

Ministerial Intervention after an AAT Decision Under Section 417

This factsheet explains how to write a letter to request Ministerial Intervention under Section 417 of the *Migration Act 1958* (the 'Act').

What is Section 417?

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.

Who is Eligible to Apply under s.417?

It is only possible to make this request if the AAT has made a decision on your application.

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 a partner who is an Australian citizen or permanent resident, you might be able to apply for a Partner visa in Australia. Seek migration 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 raises new, substantive issues.

Time limits

You should write to the Minister within 35 days of the decision of the AAT or within 35 days of finalisation of a judicial review application so that your bridging visa does not expire and you become unlawful. It is important to note that the Minister will not consider a request while judicial review is ongoing.

What are unique and exceptional circumstances?

The Minister's office receives many of these requests every year and the Minister only grants visas in a very small number of cases. Unless you can show that your case meets the guidelines the Minister has published, it is unlikely to be referred to the Minister for consideration for approval.

The Minister's guidelines state that the following factors *may* be relevant "individually or cumulatively" in determining whether a case involves "unique or exceptional circumstances". Below are examples of unique or exceptional circumstances and how you might show they exist.

Minor Children

Australia has obligations under the Convention on the Rights of the Child and you may apply for Ministerial Intervention if your removal from Australia would not be in the best interests of a child. For example, the child's family would be separated, or the child's physical or mental health would be affected. Your letter should explain these circumstances. The following documents may be useful:

- Child's birth certificate
- Family law orders
- Child support payment documents
- A statutory declaration from the child's parent, teacher, relatives or others explaining the impact on the child if you are removed
- Medical or psychological reports about the child
- Supporting letter from the child's parent
- Letter of support from your local Federal Member of Parliament

Effect on an Australian Citizen

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)? For example, an Australian citizen or permanent resident you are caring for has serious health issues and no other care is available. Your letter should explain these circumstances. The following documents may be useful:

- Medical/specialist reports confirming an Australian citizen or permanent resident requires ongoing and continuous care that is not otherwise readily available
- Supporting letter from the Australian citizen or permanent resident or their family members
- Birth certificate, Australian citizenship papers, marriage certificate, joint utility bills, joint saving accounts
- Statutory declaration outlining compassionate circumstances
- Medical or psychological reports
- Letter of support from your local Federal Member of Parliament.

Compassionate Circumstances

Are there compassionate circumstances regarding your age, health or psychological health? Your letter should explain these circumstances. The following documents may be useful:

- Documentation supporting that you would face irreparable harm and continuing hardship if you are returned to your country of origin
- Evidence of your age, and/or health or psychological state
- Medical/specialist/psychological reports
- A statutory declaration from you or people you know about your age and/or health

- A supporting letter from family or others willing to provide you with ongoing care while in Australia
- Letter of support from your local Federal Member of Parliament

Long Term Residence in Australia

Have you been in Australia for a very long time (including time spent in detention)? Have you integrated well into the Australian community? Your letter should explain these circumstances. The following documents may be useful:

- Documents showing participation in or membership of community organisations, for example, cultural groups, sporting clubs, volunteer work
- Supporting letters from community organisations
- Children's school enrolment record
- Business ownership records
- Letter of support from your local Federal Member of Parliament

Benefit to Australia

Would allowing you to remain in Australia result in exceptional economic, scientific, cultural or other benefit to Australia? Your letter should explain these circumstances. The following documents may be useful:

- Documents supporting why you would be of exceptional benefit to Australia
- Awards or industry/peer recognition
- Supporting letters from relevant national bodies
- Evidence of qualifications

Unintended Consequences or Unfair/Unreasonable Results

Circumstances where the migration laws have had unintended consequences or have led to unfair or unreasonable results. You may wish to provide a letter from you, a legal advisor or another person explaining what these circumstances are.

Threat to your Personal Security, Human Rights or Dignity

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? For example:

- Would you experience systematic harassment or denial of basic rights available to others in your country? Or
- Have you experienced torture or trauma in your country of origin and are you likely to experience further trauma if returned?

Your letter should explain these circumstances. The following documents may be useful:

- Country information that relates to your fears
- Independent information about your country that shows you would face this kind of harm
- 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

Unable to Return to Home Country

This covers circumstances where you can't return to your country because of circumstances outside of your control.

You should provide a letter from you, a legal advisor or another person explaining what these circumstances are.

How do I make a request to the Minister?

To request the Minister to consider your case and grant you a visa on these grounds, you need to write a letter to the Minister stating why you believe your circumstances are “unique and exceptional”.

It is very important that you specifically address the Guidelines in your letter to the Minister and explain why you fall within one or more of them.

You should also collect as many letters of support as you can to demonstrate that your situation is unique and compelling and there are strong humanitarian reasons why you should be permitted to stay in Australia. These may come from family or friends, current or former employers, Amnesty International, the UNHCR, community organisations, religious bodies, local politicians, and doctors or social workers / psychologists.

Details of your integration into Australian society are also relevant and particularly your contribution to the community. Evidence of your involvement in community / sporting / religious activities is useful as is evidence of your qualifications and employment skills.

Where do I send a section 417 Request?

Requests must be made in writing, including either via online Ministerial Portal:

<https://www.homeaffairs.gov.au/help-and-support/departmental-forms/online-forms/contact-the-minister>

Or by post to:

Minister for Immigration, Citizenship , Migrant Services and Multicultural Affairs
PO Box 6022
Parliament House
Canberra ACT 2600

The letter should include the following:

- 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, the Minister is unlikely to re-consider another request unless there has been a significant change in circumstances that raises new, substantive issues not previously provided or considered, and meet the Minister's guidelines.

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

If you have had a previous request refused, you should seek migration advice about your options.

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.

Make sure to carefully check the conditions on your bridging visa as they are likely to change if granted a bridging visa in connection with your ongoing request for Ministerial Intervention. You may not be granted work rights in relation to your request and you may want to seek legal advice about how making a section 417 request will affect whether you can work while you are waiting for the outcome of the request.

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

You can 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.

Getting Help from RACS

RACS is entirely independent of the Department of Home Affairs. All assistance is free

If you would like advice or assistance, RACS offers the following service options:

Service	Day	Time	Address/Number
Client Line	Monday to Friday	11AM to 1PM and 2PM to 4PM	(02) 8355 7227 or admin@racs.org.au
Auburn Drop-in	Wednesday	Register in person from 10 AM to 12 PM	Visit 44A Macquarie Road, Auburn

Please note: This fact sheet contains general information only. It does not constitute legal or migration advice. RACS is independent of the Department of Home Affairs. All assistance is free. This factsheet was prepared in October 2023.