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Statutory Rules 1994 No. 261

Migration Reform (Transitional Provisions) Regulations

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Statutory Rules 1994 No. 261[1]

Migration Reform (Transitional Provisions) Regulations

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* and the *Migration Reform Act 1992*.

Dated 21 July 1994.

BILL HAYDEN
Governor-General

By His Excellency's Command,

NICK BOLKUS
Minister for Immigration and Ethnic Affairs

PART 1—PRELIMINARY

Citation

1. These Regulations may be cited as the Migration Reform (Transitional Provisions) Regulations.

Commencement

2. These Regulations commence on 1 September 1994.

Interpretation

3. (1) In these Regulations, unless the contrary intention appears:

"permanent entry permit" means an entry permit the effect of which is not subject to a limit as to time but does not include an entry visa that is operating as an entry permit;

"permanent return visa" means a visa:

(a) of one of the following classes under the Migration (1989) Regulations:
  (i) return visa, class A (code number 154);
  (ii) return visa, class B (code number 155);
  (iii) return visa, class C (code number 156);
  (iv) return visa, class D (code number 157);
  (v) return visa, class E (code number 158); or

(b) of one of the following classes under the Migration (1993) Regulations:
  (i) Class 154 (resident return (A));;
  (ii) Class 155 (resident return (B));
  (iii) Class 156 (resident return (C));
  (iv) Class 157 (resident return (D));
  (v) Class 158 (resident return (E));

"permanent visa" means:

(a) a visa:
  (i) that was available for grant before 1 September 1994; and
  (ii) of which presentation at the Entry Control Point before 1 September 1994 would have had effect as an application for a permanent entry permit; or

(b) an entry visa granted before 1 September 1994 that permitted the holder to stay in Australia indefinitely; or

(c) a visa granted on or after 1 September 1994 that permits the holder to stay in Australia indefinitely;

"primary application" means an application for a visa or an entry permit;

"primary decision" has the same meaning as in Part 5 of the amended Act;

"reporting condition" means a condition imposed before 1 September 1994 under subsection 92 (9) or 93 (9) of the old Act, or by a Court, on an illegal entrant that obliged him or her to report periodically to Immigration;

"return visa" means a permanent return visa or a temporary return visa;

"review authority" includes any officer or Tribunal (other than the Administrative Appeals Tribunal) having the function of reviewing the merits of a decision that relates to a visa or entry permit;

"temporary entry permit" means an entry permit other than a permanent entry permit, but does not include an entry visa that is operating as an entry permit;

"temporary return visa" means:

(a) a return visa, class F (code number 159) visa under the Migration (1989) Regulations; or

(b) a Class 159 (resident return (F)) visa under the Migration (1993) Regulations;

"temporary visa" means a visa other than a permanent visa;

"the amended Act" means the *Migration Act 1958* as in force on and after 1 September 1994;

"the old Act" means the *Migration Act 1958* as in force immediately before 1 September 1994;

"the Reform Act" means the *Migration Reform Act 1992;*

"visa" includes an entry visa regardless of whether it is operating as an entry permit.

(2) Unless the contrary intention appears:

(a) expressions that are used in section 40 of the Reform Act and in these Regulations have the same meanings in these Regulations as in that section; and

(b) expressions that are used in the old Act and in these Regulations have the same meanings in these Regulations as in that Act; and

(c) expressions that are used in the Migration (1989) Regulations and in these Regulations have the same meanings in these Regulations as in those Regulations; and

(d) expressions that are used in the Migration (1993) Regulations and in these Regulations have the same meanings in these Regulations as in those Regulations; and

(e) expressions that are used in the Migration Regulations and in these Regulations have the same meanings in these Regulations as in those Regulations.

(3) If an expression used in these Regulations has a particular meaning under more than 1 of the provisions referred to in paragraphs (2) (a) to (e), unless the contrary appears the meaning that that expression has in accordance with paragraph (2) (e) is to be preferred.

PART 2—ENTRY PERMITS AND VISAS GRANTED BEFORE 1 SEPTEMBER 1994

Entry permits in force before 1 September 1994 to continue in effect

4. (1) Subject to regulation 5, if, immediately before 1 September 1994, a non-citizen was in Australia as the holder of a permanent entry permit, that entry permit continues in effect on and after 1 September 1994 as a transitional (permanent) visa that permits the holder to remain indefinitely in Australia.

