

Migration (1993) Regulations (Amendment) 1994 No. 11

EXPLANATORY STATEMENT

STATUTORY RULES 1994 No. 11

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, not inconsistent with the Act, to prescribe all matters which are required or permitted by the Act to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to the Act. Without limiting the generality of section 181, section 23 of the Act enables regulations to be made providing for different classes of visas and section 33 of the Act enables regulations to be made providing for different classes of entry permits.

In addition, particular provision is made for the making of regulations in relation to the following matters:

- subsection 23(1) of the Act provides that, without limiting the generality of section 181, the regulations may provide for the granting and refusal of visas, including the granting of visas subject to conditions or to a limitation as to time. There is also provision for the regulations to provide for the recording and evidencing of visas, the effect and operation of visas, and the cancellation of visas;
- subsection 23(2) of the Act provides that the regulations may provide for different classes of visas. The regulations may also provide that a person is entitled to be granted a visa of a particular class if the person satisfies all the criteria prescribed in relation to that class;
- subsection 33(1) of the Act provides that, without limiting the generality of section 181, the regulations may provide for the granting and refusal of entry permits, including the granting of entry permits subject to conditions or to a limitation as to time. There is also provision for the regulations to provide for the recording and evidencing of entry permits, the effect and operation of entry permits, and the cancellation of entry permits;
- subsection 33(2) of the Act provides that the regulations may provide for different classes of entry permits. The regulations may also provide that a person is entitled to be granted an entry permit of a particular class if the person satisfies all the criteria prescribed in relation to that class;
- paragraph 181(1)(a) of the Act provides that the regulations may provide for the charging and recovery of fees in respect of any matter under the Act or the Regulations; and
- paragraph 181(1)(b) of the Act provides that the regulations may provide for the remission, refund or waiver of fees, including the exemption of persons from the payment of such fees.

The purpose of the Regulations is:

- to add to the prescribed change of circumstances for the purposes of restrictions on applications for entry permits after entry in paragraphs 36(1)(a) and 37(2)(a) of the Act. The matters prescribed relate to persons who are eligible to apply for, and who satisfy some of the prescribed criteria for the grant of new classes of entry permit created by these Regulations;
- to provide that applications by members of the family unit of an applicant may be combined with, and lodged at the same time as, the application by that other applicant;

- to create a new class of entry permit - Class 815 (PRC (permanent)) entry permit. This new Class will provide access to permanent residence to nationals of the People's Republic of China (PRC) who arrived in Australia before 20 June 1989 and on both 20 June 1989 and 1 November 1993 were either in Australia or the holder of a return visa. The Class also makes provision for members of the family unit of an applicant to be granted permanent residence on satisfaction of prescribed criteria;
- to amend the provisions in Part 437 - Class 437 (PRC (temporary)) entry permit to provide that this entry permit can be granted to an applicant for a Class 815 (PRC (permanent)) entry permit until a decision is made on that application, or in any other case until 30 June 1994. If a person is the holder of a Class 437 (PRC (temporary)) entry permit and is an applicant for a Class 815 (PRC (permanent)) entry permit, the application for the Class 815 (PRC (permanent)) entry permit is taken to be an application for a further Class 437 (PRC (temporary)) entry permit;
- to create a new class of entry permit - Class 816 (special (permanent)) entry permit. This new Class will provide access to permanent residence to certain persons who met certain educational or business criteria on 1 November 1993, and had not turned 45 prior to 1 November 1993, and met certain visa requirements on or before 12 March 1992 and certain travel requirements on or before 1 November 1993, and who meet certain English language requirements by not later than 31 October 1995; and
 - . who applied for refugee status prior to 1 November 1993 (whether or not the application has been decided, or withdrawn, and whether or not the decision, if made, was adverse to the applicant); or
 - . who were granted a Class 435 (Sri Lankan (temporary)) entry permit or Class 443 (citizens of the former Socialist Federal Republic of Yugoslavia (temporary)) entry permit on or before 1 November 1993, or who have applied for those classes prior to 1 November 1993 and who appear to meet the prescribed criteria applicable on 1 November 1993 on the basis of their application where that application has not been decided.
 - . The new Class makes provision for members of the family unit of an applicant to be granted permanent residence on satisfaction of prescribed criteria;
- to create a new class of entry permit - Class 818 (highly qualified on-shore (permanent)) entry permit. This new Class will provide access to permanent residence to certain persons who had not turned 45 years of age before 1 November 1993 and who hold, or have undertaken study towards, higher education qualifications. The new Class makes provision for members of the family unit of an applicant to be granted permanent residence on satisfaction of prescribed criteria;
- to create a new class of visa and entry permit - Class 817 (protection (permanent)) visa and entry permit. This new Class will provide for access to permanent residence for persons who have been granted Class 784 (domestic protection (temporary)) entry permits or its equivalent under the Migration (1989) Regulations. The new Class makes provision for members of the family unit of an applicant to be granted permanent residence on satisfaction of prescribed criteria;
- to insert a new Division 1.5 - Group 1.5 (Permanent resident (refugee and humanitarian) (onshore)) in Schedule 1 (Classification of Visas and entry permits) and to amend Division 1.2 - Group 1.2 (Permanent resident (after entry)). This reflects policy changes as a result of the insertion of the new Classes in these Regulations and changes made to existing Classes;
- to amend Schedule 2, Chapter 2.8 (Miscellaneous visa and entry permits) to introduce a new entry permit - Class 830 (1 November 1993 (processing)) entry permit. This new Class will provide for the grant of temporary residence in Australia to certain persons who have applied for a Class 815 (PRC (permanent)) entry permit, or a Class 816 (special (permanent)) entry permit, or a Class 817 (protection (permanent)) entry permit or a Class 818 (highly qualified on-shore (permanent)) entry permit inserted by these Regulations.
- to amend Schedule 3 (Provisions with respect to the grant of visas and entry permits included in certain groups to secondary persons) as a result of the insertion of the new Classes by these Regulations; and

- to create a new Schedule 6.1 (Requirements for a business for the purposes of subclause 816.721(3)). This new schedule is inserted as a result of the new Class 816 inserted by these Regulations.

The regulations commence on 1 March 1994.

Details of the Regulations are set out in the attachment.