

Newsletter

Immigration Solutions for a Changing World

Did you know that Australian lawyers and migration agents are required each year to attend continuing practical development courses to remain registered? Each year every member of our professional staff undertakes over 20 hours of ongoing training to keep up to date with changes in the law. This means we are able to provide you with the most up to date advice and assistance.



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New 3 Year Bans For Fraud

The Department of Immigration and Citizenship have recently introduced a new Public Interest Criteria for certain visas aimed at reducing or penalising cases of fraud.

The new Fraud Criterion allows the Department to refuse a new visa application under three circumstances:

- a. Where the visa applicant has provided bogus, false or misleading documents or information during the course of their current application;
- b. Where the applicant previously provided bogus, false or misleading documents or information in an application for a visa that they held during the 12 months before the lodgement of the new visa application;
- c. Where the applicant has had a previous visa application refused during the last 3 years for failing to meet the fraud criterion.

The effect of this new criterion is to place a 3 year ban on visa applicants applying for a new visa if they have previously had a refusal due to fraud. The new criterion will apply to most Skilled and Employer Sponsored visa

applications, including the Subclass 457 Visa. In the future it may be extended to other types of visas.

The 3 year ban will not only apply to the main visa applicant, but will also apply to all of the family members who are included in the application, even if they were not responsible for the fraud.

The only circumstance in which the Department will waive the 3 year ban is if an applicant can demonstrate compelling and compassionate circumstances that either affects the interests of Australia or that affect the interests of an Australian citizen, permanent resident or an eligible New Zealand citizen.

If you or anyone you know may be affected by this change in law, it is recommended that you seek professional advice as soon as possible from a qualified migration law professional.

CONTACT US

If you require advice on this or other migration, commercial or employment law issues contact us at: mail@rothsteinlawyers.com

Visa Cancellations

Each year the Department of Immigration and Citizenship cancels thousands of visas. Do you know what the risks are?

The process of obtaining an Australian visa is often an expensive and lengthy process. Unfortunately there are many people who after having gone through the difficulties of obtaining an Australian visa end up having their visa cancelled. Having your visa cancelled, either by request or involuntarily by the Department of Immigration and Citizenship, is serious as it can mean detention and removal from Australia. So what does it mean when your visa is cancelled?

The Migration legislation gives the Department the ability to cancel your visa under a number of circumstances including:

- You fail to comply with the conditions of your visa, such as working while holding a visitor visa; not meeting course requirements while holding a student visa; or you may have held a Subclass 457 visa but you no longer work for the sponsor;
- The circumstances under which your visa was granted no longer exist, such as you may have held a Partner temporary visa but the relationship with your Australian sponsoring spouse has broken down;
- You fail the character test such as may occur if you have a substantial criminal record.

There are other prescribed circumstances in which a visa can be cancelled such as:

- where you have provided incorrect information or bogus documents to Australian immigration authorities including answers on passenger cards;
- where as the holder of a visa your presence in Australia would be contrary to Australia's foreign policy interests.

If your visa is cancelled and you are in Australia at the time the visa is cancelled, in most cases you will have to depart Australia unless you successfully appeal the decision. Once a visa is cancelled, a person who is in Australia would become an 'unlawful non-citizen' and may be subject to detention and removal from Australia. Those who are outside of Australia at the time of cancellation will most likely be unable to return to Australia.

It is also important to remember that not only will having a visa cancelled affect you at the time of cancellation, but may also have negative impacts on your future. Having a visa cancelled may result in you experiencing difficulty in obtaining a visa in the future, not only for Australia, but potentially also many other countries.

Prior to the cancellation of a visa the Department is in most cases (but not all) required to follow a strict notification and assessment process that gives you the opportunity to reply and present reasons why your visa should not be cancelled. However the time limits to reply to such a notice are often very short and as such if you ever receive such a notice you should immediately get advice on what to do.

If your visa is cancelled there may also be an opportunity to appeal that decision to either the Migration Review Tribunal or the Administrative Appeal Tribunal, depending on the circumstances. In order to be able to successfully lodge an appeal certain specific criteria must be met. Specifically you need to be aware that there are often very strict and short time limits that apply and as such if you ever receive such a cancellation you should immediately get professional advice on what to do.

If you or anyone you know is affected by a visa cancellation, it is recommended that you seek professional advice as soon as possible from a qualified migration law professional.



New Lawyer

For those of you who have dealt with us during the previous 12 months you may have had the pleasure of speaking to Sashi Perera who has worked at M. Rothstein & Co as an Articled Clerk.

On the 3rd of May 2011 the staff of M. Rothstein & Co had the pleasure to attend Sashi's admission ceremony as a lawyer at the Supreme Court of Western Australia.

Subject to some final paperwork requirements by the Legal Practice Board of Western Australia, Sashi will soon be permitted to undertake work as an Australian Legal Practitioner. It is intended that she will shortly thereafter apply to obtain her registration with the Migration Agents Registration Authority so as to be able to provide migration advice.

We, congratulate Sashi for her hard work and determination in reaching this achievement

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