(2) If, immediately before 1 September 1994, a non-citizen was in Australia as the holder of a temporary entry permit, that entry permit continues in effect on and after 1 September 1994 as a transitional (temporary) visa that:

(a) permits the holder to remain in Australia; and

(b) is subject to the conditions (if any) to which the entry permit was subject; and

(c) has a visa period ending on the day on which the entry permit would have stopped being in force.

Certain permanent entry permits, etc., granted on or after 1 September 1992

5. If a non-citizen:

(a) was in Australia immediately before 1 September 1994 as:

(i) the holder of a permanent entry permit granted on or after 1 September 1992; or

(ii) the holder of a permanent entry visa; and

(b) in the case of a non-citizen who holds a permanent entry visa, first entered Australia on or after 1 September 1992; and

(c) has not held, and is not an applicant for, a return visa, Class A (code number 154) under the Migration (1989) Regulations or a Class 154 (resident return (Class A)) visa under the Migration (1993) Regulations;

he or she is taken, on 1 September 1994, to hold a transitional (permanent) visa permitting him or her to:

(d) travel to, and enter, Australia:

(i) in the case of the holder of an entry permit—within 3 years from the date of grant of the entry permit; or

(ii) in the case of the holder of an entry visa—within 3 years from the date he or she first entered Australia; and

(e) remain indefinitely in Australia.

Visas granted before 1 September 1994 to continue in effect

6. (1) If, immediately before 1 September 1994, a person held a permanent visa (other than a permanent return visa), that visa continues in effect on and after 1 September 1994 as a transitional (permanent) visa that:

(a) authorises the holder to:

(i) travel to and enter Australia until the date on which the first-mentioned visa would have ceased to be in force; and

(ii) remain in Australia indefinitely; and

(b) is subject to the conditions (if any) to which the first-mentioned visa was subject; and

(c) if the first-mentioned visa was subject to a requirement that first entry must be by a certain date, and the holder has not entered Australia by that date—ceases to be in effect on that date.

(2) If, immediately before 1 September 1994, a person held a temporary visa (other than a diplomatic visa (code number 995) granted under the Migration (1989) Regulations or a Class 995 (diplomatic) visa granted under the Migration (1993) Regulations), that visa continues in effect on and after 1 September 1994 as a transitional (temporary) visa that:

(a) permits the holder to travel to, enter, and remain in Australia; and

(b) is subject to the conditions (if any) to which the first-mentioned visa was subject; and

(c) has a visa period ending:

(i) if the first-mentioned visa was subject to a requirement that first entry must be by a certain date, and the holder has not entered Australia by that date—on that date; or

(ii) in any other case—at the time at which the first-mentioned visa would have ceased to be in force.

Permanent return visas

7. If, immediately before 1 September 1994, a non-citizen held a permanent return visa, that visa continues in effect on and after 1 September 1994 as a transitional (permanent) visa permitting the holder to:

(a) travel to and enter Australia during the remainder of the period during which the permanent return visa would have permitted the holder to do so; and

(b) remain in Australia indefinitely.

Persons to whom section 37 of the old Act applied

8. (1) This regulation applies to a non-citizen who:

(a) was in Australia on 1 September 1994; and

(b) was, immediately before that date, a person to whom section 37 of the old Act applied.

(2) On and after 1 September 1994, section 37 of the old Act continues to apply to a person to whom this regulation applies as if:

(a) paragraphs (b) and (c) were omitted and the following paragraph substituted:

"(b) while in Australia, has been refused an entry permit.";

and

(b) subsections (2) and (3) were omitted and the following subsection substituted:

"(2) While a person to whom this section applies is in Australia, he or she may, subject to the regulations, apply for a visa of a class prescribed for the purposes of section 48 of this Act as in force on 1 September 1994, but not for a visa of any other class.".

PART 3—AUTHORITIES TO RETURN AND RETURN ENDORSEMENTS

Authorities to Return etc. granted before 19 December 1989

9. A non-citizen who, immediately before 1 September 1994, held an old visa of the kind known as:

(a) an Authority to Return; or

(b) a Return Endorsement;

is taken, on 1 September 1994, to have been granted a transitional (permanent) visa permitting the holder:

(c) to travel to and enter Australia within 3 years after each departure from Australia; and

(d) to remain indefinitely in Australia.

