

## Fact Sheet: How to request Ministerial Intervention

This factsheet explains how to write a letter to request Ministerial Intervention under either section 417 or section 48B of the *Migration Act 1958* (the 'Act').

### Which type of request applies?

| Type of request  | When can you make this request?  | How can the request be made?   |
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| <p><b>Section 417</b></p> <p>Asking Minister to grant a visa due to unique or exceptional circumstances</p>  | <p>Refused by the AAT Migration and Refugee Division (not Immigration Assessment Authority, fast track cases)</p>  | <p>In writing to the Minister.</p> <p>Must be made separately to any other request to Minister e.g. cannot be combined with s48B request</p>                                   |
| <p><b>Section 48B</b></p> <p>Asking Minister for permission to make another protection visa application due to exceptional circumstances that justify considering new information or significant changes in circumstances after protection visa refusal decision</p> | <p>Refused a protection visa</p> <ul style="list-style-type: none"> <li>▪ Fast track or non-fast track</li> <li>▪ The request will not be considered for referral to Minister if the protection visa was refused in the last 6 months, unless: <ul style="list-style-type: none"> <li>○ making gender based claims where there are exceptional reasons why those claims were not raised earlier; or</li> <li>○ from Afghanistan, Iraq, Syria, Libya, Yemen, South Sudan or Somalia.</li> <li>○ There is a risk of the death penalty for the person in the USA, Japan or South Korea.</li> </ul> </li> <li>▪ The request can be made after merits review options have been exhausted in the AAT or IAA or if the deadline to apply for review in the AAT was missed (note applying to the AAT is not applicable for fast track cases).</li> </ul> | <p>In writing to the Minister.</p> <p>Must be made separately to any other request to Minister e.g. cannot be combined with s417 request</p>                                   |
| <p><b>Section 195A</b></p> <p>Visa grant from detention in the public interest</p>   | <p>A person in immigration detention</p>   | <p>Must be made by a Departmental officer.</p> <p>Requests should go to a person's Immigration Caseworker in detention.</p> <p>See our separate factsheet on this request.</p> |

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| <p><b>Section 197AB</b></p> <p>Residence determination permitting release from closed detention in order to reside in community detention</p> | <p>A person in immigration detention</p>                     | <p>Must be made by a Departmental officer.</p> <p>Requests should go to a person's Immigration Caseworker in detention.</p> <p>See our separate factsheet on this request.</p> |
| <p><b>Section 198AE</b></p> <p>An exemption from transfer to offshore processing if you are subject to transfer to Nauru or PNG</p>           | <p>If the person is subject to transfer to Nauru or PNG.</p> | <p>Seek legal advice if you are in Australia and have undergone processing on Nauru or PNG, or if you are subject to transfer to Nauru or PNG.</p>                             |

Please note this is not a complete list of Ministerial Intervention powers that may apply to a person. Seek legal advice before making a request.

## 1. Section 417 (a request following negative AAT protection visa decision)

Section 417 of the Act gives the Minister for Immigration the power to grant a visa to a person refused by the Administrative Appeals Tribunal's Migration and Refugee Division (AAT) if the Minister thinks it is in the "public interest" to grant them a visa.

It is not possible to make this request unless you have had a negative decision by the AAT. If you are a fast track applicant, you are not able to make this kind of Ministerial Intervention request - your option may be a request under s48B if you are in the community. If you are in detention you also have the option of a request under s195A.

### Minister's Power under section 417 of the Migration Act

The Minister will only consider cases that have 'unique or exceptional circumstances'.

Important points to note:

- The Minister does not have to consider whether to intervene in your case.
- The Minister only intervenes in a small number of cases each year.
- Before making a request to the Minister you should consider what other options you have, because this is often the last step in the legal process.
- The Minister's decision cannot be reviewed or appealed.
- If you have an Australian partner you might be able to apply for a Partner visa in Australia. Seek legal advice.
- The Minister will not consider requests which raise claims only relating to Australia's protection obligations.
- If you are in the community, you should be lawful when making this request, by having a current bridging visa without condition 8512 (which specifies the date to leave Australia). People in detention can make this request.
- Second or repeat requests are only considered in limited circumstances if there is a significant change in circumstances which raise new, substantive issues.

