

Section 48 Bar Explained: What It Means and How to Overcome It

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As an immigration lawyer with over 33 years of legal experience in Australia, I have encountered nearly every conceivable challenge within our complex immigration system. My name is Nilesh Nandan, and throughout my career, I have dedicated myself to helping individuals and families navigate the often-turbulent waters of visa applications, refusals, and appeals. One of the most critical and frequently misunderstood hurdles is the Section 48 bar. It is a legislative provision that can seem like a definitive dead end, but with expert guidance, it is often possible to find a way forward. In this comprehensive guide, I will draw upon my extensive experience to demystify the Section 48 bar, explaining what it is, when it applies, and the strategic pathways available to you if you find yourself in this challenging situation.

Understanding the Section 48 Bar: What is it?

Section 48 of the *Migration Act 1958* is a pivotal provision that restricts your ability to apply for most visas while you are in Australia if you have had a visa refused or cancelled since your last entry into the country. This means that if you are in Australia on a bridging visa following a visa refusal, your options for lodging a new visa application from within Australia become severely limited.

The primary purpose of Section 48 is to maintain the integrity of Australia's immigration system. The Department of Home Affairs is wary of individuals attempting to prolong their stay in Australia indefinitely by lodging a series of unmeritorious visa applications. While this is a necessary measure to prevent abuse of the system, it can also inadvertently penalize genuine applicants who have made an honest mistake or whose circumstances have changed. The bar is designed to be a strict measure, and its application is not discretionary.

When Does the Section 48 Bar Come into Effect?

The Section 48 bar is triggered when the following three conditions are met:

- You are physically present in Australia.
- You do not hold a substantive visa (for instance, you are on a bridging visa or are an unlawful non-citizen).
- You have had a visa application refused or a visa cancelled since your last entry into Australia.

It is crucial to understand that the bar takes effect from the moment your visa is refused, even if you have lodged an appeal with the Administrative Review Tribunal (ART). This means you cannot simply submit another visa application while you await the outcome of your review. For example, if you apply for a student visa, are refused, and then apply for a review of that decision, you are still subject to the Section 48 bar while you await the ART's decision.

Navigating the Exemptions: Which Visas Can You Still Apply For?

While the Section 48 bar is extensive, it is not absolute. There are several visa subclasses that are exempt, allowing you to apply for them even if you are subject to the bar. These exemptions are outlined in Regulation 2.12(1) of the *Migration Regulations 1994* and offer a potential lifeline for those affected.

Here is a table of the most common exempt visas:

Visa Class	Visa Name
Partner (Temporary) (Class UK)	Partner Visa (subclass 820)
Partner (Residence) (Class BS)	Partner Visa (subclass 801)
Protection Visas	Protection Visa (subclass 866)
Medical Treatment (Visitor) (Class UB)	Medical Treatment Visa (subclass 602)
Special Category (Temporary) (Class TY)	Special Category Visa (subclass 444)
Bridging Visas (Classes WA, WB, WC, WD, WE, WF, WR)	Various Bridging Visas

A recent lifeline for skilled migrants

A significant and welcome development in late 2021 was the introduction of an exemption for certain skilled migration visas. This has provided a crucial pathway for skilled migrants who were previously barred from applying for these visas onshore. The exempt skilled migration visas are:

- Skilled Independent (subclass 189)
- Skilled Nominated (subclass 190)
- Skilled Work Regional (Provisional) (subclass 491)
- Skilled Employer Sponsored Regional (Provisional) (subclass 494)

This change has been a game-changer for many skilled workers who have had a visa refused and were previously faced with the prospect of having to leave Australia to lodge a new application. It allows them to remain in Australia and continue to contribute to the economy while they pursue a different visa pathway.

Ministerial Intervention: A Path for Exceptional Circumstances

If you are subject to the Section 48 bar and are not eligible to apply for any of the exempt visas, your final option may be to seek ministerial intervention. The Minister for Immigration has the personal power to intervene in a case and grant a visa if they are satisfied that it is in the public interest to do so.

However, it is essential to understand that ministerial intervention is not a standard part of the visa application process. The Minister is not obligated to consider your request, and they will only intervene in a very small number of cases with unique and compelling circumstances. To have any chance of success, you must be able to demonstrate that your situation is exceptional and warrants the Minister's personal intervention. This may include, for example, cases where there are significant humanitarian or compassionate reasons for you to remain in Australia.

Practical Strategies for Overcoming the Section 48 Bar

If you are confronted with a Section 48 bar, it is imperative to seek professional legal advice as soon as possible. Here are some of the practical strategies we can explore together:

- 1. Thoroughly Review the Refusal Decision:** The first and most critical step is to meticulously review the reasons for your visa refusal. Was the decision legally sound? Are there grounds for an appeal to the Administrative Review Tribunal (ART)? If the refusal decision is overturned on appeal, the Section 48 bar will no longer be an issue.
- 2. Assess Your Eligibility for Exempt Visas:** We will conduct a comprehensive assessment of your circumstances to determine your eligibility for one of the exempt visa subclasses. If you are in a genuine and ongoing relationship with an Australian citizen or permanent resident, a partner visa may be a viable option. If you are a skilled worker, we can explore the various skilled migration visa pathways that are now available.
- 3. Consider the Option of Departing Australia:** In some situations, the most pragmatic and effective strategy is to depart Australia and lodge a new visa application from overseas. While this can be disruptive and emotionally challenging, it may be the only certain way to overcome the Section 48 bar and achieve your migration goals.
- 4. Prepare a Compelling Ministerial Intervention Request:** If all other avenues have been exhausted, we can prepare a detailed, persuasive, and well-documented submission to the Minister for Immigration. This is a complex and time-consuming process that requires a deep understanding of the relevant legal

principles and policies, but it can be successful in cases with truly exceptional circumstances.

What Should You Do Next?

Facing a Section 48 bar can be a stressful and overwhelming experience. The law is complex, the stakes are high, and the wrong decision can have serious consequences for your future in Australia. If you have had a visa refused and are uncertain about your options, I invite you to book a consultation with me. We can discuss your individual situation in detail and develop a clear and effective strategy to help you achieve your migration goals.

Here is a checklist of what to do if you think you may be affected by the Section 48 bar:

- **Do not panic.** There are often solutions available.
- **Locate your visa refusal or cancellation letter.** This document is essential for understanding your situation.
- **Check the date of the decision.** This will help determine your eligibility for an appeal.
- **Do not lodge any further visa applications without seeking professional advice.** This could be a costly mistake.
- **Book a consultation with an experienced immigration lawyer.** This is the most important step you can take.

Remember, a visa refusal is not necessarily the end of your Australian dream. With the right advice, a clear strategy, and expert representation, you can navigate the complexities of the Section 48 bar and move forward with your life in this wonderful country.

About the Author

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