PART 4—STATUS OF CERTAIN NON-CITIZENS ON 1 SEPTEMBER 1994

Non-citizens in Australia with applications not finally determined as at 1 September 1994

10. (1) This regulation applies to a non-citizen in Australia (other than an illegal entrant in custody within the meaning of section 11 of the old Act) who was in Australia immediately before 1 September 1994:

(a) if he or she applied for an entry permit (other than a processing entry permit) on or after 19 December 1989 and before 1 September 1994 and the application has not been finally determined; or

(b) if he or she applied for an entry permit before 19 December 1989 and no decision had been made on that application; or

(c) if:

(i) he or she applied for an entry permit before 19 December 1989; and

(ii) his or her application is one in respect of which an application for reconsideration could be made under regulation 173A of the Migration (1989) Regulations or regulation 7.8 of the Migration (1993) Regulations; and

(iii) his or her primary application was refused before 1 September 1994; and

(iv) he or she had not applied for reconsideration of the primary decision before 1 September 1994; and

(v) the period within which he or she could apply for reconsideration had not expired on 1 September 1994; or

(d) if:

(i) he or she had applied for an entry permit before 19 December 1989, and had applied for reconsideration of a decision in respect of that application, as set out in paragraph (c); and

(ii) no decision had been made on the reconsideration before 1 September 1994.

(2) A non-citizen to whom this regulation applies is taken to have been granted a bridging visa on 1 September 1994 of a class worked out as follows:

(a) if:

(i) at the time of primary application, he or she was not a prohibited non-citizen or an illegal entrant; and

(ii) immediately before 1 September 1994, he or she was not subject to a reporting condition;

a bridging visa, Class A;

(b) if, immediately before 1 September 1994, he or she held a visa that permitted him or her to re-enter Australia—a bridging visa, Class B;

(c) if:

(i) at the time of primary application, he or she was a prohibited non-citizen or an illegal entrant; and

(ii) immediately before 1 September 1994, he or she was not subject to a reporting condition;

a bridging visa, Class C;

(d) if, immediately before 1 September 1994, he or she was subject to a reporting condition—a bridging visa, Class E.

(3) If the non-citizen applied:

(a) on or after 19 December 1989 and before 1 February 1993 for an entry permit of a class mentioned or referred to in regulation 22A, 22B, 22C or 22E of the Migration (1989) Regulations; or

(b) on or after 1 February 1993 and before 1 September 1994 for an entry permit of a class mentioned or referred to in regulation 2.29 of the Migration (1993) Regulations;

then, despite those regulations, he or she is not taken to have been granted a bridging visa under this regulation in respect of an application that, under a regulation referred to in paragraph (a) or (b), his or her application is taken to have effect as.

[**NOTE:** Under those regulations, an application for an entry permit of certain classes also had effect as an application for an entry permit of certain other classes.]

Visa period, etc., of bridging visa taken to have been granted under regulation 10

11. (1) The visa period of a bridging visa that a non-citizen is taken to have been granted under regulation 10 starts on 1 September 1994 and ends:

(a) if his or her primary application was made before 19 December 1989:

(i) if that application is an application in respect of which an application for reconsideration could be made under regulation 173A of the Migration (1989) Regulations or regulation 7.8 of the Migration (1993) Regulations:

(A) 28 days after the Minister notifies him or her of a decision on the primary application; or

(B) if the non-citizen has applied or applies for reconsideration under either of those regulations, within the time allowed to do so—28 days after the Minister notifies the non-citizen of the Minister's decision following the reconsideration; or

(ii) if that application is not an application in respect of which an application for reconsideration could be made under regulation 173A of the Migration (1989) Regulations or regulation 7.8 of the Migration (1993) Regulations—28 days after the Minister notifies him or her of a decision on the primary application; or

(iii) if the visa is a bridging visa A or B—on cancellation of a substantive visa held by the non-citizen; or

(iv) on the grant of another bridging visa to the non-citizen in respect of that application; or

(v) on the grant of a transitional visa to the non-citizen; or

(vi) if the application is withdrawn—on that withdrawal; or

(b) in any other case—as provided under the amended Act and the Migration Regulations in respect of a bridging visa of the class that the non-citizen is taken to hold.

