

Public Interest Criterion 4001

Either:

- (a) the person satisfies the Minister that the person passes the character test; or
- (b) the Minister is satisfied, after appropriate inquiries, that there is nothing to indicate that the person would fail to satisfy the Minister that the person passes the character test; or
- (c) the Minister has decided not to refuse to grant a visa to the person despite reasonably suspecting that the person does not pass the character test; or
- (d) the Minister has decided not to refuse to grant a visa to the person despite not being satisfied that the person passes the character test.

Migration Act 1958

Section 501 Refusal or cancellation of visa on character grounds TRANSITIONAL PROVISIONS

Decision of Minister or delegate — natural justice applies

- 501** (1) The Minister may refuse to grant a visa to a person if the person does not satisfy the Minister that the person passes the character test.

Note: Character test is defined by subsection (6).

- (2) The Minister may cancel a visa that has been granted to a person if:
- (a) the Minister reasonably suspects that the person does not pass the character test; and
 - (b) the person does not satisfy the Minister that the person passes the character test.

*Decision of Minister — natural justice does **not** apply*

- (3) The Minister may:
- (a) **refuse to grant a visa to a person**; or
 - (b) cancel a visa that has been granted to a person;
- if:
- (c) **the Minister reasonably suspects that the person does not pass the character test**; and
 - (d) **the Minister is satisfied that the refusal or cancellation is in the national interest**.
- (4) The power under subsection (3) may only be exercised by the Minister personally.
- (5) **The rules of natural justice**, and the code of procedure set out in Subdivision AB of Division 3 of Part 2, **do not apply to a decision under subsection (3)**.

Character test

- (6) For the purposes of this section, a person does **not** pass the *character test* if:
- (a) the person has a **substantial criminal record** (as defined by subsection (7)); or
 - (aa) the person has been convicted of an offence that was committed:
 - (i) while the person was in **immigration detention**; or
 - (ii) during an escape by the person from immigration detention; or
 - (iii) after the person escaped from immigration detention but before the person was taken into immigration detention again; or
 - (ab) the person has been convicted of an offence against section **197A**; or
 - (b) the person has or has had an **association with someone else**, or with a group or organisation, whom the Minister reasonably suspects has been or is **involved in criminal conduct**; or
 - (c) having regard to either or both of the following:
 - (i) the person's **past** and present **criminal conduct**; or
 - (ii) the person's **past** and present **general conduct**;**the person is not of good character**; or
 - (d) in the event the person were allowed **to enter or to remain in Australia**, there is a **significant risk** that the person would:
 - (i) engage in criminal conduct in Australia; or
 - (ii) **harass, molest**, intimidate or stalk another person in Australia; or
 - (iii) vilify a segment of the Australian community; or
 - (iv) incite discord in the Australian community or in a segment of that community; or
 - (v) represent a danger to the Australian community or to a segment of that community, whether by way of **being liable to become involved in activities that are** disruptive to, or in violence threatening harm to, that community or segment, or in any other way.

Otherwise, the person passes the *character test*.

Substantial criminal record

- (7) For the purposes of the character test, a person has a **substantial criminal record** if:
- (a) the person has been sentenced to death; or
 - (b) the person has been sentenced to **imprisonment** for life; or
 - (c) the person has been sentenced to a term of imprisonment of 12 months or more; or
 - (d) the person has been sentenced to 2 or more terms of imprisonment (whether on one or more occasions), where the total of those terms is 2 years or more; or
 - (e) the person has been acquitted of an offence on the grounds of unsoundness of mind or insanity, and as a result the person has been detained in a facility or institution.

Periodic detention

- (8) For the purposes of the character test, if a person has been sentenced to periodic detention, the person's term of **imprisonment** is taken to be equal to the number of days the person is required under that **sentence** to spend in detention.

Definitions

(12) In this section:

court includes a court martial or similar military tribunal.

imprisonment includes any form of punitive detention in a facility or institution.

sentence includes any form of determination of the punishment for an offence.

Note 1: Visa is defined by section 5 and includes, but is not limited to, a protection visa.

Note 2: For notification of decisions under subsection (1) or (2), see section 501G.

Note 3: For notification of decisions under subsection (3), see section 501C.