**What are unique and exceptional circumstances?**

The table below provides examples of unique or exceptional circumstances and how you might show they exist:

| Examples of unique or exceptional circumstances   | Supporting documents  |
|---|---|
| <p>Australia's obligations under the Convention on the Rights of the Child</p> <p>Would your removal from Australia not be in the best interests of a child?</p> <p>If you were forced to leave Australia, would the rights of a child be negatively affected?</p> <p>For example, the child's family would be separated, or the child's physical or mental health would be affected.</p> | <p>Child's birth certificate, any family law orders, child support payment documents.</p> <p>A statutory declaration from the child's parent, teacher, relatives or others explaining the impact on the child if you are removed.</p> <p>Medical or psychological reports about the child.</p> <p>Supporting letter from the child's parent.</p> <p>You can also ask your local Federal Member of Parliament to write a letter of support to go with your request to the Minister.</p>  |
| <p>If you were forced to return, would this cause serious, ongoing and irreparable harm to an Australian citizen or Australian family unit (with at least one citizen or permanent resident)?</p> <p>For example, an Australian citizen or permanent resident you are caring for has serious health issues and no other care is available.</p>  | <p>Medical/specialist reports confirming an Australian citizen or permanent resident requires ongoing and continuous care that is not otherwise readily available</p> <p>A supporting letter from the Australian citizen or permanent resident or their family members</p> <p>Birth certificate, Australian citizenship papers, marriage certificate, joint utility bills, joint saving accounts</p> <p>A statutory declaration outlining compassionate circumstances</p> <p>Medical or psychological reports</p> <p>You can also ask your local Federal Member of Parliament to write a letter of support to go with your request to the Minister.</p> |
| <p>Are there compassionate circumstances regarding your age, health or psychological health?</p>  | <p>Documentation supporting that you would face irreparable harm and continuing hardship if you are returned to your country of origin</p> <p>Evidence of your age, and/or health or psychological state</p> <p>Medical/specialist/psychological reports</p> <p>A statutory declaration from you or people you know about your age and/or health</p> <p>A supporting letter from family or others willing to</p>  |

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|  | <p>provide you with ongoing care while in Australia</p> <p>You can also ask your local Federal Member of Parliament to write a letter of support to go with your request to the Minister.</p>  |
| <p>Have you been in Australia for a very long time (including time spent in detention)?</p> <p>Have you integrated well into the Australian community?</p>   | <p>Documents showing participation in or membership of community organisations, for example, cultural groups, sporting clubs, volunteer work</p> <p>Supporting letters from community organisations</p> <p>Children’s school enrolment records</p> <p>Business ownership records</p> <p>You can also ask your local Federal Member of Parliament to write a letter of support to go with your request to the Minister.</p> |
| <p>Would allowing you to remain in Australia result in exceptional economic, scientific, cultural or other benefit to Australia?</p>   | <p>Documents supporting why you would be of exceptional benefit to Australia</p> <p>Awards or industry/peer recognition</p> <p>Supporting letters from relevant national bodies</p> <p>Evidence of qualifications</p>  |
| <p>Circumstances where the migration laws have had unintended consequences or have led to unfair or unreasonable results</p>   | <p>A letter from you, a legal advisor or another person explaining what these circumstances are.</p>   |
| <p>Are you unable to return to your country of origin because there would be a significant threat to your personal security, human rights or human dignity, but the mistreatment does not meet the criteria for the grant of any type of protection visa.</p> <p>For example:</p> <p>Would you experience systematic harassment or denial of basic rights available to others in your country, or</p> <p>Have you experienced torture or trauma in your country of origin and are you likely to experience further trauma if returned.</p> | <p>Country information that relates to your fears.</p> <p>Independent information about your country that shows you would face this kind of harm.</p> <p>A letter from you, a legal advisor or another person explaining why this mistreatment did not meet the criteria for the grant of any type of protection visa.</p>   |
| <p>Circumstances where you can’t return to your country because of circumstances outside of your control.</p>  | <p>A letter from you, a legal advisor or another person explaining what these circumstances are.</p>   |

## **2. Section 48B (public interest to allow another protection visa application)**

If you have been refused a protection visa, you are not allowed to apply for another protection visa. Under section 48B, the Minister can allow you to make another protection visa application. You should meet the following criteria:

- There should be exceptional circumstances which justify consideration of plausible new information about your case or there should have been significant changes in circumstances, since your protection visa refusal decision
- The plausible new information means that you may now be a person to whom Australia owes protection obligations.
- The plausible new information should not previously have been considered adversely by a decision maker with the Department, Tribunal, a previous s48B request, or an ITOA.
- If you are in the community, you should be lawful, on a bridging visa, when making this request. People in detention can make this request.

