

# Hepatitis B and immigration

*This template has been developed to support clinicians who have patients with chronic hepatitis B applying for a permanent visa.*

## Summary

Patients with chronic hepatitis B (CHB) can be denied a permanent visa because they fail to meet the health requirements set by the Department of Home Affairs. The main reasons for failing the health assessment are related to the significant health services and/or community care costs, or prejudice to access of Australians to some health services, in particular access to organ transplants. Depending on the type of visa the applicant has applied for, they can be provided a 'natural justice' opportunity that will allow the applicant to apply for a health waiver (see table 2). The provision of a 'positive' medical report in a migration case is very important, and can contribute to a favourable outcome for the patient. In addition, the range of other discretionary issues, such as cost mitigation or strongly compassionate and compelling other reasons can contribute to whether or not a health waiver will be granted. These issues should be made by the applicant and his/her migration advisors.

*It is often important that a medical report is provided prior to the appointment with the Medical Officer of the Commonwealth (MOC)*

**In this report it is important that the following is included:**

- contribution to the Australian community (e.g. via paid or volunteer work) despite having CHB,
- whether it is likely that the patient will develop liver disease including significant fibrosis, cirrhosis, or hepatocellular carcinoma; and whether they will develop end stage liver disease and require liver transplantation.
- whether or not the applicant is likely to need treatment, or at which stage it is likely that medication will be needed. For example, if the applicant is in the immune control phase they will not need antiviral therapy and are most likely to never need it.
- information regarding the impact of treatment including how the applicant's ability to work will be influenced by them being on medication, and how this will influence the likelihood of developing liver diseases.

# Introduction

**This template has been developed as a source of information to clinicians with patients who have chronic hepatitis B (CHB) and are in the process of applying for a permanent visa. Patients can be denied a permanent visa due to their hepatitis B status. To be eligible for a permanent visa the applicant has to meet the health criteria set by the Department of Home Affairs. This template can be used by health professionals to help support patients who are undergoing this process.**

## a. Hepatitis B

Hepatitis B virus (HBV) is a DNA virus that may cause inflammation of the liver, cirrhosis, liver failure and hepatocellular carcinoma (HCC). The virus is transmitted by contact with infected blood or some body fluids. The infection is vaccine preventable. If the initial infection persists for six months the patient has CHB. The risk of developing CHB is much higher in infants via perinatal transmission and in young children compared to adults

(see table 1). The great majority of people living with CHB were infected at birth or in early childhood, including in Australia where most people living with CHB were born overseas in endemic areas, or are Aboriginal or Torres Strait Islander people.

Antiviral treatment for CHB is used to suppress the virus and to prevent, halt or even reverse liver damage including fibrosis and cirrhosis, and preventing HCC. The decision to initiate treatment depends on serum HBV DNA viral load, ALT levels, which phase of CHB the patient is in, and a range of other patient factors.

## b. Health assessment for visa applicants

When applying for a permanent visa the applicant must undergo a health assessment conducted by the MOC. Currently MOCs are employed by the private multinational healthcare company, Bupa. MOCs are required to determine whether the health status of the applicant could affect their visa application. Australian migration law provides two distinct types of health-related Public Interest Criteria (PIC), see table 2.

**Table 1:** Risk of progression, by age at infection <sup>1</sup>

	Perinatal	Childhood	Adult
Risk of development of chronic infection (%)	80–90	30	<5
Risk of advanced liver disease (% exposed to HBV)	20-30	5-10	1-2

<sup>1</sup> Edith Cowan University. Hepatitis Education Project. 2014; Available from: <http://hepatitis.ecu.edu.au/>

**Table 2:** Health PICs categorised by visa type and health waiver

Health PIC	Visa type	Health waiver available, when failing the health assessment
PIC 4005	majority of visas	No
PIC 4007	most family stream, all humanitarian and a limited number of skilled visas, including temporary employer nominated work visas.	Yes * within the family stream, a health waiver is available for: partner/fiancée/defacto/spouse and child visas. Not available for parent, carer or adoptive child visas.

There are different outcomes for each applicable PIC if the MOC finds that the applicant fails the health assessment. This could lead to a visa refusal.

The MOC will assess if the applicant meets the following criteria:

- a) free from tuberculosis,
- b) free from any disease that is a threat to the public health in Australia or a danger to the Australian community (e.g. Ebola),
- c) free from any disease or condition that would be likely to require the applicant to:
  - i. receive healthcare or community services, or
  - ii. meet the medical criteria for the provision of a community service,

and the provision of those healthcare and community services are likely to result in 'significant costs' to the Australian community, prejudice the access of an Australian citizen or permanent resident to healthcare or community services. [Under Department Policy this is currently set at a threshold of \$40,000 over the whole duration of the visa, or lifetime for permanent visa applicants.]

These requirements are regardless of whether the healthcare or community services would actually be used in connection with the applicant. This means that the MOC's opinion is not based upon the particular visa applicant but upon a hypothetical person with the same condition and severity.

If an applicant is found by the MOC to not meet the health criteria, there will be a different outcome for each applicable category of PIC (table 2). Visas where PIC 4005 applies do not have the possibility to apply for a health waiver.