(2) A bridging visa B that a non-citizen is taken to have been granted under regulation 10 permits him or her to travel to and enter Australia during the period during which the visa referred to in paragraph 10 (2) (b) would have permitted him or her to do so.

Non-citizens outside Australia with applications not finally determined on 1 September 1994

12. (1) This regulation applies to a non-citizen who:

(a) was outside Australia on 1 September 1994; and

(b) immediately before that date, held a visa permitting him or her to travel to and enter Australia; and

(c) would be a non-citizen to whom regulation 10 or 13 applies if he or she had been in Australia on 1 September 1994.

(2) A non-citizen to whom this regulation applies is taken, on 1 September 1994, to have been granted a bridging visa Class B permitting him or her:

(a) to travel to and enter Australia during the period during which the visa referred to in paragraph (1) (b) would have permitted him or her to do so; and

(b) to remain in Australia until 28 days after his or her substantive visa application is finally determined.

Members of the family unit

13. (1) This regulation applies to a non-citizen who:

(a) is a member of the family unit of a non-citizen (in this regulation called "the family head") who is taken, under regulation 10 or 12, to have been granted a bridging visa because he or she has applied for review of a decision; and

(b) was in Australia on 1 September 1994; and

(c) was not in immigration detention; and

(d) either:

(i) was included in the family head's application for an entry permit; or

(ii) applied at the same time as the family head for an entry permit.

(2) A non-citizen to whom this regulation applies is taken to have been granted a bridging visa:

(a) of the same class; and

(b) subject to subregulation (3), having the same visa period and conditions;

as the bridging visa that is taken, under regulation 10, to have been granted to the family head.

(3) If a non-citizen to whom a bridging visa is taken to be granted under this regulation was, immediately before 1 September 1994, subject to:

(a) a restriction as to his or her right to work; or

(b) a reporting condition;

the bridging visa is subject to a condition to the same effect.

Illegal entrants who have applied for judicial review

14. **(1)** This regulation applies to a non-citizen who:

(a) was in Australia immediately before 1 September 1994; and

(b) was, immediately before 1 September 1994, an illegal entrant; and

(c) was not in immigration detention on that date; and

(d) applied for judicial review of a decision before that date and within the period:

(i) allowed for the purpose under the old Act or the *Administrative Decisions (Judicial Review) Act 1977*, as the case requires; or

(ii) allowed for the purpose by the Court.

(2) A non-citizen to whom this regulation applies is taken to have been granted, on 1 September 1994, a bridging visa of a class worked out as follows:

(a) if:

(i) at the time of primary application, he or she was not a prohibited non-citizen or an illegal entrant; and

(ii) immediately before 1 September 1994, he or she was not subject to a reporting condition;

a bridging visa, Class A;

(b) if:

(i) at the time of primary application, he or she was a prohibited non-citizen or an illegal entrant; and

(ii) immediately before 1 September 1994, he or she was not subject to a reporting condition;

a bridging visa, Class C;

(c) if:

(i) immediately before 1 September 1994, he or she was subject to a reporting condition; or

(ii) the decision being reviewed is a decision to cancel an entry permit;

a bridging visa, Class E.

(3) The visa period of a bridging visa that a non-citizen is taken to have been granted under subregulation (2) starts on 1 September 1994 and ends:

(a) 28 days after the non-citizen is notified of the decision of the Court; or

(b) if the non-citizen appeals against the decision of the Court—28 days after the appeal is finally disposed of.

Conditions of bridging visa under regulation 10, 12, 13 or 14

15. (1) If a non-citizen was subject to a reporting condition immediately before 1 September 1994, a bridging visa taken to be granted to him or her under regulation 10, 12, 13 or 14 is subject to the same reporting conditions as those to which the non-citizen was subject before that date.

(2) If, immediately before 1 September 1994, the non-citizen:

(a) was an illegal entrant; and

(b) had applied before that date for an entry permit of any of the following classes:

(i) Class 817 (protection (permanent)) under the Migration (1993) Regulations; or

(ii) Class 784 (domestic protection (temporary)) under the Migration (1993) Regulations; or

(iii) domestic protection (temporary) (code number 784) under the Migration (1989) Regulations; and

(c) had been given written permission to work under subsection 83 (2) of the old Act;

a bridging visa taken to have been granted to him or her under regulation 10, 12, 13 or 14 is subject to the conditions with regard to work that applied to the non-citizen immediately before 1 September 1994.

