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# Media

## Fact Sheet 79 - The Character Requirement

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All non-citizens, including sponsors of visa applicants and non-migrating family members seeking to enter or stay in Australia, must be assessed against the character requirement.

Visa applicants, some non-citizen sponsors, and non-migrating family members must therefore meet the character requirements defined in Section 501 of the *Migration Act 1958*. These requirements are usually linked to the class of visa being applied for through Public Interest Criteria (PIC) 4001.

Section 501 of the Act contains a character test to ensure that visa applicants, visa holders, relevant non-citizen sponsors, and non-applicant family members are of acceptable character. The test puts the onus on the person to show that they are of good character.

As well as being a tool to help assess the suitability of people to enter and stay in Australia, and/or sponsor a non-citizen to come to Australia, the test introduces discretionary powers to either refuse or cancel visas if the person does not pass the character test.

## The character test

A person will not pass the character test where:

- they have a substantial criminal record
- they have been convicted of any offence that was committed while in immigration detention, during an escape from immigration detention, during a period where a person escaped from immigration

- detention, or if the person has been convicted of the offence of escaping from immigration detention
- they have, or have had, an association with an individual, group or organisation suspected of having been, or being, involved in criminal conduct
- having regard to the person's past and present criminal conduct, the person is found not to be of good character
- having regard to the person's past and present general conduct, the person is found to be not of good character
- there is a significant risk that the person will engage in criminal conduct in Australia, harass, molest, intimidate or stalk another person in Australia, vilify a segment of the Australian community, or incite discord in the Australian community or in a segment of that community, or represent a danger to the Australian community or a segment of that community.

See: [Fact Sheet 78](#) - Controversial Visa Applicants

## Substantial criminal records

A person is deemed to have a substantial criminal record if they have been:

- sentenced to either death or life imprisonment
- sentenced to a term of imprisonment for 12 months or more
- sentenced to two or more terms of imprisonment (whether on one or more occasions), where the total of those terms is two years or more
- acquitted of an offence on the grounds of either unsoundness of mind or insanity and, as a result, the person has been detained in a facility or institution.

## Conduct of persons in immigration detention

A person will not pass the character test if they receive a conviction of any kind, regardless of whether a prison sentence has been imposed while:

- in immigration detention
- during an escape from immigration detention
- during a period where a person had escaped from immigration detention
- if the person has been convicted of the offence of escaping from immigration detention.

See: [Fact Sheet 82](#) – Immigration Detention

## Discretionary powers and Ministerial Direction 41

When a person does not pass the character test, decision-makers will decide whether to refuse the application or sponsorship or to cancel a visa. Exercise of this discretion will take into account a wide range of factors, including the protection of the Australian community, whether the person began living in Australia as a minor, the length of time the person has been living lawfully in Australia, Australia's international law obligation. Other factors such as the person's family ties in Australia, the person's age, their health and level of education will also be taken into consideration.

The exercise of the discretion is guided by Ministerial Direction 41 made under section 499 of the Act.

See: [Ministerial Direction 41](#) (1.3MB PDF file)

## Exclusion from Australia

A person whose visa is cancelled on the grounds of either a substantial criminal record, or past and present criminal conduct, is permanently excluded from Australia.

## Appeals

Where the decision to refuse or cancel a visa is made by the minister personally, the person has no right of appeal to the Administrative Appeals Tribunal (AAT). Whereas, if a delegate of the minister either refuses or cancels a person's visa and the person is in Australia they will have a right to have the decision reviewed by the AAT. If they are not in Australia, they may also have a right to have the decision reviewed, for example, if they have either a sponsor or nominator in Australia.

Strict time limits apply on appeals to the AAT. Applicants in Australia seeking reviews of decisions must apply to the AAT within nine days of being notified of the decision.

For applicants outside Australia, the application for review must be lodged by a sponsor or nominator within 28 days of the day of being notified of the decision.

The AAT will be deemed to have confirmed the decision being reviewed if it does not make its own decision within 84 days of the date on which the applicant was notified of the original decision.

Whether or not there is an appeal to the AAT, an applicant may seek judicial review of the decision, if they believe the decision was not lawfully made

## Other possible refusals

A visa will be refused where the person is assessed by the competent Australian authorities to be directly or indirectly a risk to Australian national security.

Similarly, a visa will be refused where a person is determined by the Foreign Minister, or a person authorised by the Foreign Minister, to be a person whose presence in Australia:

- is, or would be, contrary to Australia's foreign policy interests, or
- is, or would be, contrary to Australia's Autonomous Sanctions Regulations, or
- may be directly or indirectly associated with the proliferation of weapons of mass destruction.

Further information is available on the department's website.

See: [www.immi.gov.au](http://www.immi.gov.au)

The department also operates a national general enquiries line.

**Telephone:** 131 881

**Hours of operation:** Monday to Friday from 8.30 am to 4.30 pm. Recorded information is available outside

these hours.

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