



## **FACT SHEET: Information on**

# **YOUR OPTIONS AFTER BEING REFUSED BY THE REFUGEE REVIEW TRIBUNAL**

If the Refugee Review Tribunal (RRT) has refused your refugee application you have 28 days from the date of the decision letter before your bridging visa expires. After this period of time you will become an unlawful and may be detained or deported.

## **1. JUDICIAL REVIEW**

An appeal to the Federal Court, Federal Magistrates Court or High Court will only be successful if the Refugee Review Tribunal has made a specific error of law in making its decision. It is complex and difficult to do without the assistance of a solicitor or barrister. RACS cannot assist with Judicial review although we can provide referrals to solicitors and barristers who do.

You have 28 days from the date of deemed notification of the Tribunal's decision to apply to the Federal Court or Federal Magistrates Court.

You have 35 days from the date of actual notification of the Tribunal's decision to apply to the High Court.

If you do not make your application by these timeframes, you may seek legal advice in relation to an out of time court application.

## **2. APPLY TO THE MINISTER OF IMMIGRATION TO ALLOW YOU TO STAY FOR HUMANITARIAN REASONS under s417 Migration Act**

If the Tribunal has found that you are not a refugee, but you believe there are strong humanitarian reasons for giving you a protection visa, then you can write to the Minister for Immigration asking him to allow you to stay in Australia. You should be aware that the Minister is sent hundreds of these letters and in most cases, he will not allow people to stay for humanitarian reasons, but this should not discourage you from applying if you believe that your case is strong.

You should write to the Minister within 28 days (you can also write after the 28 days) of the decision of the RRT or finalisation of Judicial review. The Minister will not consider a letter while judicial review is ongoing so you must write to the Minister before the decision is finalised. The Minister will allow you to stay if he believes it is in Australia's public interest to do so, but there are a number of factors he particularly looks at. These are summarised in a sheet called '*Ministerial Guidelines for the Identification of Unique or Exceptional Cases*'. The Minister signed this sheet in March 1999, so make sure that you have right guidelines and not an earlier copy.

The Minister has the power but is not obliged to exercise these guidelines issued under section 417 of the Act. If your case involves "unique or exceptional circumstances" it may be in the public interest for the Minister to intervene for compassionate reasons. The following factors may be relevant in assessing whether your case involves unique or exceptional circumstances:

**Suite 8c, 46-56 Kippax Street Surry Hills NSW 2010, Telephone: 02 9211 4001, Facsimile: 02 9281 8078**  
Email: [admin@racs.org.au](mailto:admin@racs.org.au), Website: <http://www.racs.org.au>

- Particular circumstances where there that provide a sound basis for a significant threat to a person's security or human rights.
- Particular circumstances or characteristics including where it would be inhumane to return a person to a country where the person has experienced torture and trauma and would be likely to experience further trauma in that country.
- Where there are substantial grounds for believing a person may be in danger of being subject to torture if required to return to their country of origin in contravention of the International Convention Against Torture.
- Circumstances that may bring Australia's obligations as a signatory to the Convention on the Rights of the Child into consideration, where it is in the best interests of the child that a person should remain in Australia. If you have a child that is an Australian citizen (one of the child's parents are an Australian citizen) you should emphasise this situation.
- Circumstances that may bring Australia's obligations as a signatory to the International Covenant on Civil and Political Rights (ICCPR) into consideration, where a person would face a real risk of violation of his or her fundamental human rights such as being subject to torture or the death penalty (no matter whether lawfully imposed).
- Circumstances that the legislation could not have anticipated.
- Intended, but in the particular circumstances, particularly unfair or unreasonable consequences of legislation.
- Strong compassionate circumstances that would result in irreparable harm and continuing hardship to an Australian family unit (where at least one member of the family is an Australian citizen or permanent resident) or an Australian citizen
- Exceptional economic, scientific, cultural or other benefit to Australia.
- The length of time the person has been present in Australia (including time spent in detention) and their level of integration into the Australian community.
- The age of the person.
- The health and psychological state of the person.

You should try to show why you fall into one or more of these categories.

You should also collect as many letters of support for or proof of, your situation as you can. These may come from Amnesty International, community organisations, ethnic groups, religious bodies and local politicians. Details of your involvement in Australian society are also relevant. Include letters of support from any Australian permanent resident of citizen family members especially children or partners. Included certified copies of birth certificates, citizenship certificates or passports as evidence.

An example of a letter is at the bottom of this sheet. It is an example only. A copy of the guidelines can be provided.

### **3. APPLY TO THE MINISTER TO LODGE A SECOND REFUGEE APPLICATION under s48B of the Migration Act**

You can only put in a second refugee application if the Minister gives you permission. You can write to the Minister requesting he exercise his discretion under s 48B to allow you to put in another application. The Minister will only give his permission if there is new evidence or new circumstances that apply to your case which were not available or had not happened before the Tribunal made its decision. If the

information was available previously, you must show a very good reason why it was not given to the Tribunal.

#### **4. ANY OTHER IMMIGRATION OPTIONS**

Once you have been rejected by the RRT, you are prevented from applying for most other immigration categories in Australia. However, RACS cannot advise on any other immigration options because it specialises in protection visa applications only. For information about other immigration options, you can call IARC a free immigration legal service, on their advice line, 9281 8355.

#### **5. LEAVING AUSTRALIA**

If you have not applied for any of the above options, or 'if any of the above options are not successful, then in most cases you have 28 days after the decision to leave Australia. You will need to confirm this with the time limits on your bridging visa. If you need some more time to make arrangements you should contact the Immigration Department. If you do not leave Australia by this time, then you are liable to be taken to Immigration Detention and deported.

#### **6. LEGAL HELP**

You can call the Refugee Advice and Casework Service to make an appointment at RACS Monday Evening advice service, or for a referral to another legal service or private migration agent:

Refugee Advice and Casework Service  
Suite 8c, 46-56 Kippax Street, Surry Hills NSW 2010  
Tel: 02 9211 4001

**All information in this fact sheet is correct at September 2004.**

While every effort has been made to ensure that the information in this fact sheet is free from error and/or omissions, this fact sheet is a short overview and the law is complex constantly changing. We advise readers to seek advice from a registered migration agent when faced with specific problems.

## SAMPLE HUMANITARIAN LETTER

The Honourable Amanda Vanstone  
Minister for Immigration and Multicultural Affairs and Indigenous Affairs  
Parliament House  
Canberra ACT 2600  
Fax: 02 6273 4144

(Date)

Dear Minister

Re: Name  
Client ID: (from DIMIA letter)  
File ref: (from DIMIA letter)

I submit that there are strong and compelling reasons why I cannot return to (country you are from).

The Refugee Review Tribunal found that I was not a refugee on (date of Tribunal's decision). Even though the Tribunal found that I did not meet the legal requirements for refugee status, I will face a threat to my personal security or human rights abuses or abuse of my human dignity if I return to my country.

*Provide a paragraph that tells the Minister about the problems you will face in your country. If you have been harassed or have faced torture or trauma in the past, then you should also include this information. Medical certificates and independent country information can also be included.*

*Outline each ground of the Ministerial guidelines which applies in your case and explain why that particular ground applies.*

I ask that you take all of the above claims and submissions into account and exercise your discretion compassionately.

I have further material I wish to submit to support my request which I will submit as soon as possible. I request that you not make a decision in my case until these documents are sent to you.

Yours sincerely,

Name  
address