(3) Subject to this regulation, the conditions of a bridging visa taken to be granted to a non-citizen under regulation 10, 12, 13 or 14 are the conditions set out in Schedule 2 of the Migration Regulations in relation to a bridging visa of that subclass.

Non-citizens who became illegal entrants because of s. 20 of the old Act

16. (1) This regulation applies to a non-citizen who:

(a) was in Australia on 1 September 1994; and

(b) was, immediately before that date, a person to whom section 20 of the old Act applied; and

(c) did not, immediately before 1 September 1994, hold an entry permit or entry visa endorsed as required by subsection 20 (5) or (5A) of the old Act;

other than a non-citizen who:

(d) is a New Zealand citizen; or

(e) was the subject of a deportation order immediately before 1 September 1994; or

(f) was, or would have been but for subsection 35 (2) of the old Act, the holder of an entry permit or entry visa that in any event would have ceased to have effect before 1 September 1994.

[**NOTE**: S. 20 of the old Act dealt with persons who evaded officers to enter Australia or who gave false information or bogus documents.]

(2) If a non-citizen to whom this regulation applies held, or would but for subsection 35 (2) of the old Act have held, an entry permit or entry visa at some time before 1 September 1994, he or she

is taken to have been granted, on 1 September 1994, a transitional visa of the same class as he or she would hold under regulation 4 or 5 if section 20 had not applied to him or her immediately before that date.

(3) A transitional visa that is taken to have been granted to a non-citizen under subregulation (2) is subject to the same conditions (if any) as the entry permit or entry visa that he or she would have held but for the effect of subsection 35 (2) of the old Act before 1 September 1994.

(4) The visa period of a transitional (temporary) visa that a non-citizen is taken to have been granted under subregulation (2) begins on 1 September 1994 and ends on the day that the entry permit or entry visa that he or she would have held but for the effect of subsection 35 (2) of the old Act would have ceased but for the effect of section 20 and subsection 35 (2) of that Act.

[**NOTE:** If s. 20 applied to a person and he or she did not hold a properly endorsed entry permit or entry visa, he or she was an illegal entrant while he or she remained in Australia: old Act, s. 14. S. 35 (2) cancelled an entry permit held by a person to whom s. 20 applied.]

New Zealand citizens in Australia

17. (1) This regulation applies to a non-citizen who:

(a) is a New Zealand citizen; and

(b) either:

(i) was in Australia lawfully immediately before 1 September 1994; or

(ii) was, immediately before 1 September 1994, an illegal entrant because of section 20 of the old Act; and

(c) is not taken to hold:

(i) a transitional visa under Part 2 or 3; or

(ii) a Norfolk Island Permanent Resident visa under regulation 18; or

(iii) a Subclass 995 (Diplomatic) visa under regulation 19; or

(iv) a special purpose visa; or

(v) an absorbed person visa; and

(d) was not the subject of a deportation order immediately before 1 September 1994.

(2) A non-citizen to whom this regulation applies is taken to have been granted a special category visa on 1 September 1994.

Non-citizens having right of permanent residence on Norfolk Island

18. A non-citizen who:

(a) was in Australia (whether lawfully or not) on 1 September 1994; and

(b) has the right of permanent residence on Norfolk Island;

is taken to have been granted a Norfolk Island Permanent Resident visa on 1 September 1994.

Diplomats

19. (1) A non-citizen who, immediately before 1 September 1994:

(a) was in Australia; and

(b) was an exempt non-citizen of the kind referred to in paragraph (b) of the definition of "exempt non-citizen" in subsection 4 (1) of the old Act;

is taken to have been granted a Subclass 995 (Diplomatic) visa on 1 September 1994.

(2) The visa period of a Subclass 995 (Diplomatic) visa that is taken to have been granted to a non-citizen under subregulation (1) ends when the non-citizen ceases to have the status of a diplomatic or consular representative in Australia of a country other than Australia.

