



Statutory Rules 1994 No. 87¹

Migration (1993) Regulations² (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Migration Act 1958*.

Dated 29 March 1994.

BILL HAYDEN
Governor-General

By His Excellency's Command,

NICK BOLKUS
Minister for Immigration and Ethnic Affairs

1. Commencement

1.1 Subregulations 6.4, 6.14, 6.26, and 9.9 are taken to have commenced on 1 March 1994.

[NOTE: The remainder of these Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

2. Amendment

2.1 The Migration (1993) Regulations are amended as set out in these Regulations.

3. Regulation 2.10 (Prescribed change in circumstances (paragraphs 36 (1) (a) and 37 (2) (a) of the Act)

3.1 Paragraph 2.10 (ma):

After “clause 829.712”, insert “or subclause 830.711 (2)”.

4. Regulation 2.15 (Special provision for grant outside Australia of certain visas to former holders of corresponding temporary entry permits)

4.1 Subparagraph 2.15 (2) (b) (iv):

Add at the end:

“; (v) Class 830 (1 November 1993 (processing))”.

5. Schedule 1 (Classification of visas and entry permits)

5.1 Item 2801B:

Omit “[*Entry permit only*]”.

6. Schedule 2, Chapter 1.2 (Permanent resident (after entry) entry permits)

6.1 Clause 815.131 (definition of “principal applicant”):

Omit the definition, substitute:

“ ‘**principal person**’ means a person who meets the requirements of subclause 815.721 (2) or (3);”.

6.2 Subclause 815.711 (2):

Omit “An application”, substitute “Subject to subclause (3), an application”.

6.3 Subclause 815.711 (2):

Omit “may”, substitute “must”.

6.4 Subclause 815.711 (3):

Omit the subclause, substitute:

“(3) An application by a person who:

(a) is a dependent child of an applicant for a Class 815 entry permit; and

(b) was born after the lodging of, and before the making of a decision on, the application by that other applicant;

may be added to that other application at any time before the making of a decision on that application, despite the operation of clause 815.512.”.

6.5 Subclause 815.721 (4):

Omit the subclause, substitute:

“(4) An applicant meets the requirements of this subclause if the applicant:

(a) is a member of the family unit of an applicant who is a principal person; and

(b) is included in the application of the principal person.”.

6.6 Subclauses 815.722 (1) and (2):

Omit “principal applicant”, substitute “principal person”.

6.7 Clause 815.723:

Omit “principal applicant”, substitute “principal person”.

6.8 Subclause 815.732 (1):

Omit “principal applicant”, substitute “principal person”.

6.9 Subclause 815.732 (2):

Omit the subclause, substitute:

“(2) If the applicant is an applicant referred to in subclause 815.721 (4):

- (a) the principal person is the holder of a Class 815 entry permit; and
- (b) the applicant continues to be a member of the family unit of the principal person; and
- (c) the applicant satisfies public interest criteria 4001 to 4004, 4007 and 4008.”.

6.10 After paragraph 815.821 (a), insert:

“(aa) in the case of an application made by an applicant mentioned in subclause 815.711 (3): Nil;”.

6.11 Clause 816.131 (definition of “principal applicant”):

Omit the definition, substitute:

“ ‘**principal person**’ means a person who meets the requirements of paragraph 816.721 (1) (a);”.

6.12 Subclause 816.711 (2):

Omit “An application”, substitute “Subject to subclause (3), an application”.

6.13 Subclause 816.711 (2):

Omit “may”, substitute “must”.

6.14 Subclause 816.711 (3):

“(3) An application by a person who:

- (a) is a dependent child of an applicant for a Class 816 entry permit; and
- (b) was born after the lodging of, and before the making of a decision on, the application by that other applicant;

may be added to that other application at any time before the making of a decision on that application, despite the operation of clause 816.512.”.

6.15 Paragraph 816.721 (1) (b):

Omit the paragraph, substitute:

“(b) a person who:

- (i) is a member of the family unit of an applicant who is a person mentioned in paragraph (a); and
- (ii) is included in that person’s application”.

6.16 Subclauses 816.722 (1) and (2):

Omit “principal applicant”, substitute “principal person”.

6.17 Clause 816.723:

Omit “principal applicant”, substitute “principal person”.

6.18 Subclause 816.732 (1):

Omit “principal applicant”, substitute “principal person”.

6.19 Paragraph 816.732 (2) (a):

Omit the paragraph, substitute:

- “(a) has successfully met the academic progress requirements in the institution at which the applicant was enrolled for:
- (i) at least 1 year of full-time study; or
 - (ii) part-time study equivalent to at least 1 year of full-time study;
- in an accredited course leading to a post-secondary qualification where the primary language of instruction was English; or”.

6.20 Subclause 816.734 (1):

Omit “principal applicant”, substitute “principal person”.

6.21 Subclause 816.734 (2):

Omit the clause, substitute:

“(2) If the applicant is an applicant referred to in paragraph 816.721 (1) (b):

- (a) the principal person is the holder of a Class 816 entry permit; and
- (b) the applicant continues to be a member of the family unit of the principal person; and
- (c) the applicant satisfies public interest criteria 4001 to 4004, 4007 and 4008.”.