In your request to the Minister, you should explain:

- What are the significant changes in circumstances that have occurred after your protection visa refusal decision?
- What are the exceptional circumstances that justify the consideration of new information in your case?
- Why wasn't the new information available to decision makers at the time of your first application?
  - Was it not known to you at the time? Did the information not exist at the time?
  - Have conditions in your country changed since your case was decided?
  - Was there any family violence towards you which prevented you from disclosing this new information?
  - Did the actions of a migration agent prevent you from disclosing the new information?
  - Were you suffering torture and trauma effects which prevented you from disclosing this information? Medical or psychological reports should be submitted.
- How does the information show that Australia has obligations to protect you?

The Minister may also consider s48B requests following protection visa cancellations where the person has then been assessed as engaging Australia's non-refoulement obligations.

If the new information was raised with but not able to be considered by the Immigration Assessment Authority, seek legal advice.

### 3. Frequently Asked Questions

#### How do I make a request to the Minister?

Requests must be made in writing, including either by post to The Minister for Immigration, Parliament House, Canberra ACT 2600, or by email to [minister@border.gov.au](mailto:minister@border.gov.au).

- At the beginning of your request, write your name, date of birth, and a number identifying you with the Department or Tribunal: Your application ID (a ten digit number), your file number (CLF year/4 digit number), your Tribunal or IAA file number if appropriate.
- Outline your current situation and explain your exceptional circumstances and/or significant changes in circumstances, and how you meet the other criteria for Ministerial Intervention.
- If you are writing a letter, sign and date the letter.
- Provide your contact details including your address and phone number.
- Attach supporting documents and reports to provide evidence of your circumstances.
- Send certified copies rather than original documents.
- Keep a copy of the letter or email and all documents that you send.

#### Can you make more than one request for Ministerial Intervention?

While there is no limit to the number of requests for Ministerial Intervention which you may make, it is not usual for the Minister to consider repeat requests. The Minister's guidelines for s48B requests specifically say that the Minister considers that each time a person raises new claims following an initial s48B request, the claims become less compelling and asks the Department to consider this before referring a repeat request to the Minister.

So it is very important to include all relevant information in your first request to the Minister.

#### Can you request Ministerial Intervention if you are unlawful?

You can request Ministerial Intervention under s417 or s48B if you are in immigration detention. If you are in the community, the Minister does not usually consider requests unless you are a lawful non-citizen which means that you have a visa (including a bridging visa). The Minister expects a person requesting intervention to remain lawful until the request is finalised. So you need to think carefully about when you make a Ministerial Intervention request if you are on a bridging visa that is going to expire after a protection visa refusal, negative AAT or IAA decision, or unsuccessful judicial review application in the courts.

#### Can you apply for a bridging visa while waiting for the outcome of your request?

You can try to lodge an application for a bridging visa for the time you will be in the community waiting for the outcome of your request for Ministerial Intervention but it is not guaranteed you will get one. This is particularly so if it is not your first request for Ministerial Intervention. You can use Form 1008 or Form 1005, seek legal advice if you are unsure which form is appropriate.

#### Can you get other people to write in support of your Ministerial Intervention request?

Yes. You can provide letters of support with your request.

### What do you write in a supporting letter?

See the **example** letter of support at the end of this Factsheet.

It is important to provide as much detail as possible in a letter of support.

At the beginning of the letter, write the name of the person who is requesting Ministerial Intervention, their date of birth.

Outline their current situation and why you think there are (**s417 request**: unique and exceptional circumstances) or (**s48B request**: exceptional circumstances justifying the consideration of new information in their case and/or significant changes in circumstances).

The type of issues that might be relevant include:

- How do you know the applicant?
- How long have you known the applicant?
- What activities has the applicant been involved with in Australia? (for example, cultural, sporting, political, voluntary activities).
- Why do you think the Minister should allow the applicant to remain in Australia?
- What is significant about changes in the person's circumstances?
- Is the applicant of good character? What can they contribute to Australian society?
- What do you think about the prospect of the applicant being removed from Australia?
- Would this cause irreparable harm to someone? If so, to whom?
- Would the applicant's physical or mental health be adversely affected if the applicant was returned to their country of origin?
- If you are an employer of the applicant, what is your opinion of the applicant's work ethic and the quality of work performed? Can you give examples of how the applicant has contributed to your workplace or industry?

At the end of your letter, sign and date the letter. Provide your contact details including your address and phone number.

