa that could not be granted if the visa applicant is in Australia
 - decisions as to the assessed score under the points system.

If the decision was sent by mail within Australia, add 7 working days (ie exclude weekends and public holidays) immediately after the date of the Department's covering letter, then calculate the above time limits.

If the decision was sent by mail to or from outside Australia, add 21 calendar days after the date of the covering letter to the above time limits.

HOW MUCH DOES IT COST?

In order to appeal to the MRT you must pay the application fee of \$1,400, unless you are in detention as a result of a decision to:

- cancel a bridging visa
- refuse to grant a bridging visa, or
- any related decision to require a security.

Payment can be made by cash, cheque (made out to the Migration Review Tribunal), EFTPOS, Visa, MasterCard or Bankcard.

In limited circumstances this application fee may be waived if the MRT is satisfied that payment has caused, or is likely to cause, severe financial hardship. In these circumstances you may apply for a waiver of the application fee. Use form M11 for this. The form can be downloaded at www.mrt-rrt.gov.au or obtained from the MRT directly (see contact details below). This must be lodged with the application during the time permitted for appeal.

The application fee will be refunded if you are successful at the MRT or if your application is found to be invalid (eg because you lodged your appeal outside the appeal time). The fee will also be refunded if the application is withdrawn because the applicant or family member has died or if another visa of the same class has been granted.

HOW LONG DOES IT TAKE?

The length of time taken for an appeal to the MRT varies depending on the types of appeal and the complexity of the issues at stake. In order to minimise the length of the appeal you should respond to all requests by the MRT as soon as possible and provide comprehensive and detailed evidence and submissions.

If you have circumstances that may warrant the MRT treating your case with priority you should bring this to the attention of the MRT (preferably when you lodge the application for review), together with appropriate evidence of why you require priority processing. Relevant circumstances could include:

- being in detention
- suffering from a serious medical condition
- experiencing serious financial hardship, or
- separation of a child from a parent or care giver.

WHAT WILL THE MRT LOOK AT?

The MRT will consider your case as if it is a fresh application, and will look at:

- all evidence and applications which were provided to the Department during the application process and any other evidence or documents gathered or created by the Department
- any submissions or evidence which you submit to the MRT for their consideration, and
- any evidence provided at the hearing.

The MRT also has independent power to conduct its own investigations. For example it may contact your employer, friends or family if you have provided evidence from, or about, them.

If the MRT has any adverse information about you (ie information which may cause the review application to fail) then it will notify you and ask you to comment on that information. If you receive such a notification it is very important that you do respond to the request for comments within the time limit specified, otherwise your review application is likely to fail.

WHAT EVIDENCE SHOULD YOU PRESENT?

What evidence you need to present will depend on the specific circumstances of your case. You are trying to explain your situation to the MRT and make it easy for them to understand. For example, you may want to provide a chronology of events or a family tree to make it clear to the MRT what has happened and how people mentioned in the application are relevant to you.

After you lodge the application for review you should submit an application to receive a copy of your file held by the Department under the *Freedom of Information Act 1982*. This is done by completing form 424 *Request for access to documents* and submitting it to the Department. This will help you to work out why the Department made the decision it did. You will need to address each of the Department's concerns and give reasons or evidence for why the MRT should not reach the same conclusion as the Department. For example, if the Department has said that you and your fiancé have not been in contact you should give evidence of telephone calls, letters, email, photographs and/or statements of friends and family who are aware of your contact.

If you are submitting documents then you should provide certified copies of those documents and have the originals with you at the hearing. You should keep a copy of all evidence provided to the MRT and provide a cover letter explaining the relevance of the documents.

WHAT IS THE PROCESS FOR REVIEW?

