

## Visa Refusal and the IAA

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#### Who is this Infosheet for?

This Infosheet provides information for people who **arrived to Australia by boat without a valid visa** between 14 August 2012 – 31 December 2014 and whose visa applications are subject to the **Fast Track process**. If your visa application is refused by the Department of Home Affairs (DHA or Department), your application will be automatically referred to the Immigration Assessment Authority (IAA) to be considered again.

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#### IMPORTANT

- **You have 21 days after the date your visa refusal was referred to the IAA to provide any new information or written submissions to the IAA.**
- **You must ensure that any supporting documents submitted in support of your protection visa application are genuine.**
- **Submissions to the IAA cannot be longer than 5 pages in length.**

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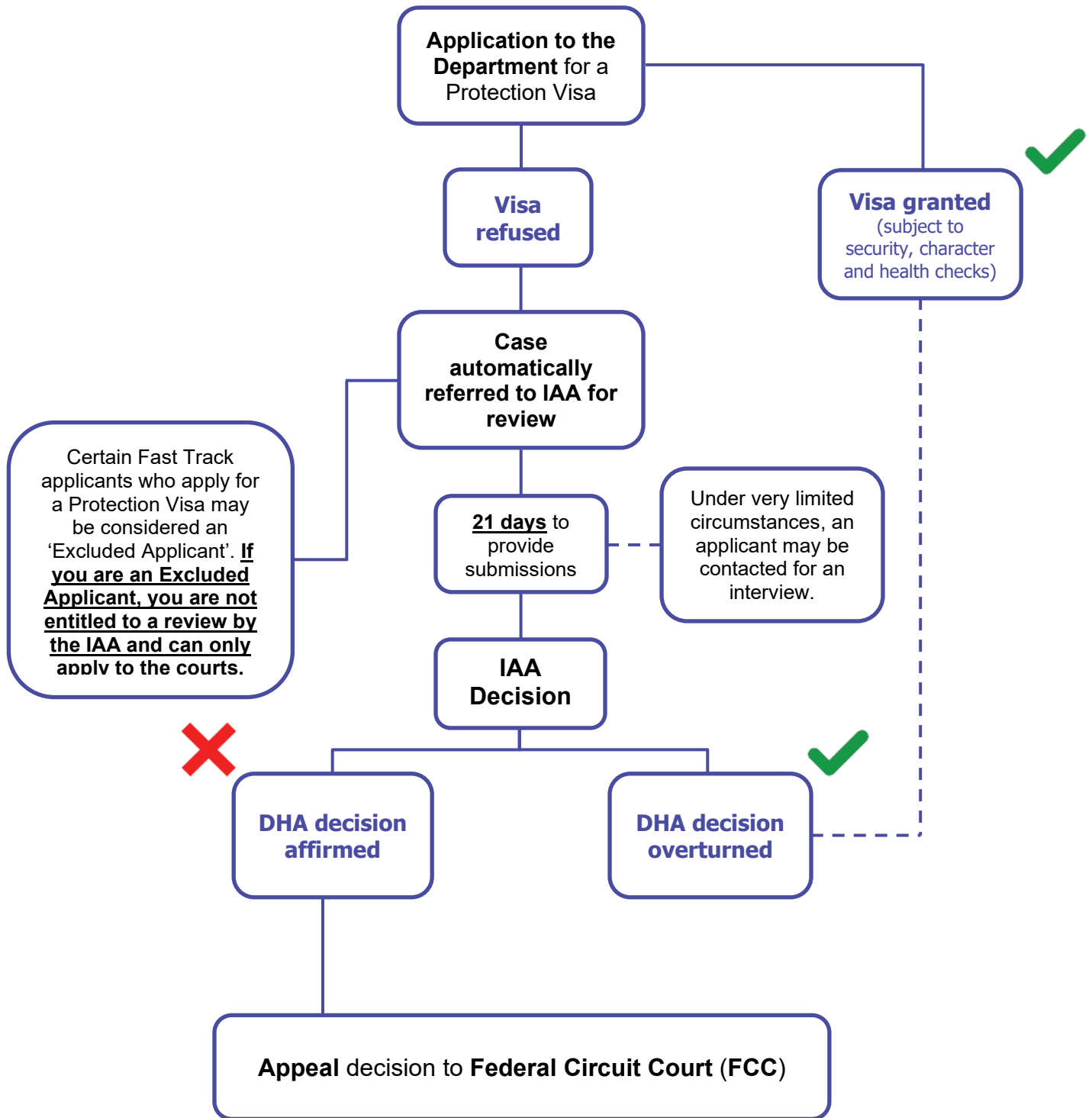
#### What is the IAA?

The IAA is a body established to review visa refusals by the DHA for Fast Track applicants. If you are not a Fast Track applicant your matter will not be reviewed by the IAA.