## Example of a request seeking Ministerial Intervention under s48B

[contact details and date if sending by way of letter].

Dear Minister

**Request for Ministerial Intervention: [Your application ID (a ten digit number), Your file number (CLF year/4 digit number)]**

I would like to request Ministerial intervention under Section 48B of the *Migration Act 1958*.

I arrived in Australia on a [visa type] visa in [year]. Please find my Department refusal decision record [and my IAA decision] attached.

According to the guidelines, Ministerial Intervention requests can be made when there are exceptional circumstances which justify the consideration of new information or there have been significant changes in circumstances subsequent to a protection visa refusal decision. It could be argued that there are exceptional and/or significant chances in this case which warrant the Minister's intervention.

- *Explain exceptional circumstances and /or significant changes in circumstances in as much detail as possible including why the information is plausible and why you couldn't provide the information when your protection visa was being considered;*
- *Use the table and write headings if needed;*
- *Outline your connections to the community;*
- *Outline your changed circumstances;*
- *List the supporting documents you have enclosed in your letter;*
- *Explain the importance of each of these documents.*

I ask that you take the above into consideration when assessing my request for Ministerial Intervention and am grateful for this consideration.

Yours sincerely,

[signature]

[Full name].

## Example of a request seeking Ministerial Intervention under s417

[contact details and date if sending by way of letter].

Dear Minister

**Request for Ministerial Intervention: [Your application ID (a ten digit number), Your file number (CLFyear/4 digit number), your Tribunal file number .]**

I would like to request Ministerial Intervention under section 417 of the *Migration Act 1958*.

According to the guidelines, Ministerial Intervention requests can be made when there are unique and exceptional circumstances in a case. It could be argued that there are unique and exceptional circumstances in this case which warrant the Minister's intervention.

I arrived in Australia on a [visa type] visa in [year]. Please find my Tribunal decision record attached.

- *Explain unique and exceptional circumstances in as much detail as possible;*
- *Use the table and write headings if needed;*
- *Outline your connections to the community;*
- *Outline your changed circumstances;*
- *List the supporting documents you have enclosed in your letter;*
- *Explain the importance of each of these documents.*

*[List reasons why there are "compelling and compassionate circumstances" in your case.]*

I ask that you take the above into consideration when assessing my request for Ministerial Intervention and am grateful for this consideration.

Yours sincerely,

[signature]

[Full name].

## Example of a Letter of Support

The Minister for Immigration  
Parliament House  
Canberra ACT 2600

[date]

Dear Minister,

**Re: Letter of support for request of Ministerial Intervention in the case of [name] [DOB] [application ID (a ten digit number), file number (CLFyear/4 digit number), Tribunal file number if appropriate]**

This letter is to support [name]'s request.

I have known [name] for [X] years. [explain how you know the person].

**For s417 request:** According to the guidelines, Ministerial Intervention requests can be made when there are unique and exceptional circumstances in a case. There are unique and exceptional circumstances in this case which warrant the Minister's intervention.

**For s48B request:** According to the guidelines, Ministerial Intervention requests can be made when there are exceptional circumstances which justify the consideration of new information or there have been significant changes in circumstances subsequent to a protection visa refusal decision. It could be argued that there are exceptional and/or significant changes in this case which warrant the Minister's intervention.

- *List reasons why there are (**s417 request**) unique and exceptional circumstances or (**s48B request**) exceptional circumstances which justify the consideration of new information or a significant change in the person's circumstances*
- *Use the chart for reference.*
- *Outline the person's connections to the community*
- *Outline any changed circumstances or new information*
- *List the supporting documents you have attached to your letter.*
- *Explain the importance of each of these documents.*

I ask that you take the above into consideration when assessing [name's] request for Ministerial intervention and I am grateful for this consideration.

Yours sincerely,

[your signature]

[your name].

**Please note:** This factsheet contains general information only. It does not constitute legal or immigration advice. RACS is independent of the Department of Immigration and Border Protection. This factsheet was prepared in September 2017. A previous version of this factsheet was written in conjunction with the Asylum Seeker Resource Centre. This factsheet was prepared with reference to the following:

- PAM3: Act - Ministerial powers: Minister's guidelines on ministerial powers (s351, s417 and s501J) (signed on 11 March 2016)
- PAM3: Ministerial guidelines and procedural instruction - The ministerial intervention power under s48B of the Migration Act 1958 (as signed on 5 December 2016 for commencement on 1 January 2017)