6.22 After paragraph 816.821 (a), insert:

“(aa) in the case of an application made by an applicant mentioned in subclause 816.711 (3): Nil;”.

6.23 Clause 818.131 (definition of “principal applicant”):

Omit the definition, substitute:

“ ‘**principal person**’ means a person who meets the requirements of paragraph 818.721 (1) (a);”.

6.24 Subclause 818.711 (2):

Omit “An application”, substitute “Subject to subclause (3), an application”.

6.25 Subclause 818.711 (2):

Omit “may”, substitute “must”.

6.26 Subclause 818.711 (3):

“(3) An application by a person who:

- (a) is a dependent child of an applicant for a Class 818 entry permit; and
- (b) was born after the lodging of, and before the making of a decision on, the application by that other applicant;

may be added to that other application at any time before the making of a decision on that application, despite the operation of clause 818.512.”.

6.27 Paragraph 818.721 (1) (b):

Omit the paragraph, substitute:

“(b) a person who:

- (i) is a member of the family unit of an applicant who is a person mentioned in paragraph (a); and
- (ii) is included in that person’s application”.

6.28 Clause 818.722:

Omit “principal applicant”, substitute “principal person”.

6.29 Subclause 818.723 (1):

Omit “principal applicant”, substitute “principal person”.

6.30 Subclauses 818.724 (1) and (2):

Omit “principal applicant”, substitute “principal person”.

6.31 Clause 818.725:

Omit “principal applicant”, substitute “principle person”.

6.32 Subclause 818.732 (1):

Omit “principal applicant”, substitute “principal person”.

6.33 Subclause 818.732 (2):

Omit the subclause, substitute:

“(2) If the applicant is an applicant referred to in paragraph 818.721 (1) (b):

- (a) the principal person is the holder of a Class 818 entry permit; and
- (b) the applicant continues to be a member of the family unit of the principal person; and
- (c) the applicant satisfies public interest criteria 4001 to 4004, 4007 and 4008.”.

6.34 After paragraph 818.821 (a), insert:

“(aa) in the case of an application made by an applicant mentioned in subclause 818.711 (3): Nil;”.

7. Schedule 2, Chapter 2.1 (Temporary resident visas and entry permits)

7.1 Clause 425.731:

Omit the clause, substitute:

“425.731 Either:

(a) the applicant:

(i) was at the time of application, the holder, as a primary person, of a Class 425 entry permit; and

(ii) satisfies the Minister that there is no reason to believe that the applicant does not continue to satisfy the criteria for the grant, before entry, to a primary person of a Class 425 visa; or

(b) the applicant satisfies the criteria for the grant, before entry, to a primary person of a Class 425 visa.”.

8. Schedule 2, Chapter 2.5 (Extended eligibility visas and entry permits)

8.1 Subdivision 820.34:

Omit:

“820.431 Mandatory condition: 9233”,
substitute:

“820.341 Mandatory condition: 9233”.

8.2 Paragraphs 820.721 (7) (b) and 826.722 (5) (b):

Omit the paragraphs and notes, substitute:

“(b) a person who:

- (i) is, for the purposes of a Status of Forces Agreement between Australia and the United States of America (signed 9 May 1963), Papua New Guinea (signed 26 January 1977) or Singapore (signed 10 February 1988) (in this subclause called ‘a relevant agreement’), a member of the armed forces of the United States of America, Papua New Guinea or Singapore (as the case requires); and
- (ii) holds military identity documents and travel orders; and
- (iii) is not an exempt non-citizen mentioned in section 4 (1) of the Act; or

(c) a person who:

- (i) is, for the purposes of a relevant agreement, the spouse or a dependent relative of a person mentioned in paragraph (b) (including a dependent child of that person born in Australia on or after 20 August 1986); and
- (ii) holds a valid national passport and certification that the person is a dependant of a member of the armed forces of the United States of America, Papua New Guinea or Singapore (as the case requires); or

(d) a person who:

- (i) is, for the purposes of a relevant agreement, a member of the civilian component of the armed forces of the United States of America, Papua

- New Guinea or Singapore (as the case requires);
and
- (ii) holds a valid national passport and certification that the person is a member of the civilian component of the armed forces of that country; or
- (e) a person who:
- (i) is, for the purposes of a relevant agreement, the spouse or a dependent relative of a person mentioned in paragraph (d) (including a dependent child of that person born in Australia on or after 20 August 1986); and
 - (ii) holds a valid national passport and certification that the person is a dependant of a member of the civilian component of the armed forces of the United States of America, Papua New Guinea or Singapore (as the case requires).”

9. Schedule 2, Chapter 2.8 (Miscellaneous visas and entry permits)

9.1 Clause 775.341:

Omit “9203”, substitute “9202.”.

9.2 Part 830 (heading):

Omit the heading, substitute:

**“PART 830—CLASS 830 (1 NOVEMBER 1993
(PROCESSING)) VISA AND ENTRY PERMIT”**

9.3 Divisions 830.2 to 830.4:

Omit:

“**830.2 -4 [No visa of this class]**”,

substitute:

**“830.2 1 NOVEMBER 1993 (PROCESSING) VISA—
PRELIMINARY**

830.21 When and where may application and grant be made?

830.211 A Class 830 visa may be:

- (a) applied for and granted only within Australia, but not at the Entry Control Point; and
- (b) granted either as a travel-only visa or as an entry visa.

