

Migration (1993) Regulations (Amendment) 1993 No. 329

EXPLANATORY STATEMENT

STATUTORY RULES 1993 No. 329

Issued by the Authority of the Minister for Immigration and Ethnic Affairs

Subject - Migration Act 1958

Migration (1993) Regulations (Amendment)

Section 181 of the Migration Act 1958 (the Act) provides that the Governor-General may make regulations for the purposes of the Act. Without limiting the generality of section 181, sections 23 and 33 of the Act enable the Governor-General to make regulations providing for different classes of visas and entry permits.

The purpose of the Regulations is to rectify an unintended consequence of the 1993 restructuring of the Migration Regulations made in 1989.

Under the Migration Regulations made in 1989, the discretion to waive the need to be medically examined was distinct from a waiver of the need to meet the health requirement after an assessment had been made. The discretion to waive the need to be medically examined was only intended to be available for non-travelling family members not included in a primary person's application and who were unlikely to individually apply for permanent entry to Australia in the future. An unintended consequence of the 1993 restructuring of the Migration Regulations was that the Migration (1993) Regulations extended the discretion to waive the need to undergo a medical examination to secondary persons, that is, family unit members who are included in a primary person's application.

In order to remedy this oversight, the Regulations amend all but two classes of migrant visas and entry permits. They also amend two classes of permanent resident (after entry) entry permits, all classes of permanent resident (refugee and humanitarian) visas and entry permits, and certain provisions with respect to the grant of visas and entry permits to secondary persons.

Details of the Regulations are set out in the Attachment.

ATTACHMENT

Regulation 1 - Amendment

This regulation provides for the Migration (1993) Regulations to be amended as set out in the Regulations.

Regulation 2 - Schedule 2, Chapter 1.1 (Migrant visas and entry permits)

This regulation omits the words ", unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to those criteria" from each of the following clauses:

- 100.337(1)(b) - (Spouse) Visa and Entry Permit
- 101.336(1)(b) - (Child) Visa and Entry Permit
- 102.335(1)(b) - (Adoption) Visa and Entry Permit
- 103.336(1)(b) - (Parent) Visa and Entry Permit
- 104.335(1)(b) - (Preferential Family) Visa and Entry Permit
- 105.336(1)(b) - (Concessional Family) Visa and Entry Permit
- 120.335(1)(b) - (Labour Agreement) Visa and Entry Permit
- 121.336(1)(b) - (Employer Nomination) Visa and Entry Permit
- 124.334(1)(b) - (Distinguished Talent (Australian Support)) Visa and Entry Permit
- 125.334(1)(b) - (Distinguished Talent and Special Service (Independent)) Visa and Entry Permit
- 126.336(1)(b) - (Independent Entrant) Visa and Entry Permit
- 127.335(1)(b) - (Business Skills) Visa and Entry Permit
- 128.335(1)(b) - (Business Skills (Senior Executive)) Visa and Entry Permit
- 129.335(1)(b) - (State/Territory Sponsored Business Skills) Visa and Entry Permit
- 130.335(1)(b) - (State/Territory Sponsored Business Skills (Senior Executive)) Visa and Entry Permit
- 150.333(1)(b) - (Former Citizen) Visa and Entry Permit
- 151.334(1)(b) - (Former Resident) Visa and Entry Permit
- 152.335(1)(b) - (Family Reunion (New Zealand Citizen)) Visa and Entry Permit

Regulation 3 - Schedule 2, Chapter 1.2 (Permanent resident (after entry) entry permits)

This Regulation amends the affected clauses in this chapter. Currently the affected clauses make no distinction between family unit members who are applicants and

those who are not. All other clauses in this chapter make that distinction. The amendments bring the affected clauses into line with those other clauses in this chapter, reflecting the distinction between secondary and non-secondary persons. The amendments also ensure that secondary persons are required to satisfy public interest criteria 4001 to 4006 and in the case of class 800, to satisfy public interest criterion 4009.

Subregulation 3.1 amends clause 800.733 - (Territorial Asylum) Entry Permit.

Subregulation 3.2 amends clause 802.736 - (Child (After Entry)) Entry Permit.

Regulation 4 - Schedule 2, Chapter 1.3 (Permanent resident (refugee and humanitarian) visas and entry permits)

This regulation omits the words unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to those criteria" from each of the following clauses:

200.339(1)(b) - (Refugee) Visa and Entry Permit

201.339(1)(b) - (In-Country Special Humanitarian Program) Visa and Entry Permit

202.339(1)(b) - (Global Special Humanitarian Program) Visa and Entry Permit

203.339(1)(b) - (Emergency Rescue) Visa and Entry Permit

204.339(1)(b) - (Woman at Risk) Visa and Entry Permit

205.336(1)(b) - (Camp Clearance) Visa and Entry Permit

208.337(1)(b) - (East Timorese in Portugal (Special Assistance)) Visa and Entry Permit

209.338(1)(b) - (Citizens of Former Socialist Federal Republic of Yugoslavia - Displaced Persons (Special Assistance)) Visa and Entry Permit

210.338(1)(b) - (Minorities of Former USSR (Special Assistance)) Visa and Entry Permit

211.335(1)(b) - (Burmese (Special Assistance)) Visa and Entry Permit

212.337(1)(b) - (Sudanese (Special Assistance)) Visa and Entry Permit

213.335(1)(b) - (Displaced Burmese in Thailand (Special Assistance)) Visa and Entry Permit

Regulation 5 - Schedule 3 (Provisions with respect to the grant of visas and entry permits included in certain groups to secondary persons)

This regulation omits the words ", unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to those criteria" from each of the following clauses:

011.334(b)(i) - Migrant Visas and Entry Permits (Secondary Persons)

011.334(b)(ii) - Migrant Visas and Entry Permits (Secondary Persons)

013.333(b) - Permanent Resident (Refugee and Humanitarian) Visas and Entry Permits (Secondary Persons)