(3) A non-citizen who:

(a) was outside Australia immediately before 1 September 1994; and

(b) held a Class 995 (Diplomatic) visa granted under the Migration (1993) Regulations or a diplomatic (code

number 995) visa granted under the Migration (1989) Regulations;

is taken to have been granted a Subclass 995 (Diplomatic) visa on 1 September 1994 permitting him or her to travel to and enter Australia until the date specified by the Minister for that purpose in the visa referred to in paragraph (b), and to remain in Australia until the non-citizen, or the non-citizen of whose family unit he or she is a member, as the case requires, ceases to have the status of a diplomatic or consular representative in Australia of a country other than Australia.

PART 5—APPLICATIONS UNRESOLVED ON 1 SEPTEMBER 1994

Interpretation

20. In this Part:

"application" means an application for the grant of a visa or entry permit, but does not include an application for the grant of an entry permit referred to in subparagraph 39 (a) (ii) of the Reform Act.

Visa and entry permit applications made before 19 December 1989

21. (1) This regulation applies to an application for the grant of a visa or entry permit made by a non-citizen before 19 December 1989 if the Minister had not made a decision on the application before 1 September 1994.

(2) If, on or after 1 September 1994, the Minister decides that a non-citizen is entitled to be granted a visa or entry permit under the provisions continued in effect by subsection 6 (4) of the *Migration Legislation Amendment Act 1989*, the non-citizen is taken to be granted:

(a) if the primary application was for a temporary visa or entry permit—a transitional (temporary) visa; or

(b) if the primary application was for a permanent visa or entry permit—a transitional (permanent) visa.

[**NOTE:** S. 6 (4) of the *Migration Legislation Amendment Act 1989* continues in force the provisions of the *Migration Act 1958* as in force before 19 December 1989 with regard to applications not decided at that date.]

(3) A transitional (permanent) visa that is taken to be granted to a non-citizen under subregulation (2) is a visa:

(a) to travel to and enter Australia:

(i) if the primary application was for a visa—until the date specified by the Minister for the purpose and subsequently for 3 years from the date of the holder's first entry to Australia; or

(ii) if the primary application was for an entry permit—for 3 years from the date of grant; and

(b) to remain in Australia indefinitely; and

(c) subject to the conditions (if any) that the Minister imposes, being conditions that the Minister could have imposed if the application had been decided under the old Act as in force at the date of the application.

(4) A transitional (temporary) visa that is taken to be granted to a non-citizen under subregulation (2) is a visa to travel to, enter, and remain in Australia, and:

(a) has a visa period the same as the period for which the visa applied for would have been in force; and

(b) is subject to the same conditions (if any);

as would have been the case if the application had been decided under the old Act as in force at the date of the application.

Visa applications made on or after 19 December 1989 and before 1 September 1994

22. (1) Subject to this Part, Division 2 of Part 2 of the old Act, and Regulations made for the purposes of that Division, continue to apply to a primary application for a visa made on or after 19 December 1989 and before 1 September 1994.

(2) If, on or after 1 September 1994, the Minister or a review authority decides that a non-citizen is entitled to be granted a visa under the provisions referred to in subregulation (1), the visa to be granted is:

(a) if the application was for a temporary visa—a transitional (temporary) visa; or

(b) if the application was for a permanent visa—a transitional (permanent) visa.

(3) Subject to subregulation (5), a transitional (permanent) visa that is granted to a non-citizen under subregulation (2) is a visa:

(a) to travel to and enter Australia before a date specified by the Minister for the purpose and subsequently for a period of 3 years from the date of the holder's first entry to Australia; and

(b) to remain in Australia indefinitely; and

(c) subject to the conditions (if any) that the Minister imposes, being conditions that the Minister could have imposed if the application had been decided under the old Act as in force at the date of the application.

(4) A transitional (temporary) visa that is granted to a non-citizen under subregulation (2) is a visa to travel to, enter, and remain in Australia, and:

(a) has a visa period the same as the period for which the visa would have been in force; and

(b) is subject to the conditions (if any) that the Minister imposes, being conditions that the Minister could have imposed;

if the application had been decided under the old Act as in force at the date of the application.

(5) If the application was for a permanent return visa, the transitional visa is to be a visa permitting the holder:

(a) to travel to and enter Australia within the period after the date of grant during which he or she would have been permitted to do so if he or she had been granted the visa applied for; and

(b) to remain in Australia indefinitely.

(6) Division 2 of Part 2 of the old Act continues to apply to applications to which this regulation applies as if:

(a) references in that Division to visas of a specified class or classes were references to transitional visas granted on the basis of an application for visas of a specified class or classes, as the case requires; and

(b) references in that Division to visas of a class or classes were references to transitional visas granted on the basis of an application for visas of a class or classes, as the case requires.