830.22 Period of validity (visa): As individually determined by the Minister.

830.3 [1 November 1993 (processing) visa not granted before entry]

830.4 1 NOVEMBER 1993 (PROCESSING) VISA (AFTER ENTRY)

[NOTE: The purpose of the grant of a Class 830 visa after entry is to authorise, before departure, the return travel to Australia of certain holders of Class 830 entry permits.]

830.41 Application (visa—after entry)

830.411 The application must be made in accordance with approved form 997.

[NOTE: Before an application will be considered, it must be lodged in accordance with regulation 2.14 and the fee specified in subdivision 830.81 must be paid (Act, subsection 24 (1)).]

830.42 Criteria to be satisfied at time of application (visa—after entry)

830.421 The applicant:

- (a) is the holder of a Class 830 entry permit; and
- (b) is an applicant for a Class 817 entry permit; and

- (c) was lawfully in Australia at the time of application for the Class 817 entry permit.

830.43 Criteria to be satisfied at time of decision (visa—after entry)

830.431 The applicant continues to hold a Class 830 entry permit.

830.432 The Minister is satisfied that the return of the applicant to Australia would not be contrary to the interests of Australia.

830.44 Conditions (visa—after entry)

830.441 Mandatory conditions: Nil.

830.442 Discretionary conditions: Nil.”.

9.4 Clause 830.511:

Omit the clause, substitute:

“830.511 A Class 830 entry permit may be applied for and granted either:

- (a) at the Entry Control Point, if the person is the holder of a Class 830 visa that was granted as a travel-only visa; or
- (b) after entry.”.

9.5 Clause 830.521:

Omit the clause, substitute:

“830.521 Until:

- (a) in the case of an applicant to whom subclause 830.711 (1) applies—a decision is made not to grant the Class 815, 816, 817 or 818 entry permit for which the applicant is also an applicant or
- (b) in the case of an applicant to whom subclause 830.711 (2) applies:
 - (i) the entry permit to which the principal application relates is granted; or
 - (ii) the application is withdrawn;whichever is the sooner.”.

9.6 Subdivision 830.6:

Omit:

“830.6 [1 November 1993 (processing) entry permit not granted before entry]”,

substitute:

“830.6 1 NOVEMBER 1993 (PROCESSING) ENTRY PERMIT (BEFORE ENTRY): As provided by regulation 2.30.”.

9.7 Clause 830.711:

Omit the clause and note, substitute:

“830.711 (1) Subject to subclause (2), as provided by subregulations 2.29 (1C) and (1D).

(2) A person is taken to have applied for a Class 830 entry permit if:

- (a) the person is an applicant for a Class 815, 816, 817 or 818 entry permit; and
- (b) a decision is made not to grant that entry permit; and
- (c) on review:

- (i) a review authority:

- (A) determines in writing that the Class 815, 816 or 818 entry permit would be granted except that the applicant does not hold a section 47 temporary entry permit; and

- (B) remits the application for reconsideration under paragraph 118 (4) (ba) of the Act; or

- (ii) the Refugee Review Tribunal:

- (A) determines in writing that the Class 817 entry permit would be granted except that the applicant does not hold a section 47 temporary entry permit; and

- (B) remits the application for reconsideration under paragraph 166BC (2) (c) of the Act; or

- (iii) a review authority or the Refugee Review Tribunal, as the case requires, remits the application for the Class 815, 816, 817 or 818 entry permit for reconsideration under paragraph 118 (4) (ba) or paragraph 166BC (2) (c) of the Act and the Minister determines that the entry permit would be granted except that the applicant does not hold a section 47 temporary entry permit.”.

9.8 Clause 830.731:

Omit the clause, substitute:

“830.731 The applicant is:

- (a) an applicant for an entry permit of one of the following classes:
 - (i) Class 815 (PRC (permanent));
 - (ii) Class 816 (special (permanent));
 - (iii) Class 817 (protection (permanent));
 - (iv) Class 818 (highly qualified on-shore (permanent)); or
- (b) an applicant to whom subclause 830.711 (2) applies.”.

9.9 Clause 830.732:

Add at the end:

“; or (c) has been cancelled (for any reason) or terminated under regulation 2.36”.

9.10 Subdivision 830.81:

Omit the subdivision, substitute:

“830.81 Visa applications

830.811 After entry (only): \$50.”.

10. Schedule 4 (Public interest criteria)

10.1 Subparagraph 4005 (a) (i):

Omit “or other any”, substitute “or any other”.

10.2 Subparagraph 4007 (a) (i):

Omit “or other any”, substitute “or any other”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 7 April 1994.
2. Statutory Rules 1992 No. 367 as amended by 1993 Nos. 19, 29, 88, 169, 175, 218, 235, 253, 267, 283, 309, 310, 329, 363 and 371; 1994 Nos. 11, 38 and 39.