

**“Regulation 8503 No Further Stay: Traps for the Uninitiated,”
by David Bitel, Managing Partner, Parish Patience Immigration**

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All right, your relative has got his visa to Australia and he arrives at the airport showing you his passport which is stamped with a one month visa. "I want to stay permanently in Australia" he says, hopefully, with an expectant air, suggesting "You're here already, you can organize it for me". "Sure, I'll see what I can do", you say to him whilst feeling an awful pain at the bottom of your stomach. Inwardly you cry "Help, what do I do?"

Apart from the obvious, which is to seek professional advice, the first thing anybody should do is to inspect the visa. This will tell you many things about the new arrival. Obviously, the subclass will tell you the type of "substantive" visa that the person holds. Thus, a 676 visa is a short stay visitor visa granted for up to three months, a 686 visa is a long stay visitor visa granted for more than three months and less than twelve months, nearly always where a person has some connecting relative living in Australia, and a 679 visa is a visitor visa allowing the person to stay for up to three months where that person has been sponsored by certain close relatives living in Australia who have signed a sponsorship form, probably deposited a substantial bond with the Department to ensure compliance by the visitor with the conditions of that visa and the mandatory condition under Regulation 8503.

Sometimes, your relative may have been given a 456 visa. This visa is intended for a businessman seeking to come to Australia to explore or conduct short term business dealings. It is also limited to three months. It often also has the 8503 condition endorsed. Commonly, unfortunately, people present holding this visa and a casual look at the visa holder will soon reveal that the person obtained the visa by fraud. How could it be possible for a 21 year old, unable to put a sentence together in English, to meet the businessman's test? Commonly such people are even denied entry at the airport.

People arriving from many countries including Nepal where the "risk factor" explained in Migration Regulation 4011 applies, are usually given any of the above visas with the 8503 condition. The risk factor is the system devised by the immigration bureaucrats which, in the view of this writer, at least permits immigration officers to offend against nearly all the laws prohibiting discrimination in Australia. Based on a person's country of nationality, marital status, age, gender, occupation and place of visa lodgment, certain groups of people are considered more likely than not to breach conditions of temporary visas and the law then places a much heavier onus on the applicant for a visa to prove his or her genuine intentions than would apply to a person of a similar status but coming from a country not affected by the "risk factor". Thus, for Nepalese, males aged 25 to 39 and females aged 30 to 59 are, by law, affected by the "risk factor".

Regulation 8503 provides that "the visa holder will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa, while the holder remains in Australia". The visa will merely state "no further stay". The condition means what it says! There are essentially only two exceptions to this condition. The first is where a person may be granted a protection visa and the second applies where a person has been affected by a substantial change of circumstance of a compelling and compassionate nature affecting the visa holder after the date of arrival and over which the applicant has no control. In that

situation, for example where a person suffers some significant medical problem or a close family relative with whom the visa holder is visiting suffers some significant medical problem requiring the visa holder's assistance on a temporary basis after the expiry date of the original visa, an application can be made to the Department for a waiver of this condition to permit the applicant to apply for another visa in Australia.

There will be more about protection visas in a future article, but let it be clearly understood that abuse of the protection visa regime by persons merely seeking to extend a stay in Australia is something which should be discouraged at all costs. This abuse is what in large part led to the development of the risk factor and 8503 regimes and the negative stigmatization of visa applicants from countries like Nepal.

If your relative is fortunate enough not to be the holder of a visa subject to the 8503 condition, he or she should still be cautioned strongly against lodging a further application to prolong stay in Australia unless he or she has a real prospect of success in that application and meets the required conditions attaching to any new visa application. This advice should be given for, amongst other reasons, the problems associated with Section 48 of the Migration Act. That section essentially provides that where a person is in Australia but does not hold a substantive visa, the person cannot make an application in Australia for another visa if they have already had a visa application refused or an existing visa cancelled since last arriving in Australia.

The ramifications of this section are far reaching. How often do I see a hopeful client holding blissfully the arms of a loving spouse all fired up and ready to give instructions for the lodgment of a partner visa application. After being told by them at some length about the true love and happiness that they both feel for each other, we get down to discuss the visa applicant's immigration history. Of course, I will open the passport and flick through the visa pages. There, I will see the substantive visitor visa given to the applicant on arrival. On closer examination the visa has expired. I look further and then see a Bridging visa. I look up and say to the applicant "Ah, so you made an application for something. What's happened?" I hope, usually against hope, that the response will be "Oh the application is still awaiting primary decision", but almost always the response comes "Oh the application was refused and we're on appeal". Section 48 rears its ugly head! Sometimes, the applicant will still have the application pending at primary stage but then we turn back to the original visa and of course a closer examination will reveal the ubiquitous 8503 condition. Caveat emptor.

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Parish Patience Immigration

Lawyers

Level 1, State Street Centre

338 Pitt Street

SYDNEY NSW 2000

AUSTRALIA

Tel: +612 9286 8700

Fax: +612 9283 3323

Email: ppmail@ppilaw.com.au

www.ppilaw.com.au/

Registered Migration Agents 9255523, 9359088, 9370721,

9800540, 9802999, 0004435, 0106541

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