If you are a **Fast Track applicant** and have had your visa refused, **your case is automatically referred to the Immigration Assessment Authority (IAA) unless** you are a Fast Track excluded applicant. (See below for further information.)

This means you do not need to apply for review and in most cases, you will not be asked to attend an interview with the IAA to discuss your claims for protection. The IAA will make a decision based on the documents and supporting evidence you provided to DHA and any further documents you submit to the IAA.

## The Fast Track Process



## What types of decisions can the IAA make?

The IAA has two options; they may either *agree* with the decision of the DHA not to grant you a visa, or they may *disagree* with the decision and send your case back to the DHA for reconsideration with the direction that Australia owes you protection obligations.

## What can I submit to the IAA?

You are able to provide written submissions to the IAA to explain why you believe the DHA's decision was wrong. There are **strict requirements when providing a submission** which includes:

- The **submissions can be no longer than 5 A4 size pages** (or no longer than a total of 5 A4 size pages combined if more than one submission is provided);
- Use a font size of at least 11 point with standard margins of at least 2.54cm;
- Be easily legible (including footnotes) when printed; and
- Be **provided to the IAA within 21 days of your case being referred** to the IAA by the DHA.

The IAA **cannot consider any new information other than the information received from the Department unless exceptional circumstances apply.**

**Exceptional circumstances** that justify the IAA considering that new information, include:

- The information could not have been provided to the DHA before they made their decision (e.g. if you only learnt about the information after the decision had already been made); and
- The information is new and credible (believable/truthful) and may have affected the DHA's consideration of your case if they had known it.

If you want to submit new information to the IAA, you need to show how it satisfies the criteria above. The IAA will likely refuse to consider new information that does not meet those requirements.

The IAA will make their decision and communicate it to you any time after this 21-day deadline has passed. You will most likely be contacted by email or post. If you need to **update your contact details** with the IAA, you can use the following form:

<https://www.iaa.gov.au/IAA/media/IAA/Files/Forms/F3ChangeApplicantContactFillable.pdf>

## How can I submit documents to the IAA?

To submit documents or submissions to the IAA in support of your case, you can:

- **Email:** email the documents to [iaa@iaa.gov.au](mailto:iaa@iaa.gov.au); or
- **Post:** post the documents to: GPO Box 9955, Sydney NSW 2001

Unless specifically requested, you may give the IAA a copy of a document rather than the document itself and you are not required to send the original of a document by mail if sending a document by email.

## What is a Fast Track Excluded Applicant?

Some Fast Track applicants may not be entitled to have their visa refusal reviewed by the IAA. If you have been informed that you are not entitled to a review by the IAA, you may be able to appeal this decision to the Federal Circuit Court (FCC). We strongly recommend you obtain independent legal advice if you have been told you are not entitled to a review at the IAA.

You may be an Fast Track Excluded Applicant if you:

- Come from a 'safe third country' or would be able to get 'effective protection' in another country; or
- Previously entered Australia and had a Protection Visa application refused or withdrawn;
- Made an unsuccessful claim for protection or asylum in another country, or to the United Nations High Commissioner for Refugees (UNHCR);
- Provided a false document in support of your application without a reasonable explanation; or
- Made a 'manifestly unfounded' claim, generally referring to claims that have no plausible or credible basis, or were made only to delay a person's removal from Australia.

### **What if the IAA rejects my case?**

Unfortunately the IAA has a very high rejection rate as the process makes it very difficult for people to put their best case forward. If the IAA agrees with the decision of DHA to affirm your visa refusal, you may then appeal to the Federal Circuit Court (FCC). Around 40% of IAA cases appealed to the Court are successful. However it is important to understand that the Court process can take several years and can only decide if there has been a legal error in your case. The Court cannot reconsider whether or not you should be granted protection. If you are successful at Court, then your case is back to the IAA for reconsideration and there is certainly no guarantee that you will get a different result.

For more information on taking your case to the FCC, see our **'HRLP Infosheet – Judicial Review at the FCC'**.

- For more information on how to complete and lodge an Application Form and affidavit to take your case to the FCC, see our **'HRLP Infosheet – FCC Application Form Guide'** and **'HRLP Infosheet – FCC Affidavit Guide'**.
- For more information on filing and serving documents in your case at the FCC, see our **'HRLP Infosheet – Filing and Serving Documents at the FCC (COVID-19)'**.

**We strongly recommend you obtain independent legal advice to assist you with your appeal to the FCC.**

**Disclaimer:** This fact sheet provides general information to people seeking asylum in Australia through the onshore protection visa application process according to the law in July 2021. This fact sheet is not legal advice. You should not rely on this fact sheet to make decisions about your immigration matter. We strongly recommend that you get independent advice from a qualified legal practitioner or a registered migration agent. For information please visit: <https://www.mara.gov.au>.

**Date: 12 July 2021**