The procedures for the MRT will vary from case to case but generally proceed along the following lines:

- you will lodge your application
- you will receive a letter from the MRT confirming receipt of your application and asking you to lodge any additional documents you want to lodge
- your case will be allocated to a MRT member who will review the documents
- if a favourable decision is reached on the documents alone the case will be finalised otherwise you will be invited to provide comments or provide further information to the MRT - it is important to respond to this invitation
- in most cases, you will be invited to a hearing – your migration agent can attend the hearing with you but cannot answer questions on your behalf and you can request an interpreter if required
- at the hearing you can give evidence and/or have other people give evidence in support of you – the hearing is generally informal and will be open to the public unless the MRT decides it would be in the public interest for it to be closed
- following the hearing you may be invited to provide some further evidence or documentation (or your advisor may be invited on your behalf to provide that evidence), and
- you will be provided with a written statement of the decision and reasons – you can either collect this in person at the handing down or it will be posted to you.

If you are nervous about the hearing you should try to attend some hearings before your own hearing date. This will help you to understand the process and what is expected of you at the hearing.

WHAT IF MY REVIEW IS NOT SUCCESSFUL?

If your application for review at the MRT is not successful then you will be notified that you have 28 days in which make arrangements to leave Australia. If you do not want to leave Australia then you have two potential further avenues for review:

- you can make a written request to the Minister to exercise her personal discretion to grant you a visa – for details on this you should get a copy of IARC’s information sheet entitled *Ministerial intervention following a decision of a review tribunal*
- in limited circumstances you may be able to appeal to the Federal Court or the Federal Magistrates Court – there are strict time limits for any such appeal. You should contact Legal Aid to discuss your case in relation to this (see contact details below).

BRIDGING VISAS

In most cases the bridging visa which you were granted while the application was being processed will continue for the duration of the appeal process. This bridging visa will expire 28 days after a decision is made by the MRT. For example, if you had a Bridging Visa A while your application was processed by the Department this Bridging Visa A will continue until 28 days after a decision is made by the MRT.

If you are seeking review of a decision to cancel your visa then you must apply for a Bridging Visa E for the duration of the MRT process. You should do this as soon as you are notified of the decision to cancel your visa.

PERMISSION TO WORK

If you had permission to work while your application was being processed by the Department then you will also have a right to work while your MRT appeal is processed.

If you did not have a right to work then you may be able to apply for permission to work. In order to be granted permission to work you must show a “compelling need to work”. This means that you must be suffering financial hardship. Usually a person is taken to be in financial hardship if the cost of reasonable living expenses exceeds

their ability to pay for them. To request work rights you will need to complete form 1005 *Application for a bridging visa – to change bridging visa conditions or to provide lawful status.*

CONTACT INFORMATION

MIGRATION REVIEW TRIBUNAL

9am–4.30pm Monday to Friday

Sydney CBD Level 11, 83 Clarence Street, Sydney, NSW 2000
Ph: (02) 9276 5000
Fax: (02) 9276 5599
Postal address: GPO Box 1333, Sydney, NSW 2001

National Telephone Inquiry Line: 1300 361 969

Website: www.mrt-rrt.gov.au

LEGAL AID

9am–5pm Monday to Friday

Sydney CBD 323 Castlereagh Street, Sydney, NSW 2000
Ph: (02) 9219 5000
Fax: (02) 9219 5935

Website: www.legalaid.nsw.gov.au

DEPARTMENT OF IMMIGRATION AND CITIZENSHIP (DIAC)

Counter service all NSW offices

9am–4pm Monday to Friday

Sydney CBD 26 Lee Street, Sydney 2000
GPO Box 9984, Sydney, NSW 2001

Parramatta 9 Wentworth Street, Parramatta NSW 2150
GPO Box 9984, Sydney, NSW 2001

National Telephone Inquiry Line: 131 881

Website: www.immi.gov.au

IMMIGRATION ADVICE AND RIGHTS CENTRE INC (IARC)

Administration line: (02) 9279 4300 (between 9am and 5pm)

Website: www.iarc.asn.au

IARC Telephone Advice	IARC Face-to-face advice (by appointment only)
(02) 9262 3833 Tuesday and Thursday 2.00pm–4.00pm	Contact us to make an appointment at: Immigration Advice and Rights Centre Inc. Level 5, 362 Kent Street Sydney NSW 2000 Ph: +61 2 9279 4300 (Admin Line, 9-5pm)