*It is recommended that the applicant seeks advice from a migration agent/lawyer*

In the case of permanent visa applicants where PIC 4007 applies, an opportunity is given for them to apply for a 'waiver' of the health requirement. Due to the complex process it is recommended that the applicant seeks advice from a migration agent/lawyer.

Moreover, a health waiver can be granted under PIC 4007 (provided the applicant meets all other criteria for granting the visa) if the health costs or prejudice are not 'undue'.

In this case the applicant has the capacity to 'mitigate' the costs or prejudice. Or when there are particularly compelling or compassionate circumstances, a health waiver can be granted.

In particular, a MOC must assess and provide an opinion as to whether or not a person is likely to require the provision of healthcare or community services over the proposed visa period. In case of a permanent visa it can be seen as a lifetime. The Migration Regulations require that the MOC's opinion must be accepted as correct by the Department. Based on that opinion (unless there is a legal error in the opinion) a decision is made as to whether a hypothetical person like the applicant will be likely to incur significant costs or prejudice access of others to healthcare and/or community services.

### **c. Why is hep B an issue for immigration?**

The main reason for applicants with CHB to be denied a permanent visa is due to the expected healthcare costs. Depending on what phase of the disease the patient is in, they will make use of health services in different degrees and CHB patients are therefore likely to exceed the threshold of \$40,000 over their lifetime. CHB patients with no evidence of progressive liver disease and who are not receiving antiviral therapy are required to have a check-up every six to twelve months. Patients who are on treatment may need tests more frequently. Patients with CHB with an elevated risk of HCC should undergo liver ultrasound surveillance every six months. If required, the cost of antiviral therapy contributes significantly to the overall health costs.

End stage liver disease associated with CHB is an indication for liver transplantation. If this applies to an applicant the issue is not only 'significant cost' but also prejudice of access of Australians to scarce medical resources, i.e., transplants from deceased donors. Although a health waiver can be applied for in these cases, it is most unlikely that it will ever be granted under current policy.

Hepatitis B is not considered a public health threat to the Australian community. However, it might be considered a threat when the applicant intends to work in healthcare and undertake exposure-prone procedures where there is a risk of contact between the worker's blood and a patient's open tissue. If this is a consideration, it is advisable that the applicant consults a viral hepatitis specialist experienced in the management of infected health care workers. The Department will seek a report from a prospective employer

or institution about whether a person would be involved in exposure-prone procedures before a visa decision is made.

#### d. How can clinicians support your patient?

This section explains the role of a report written by the patient's medical advisors. When it is not possible to apply for a health waiver (visas with PIC 4005) a visa refusal can be prevented. For example, in cases where there is unlikely to ever be significant costs or prejudice to access healthcare. If the MOC agrees with such an assessment and prognosis, it will increase the chance that they will meet the health criteria.

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It is often important that a medical report is provided prior to the visa applicant's appointment with a MOC. The MOC must take this report into account in forming his/her opinion as to whether the health status of the applicant is likely to be a significant cost or prejudice to access healthcare. A medical report in relation to an applicant with CHB provided to the MOC may persuade the MOC that it is unlikely there will be significant cost in that case. For example:

*An adult with CHB in the immune control phase with, low HBV viral load and no evidence of significant fibrosis will require regular investigations and clinical review, but is not likely to be found a 'significant cost' by the MOC. This is because the patient is at low risk of developing liver disease and related complications, and anti-viral drugs are not likely to be required.*

*A report by the patient's doctor in a case like this, may, at an early stage, assist in preventing the issue of the migration health 'significant cost' from being raised.*

It should be stressed that all permanent visa applicants must

disclose to the MOC in writing whether they have or ever had hepatitis. Even if they are symptom free and are not receiving therapy.

**In all cases** a medical report should deal with the nature and degree of severity of CHB in the patient/visa applicant and the prognosis. The issues to address could include:

- Whether the patient is likely to be **able to work or contribute to the Australian community** (e.g. via paid or volunteer work) despite having CHB.
- Whether it is **likely that the patient will develop liver disease** including significant fibrosis, cirrhosis, or HCC; and whether they will develop end stage liver disease and require liver transplantation.
- Whether or not the patient is likely to need antiviral treatment, or when it is likely that medication will be needed. For example, if the applicant is in the immune control phase they will not need immediate treatment and are most likely to never need it.
  - NB: The Medical Policy advice of the Department to MOCs is that only **10-20% of subjects in the immune control phase may have subsequent reactivation of HBV with immune escape**, even after many years.
- Information regarding the impact of treatment, including when the patient is on medication, whether this will influence his/her ability to work, and how this will influence the likelihood of developing liver diseases.

**The provision of a 'positive' medical report in a migration case is very important** - and can contribute to a favourable outcome for the patient.

In addition, the range of other discretionary issues, such as cost mitigation or strongly compassionate and compelling other reasons can contribute to whether or not a health waiver will be granted. **These issues should be made by the visa applicant and his/her migration advisors.**

#### e. Resources:

<https://www.homeaffairs.gov.au/about/corporate/information/fact-sheets/63advice-providers>

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