(7) Subdivision AB of Division 3 of Part 2 of the amended Act:

(a) does not apply to an application referred to in this regulation; and

(b) applies under section 342 of the amended Act to an application for review of a primary decision in respect of an application referred to in this regulation only if the review application is made on or after 1 September 1994.

Entry permit applications made on or after 19 December 1989 and before 1 September 1994

23. (1) This regulation applies to an application for an entry permit that:

(a) was made on or after 19 December 1989 and before 1 September 1994; and

(b) had not been finally determined before 1 September 1994.

(2) An application to which this regulation applies is taken, on 1 September 1994, to be:

(a) if the application was for a temporary entry permit—an application for a transitional (temporary) visa; or

(b) if the application was for a permanent entry permit—an application for a transitional (permanent) visa.

(3) An application that, under subregulation (2), is taken to be an application for a transitional visa is to be decided according to

the criteria that applied to the entry permit for which application was made.

(4) Subsections 33 (3A) and (3B) and sections 40 and 42 of the old Act continue to apply to and in relation to an application to which this regulation applies as if a reference in those sections to a class of entry permits were a reference to a class of transitional visas for which applications were constituted by applications for entry permits of a specified class under the Migration (1993) Regulations.

(5) A transitional (temporary) visa that is granted to a non-citizen on the basis of an application to which this regulation applies is to be:

(a) in the case of an application for a Class 828 (processing (temporary)), Class 829 (processing (residence)) or Class 830 (1 November 1993 (processing)) entry permit under the Migration (1993) Regulations, or a processing (code number 825) entry permit under the Migration (1989) Regulations—a visa to remain in Australia; or

(b) in any other case—a visa to travel to, enter, and remain in Australia.

(6) A transitional (permanent) visa that is granted to a non-citizen on the basis of an application to which this regulation applies is a visa:

(a) to travel to and enter Australia for a period of 3 years from the date of grant; and

(b) to remain in Australia permanently; and

(c) that is subject to the conditions (if any) that the Minister imposes, being conditions that the Minister could have imposed if the application had been decided under the old Act and Regulations as in force at the date of the application.

(7) A transitional (temporary) visa that is granted to a non-citizen on the basis of an application to which this regulation applies:

(a) has a visa period the same as the period for which the visa would have been in force; and

(b) is subject to the same conditions (if any);

as would have been the case if the application had been decided under the old Act and Regulations as in force at the date of the application.

(8) Subdivision AB of Division 3 of Part 2 of the amended Act:

(a) does not apply to an application referred to in this regulation; and

(b) applies under section 342 of the amended Act to an application for review of a primary decision in respect of an application referred to in this regulation only if the review application is made on or after 1 September 1994.

PART 6—RECONSIDERATION OF CERTAIN DECISIONS

Reconsideration under 1989 or 1993 Regulations

24. (1) This regulation applies if:

(a) a person had, before 19 December 1989, applied for a visa or entry permit; and

(b) regulation 173A of the Migration (1989) Regulations or regulation 7.8 of the Migration (1993) Regulations would have applied to a decision made before 1 September 1994 in respect of that application.

(2) Subject to these Regulations, the old Act and regulations made under it, as in force on 31 August 1994, continue to apply to the reconsideration of the decision.

(3) A fee of $240 is payable on an application for reconsideration of a decision.

(4) The fee paid under subregulation (3) is to be refunded if, on reconsideration, the applicant is granted a visa.

PART 7—REVIEW OF DECISIONS

Division 1—Offshore applications for visas made on or after 19 December 1989 and before 1 September 1994

Application of Division

25. (1) This Division applies to a decision of the Minister or a review authority on an application for a visa made on or after 19 December 1989 and before 1 September 1994 at a time when the applicant was outside Australia, if the application had not been finally determined before 1 September 1994.

(2) In its application to a decision to which this Division applies, Part 5 of the amended Act has effect in accordance with this Division.

Application of Code of Procedure

26. Subdivision AB of Division 3 of Part 2 of the amended Act (as applied by section 342 of the amended Act) applies to an application for review referred to in this Division only if the review application is made on or after 1 September 1994.

Certain decisions in respect of visas that can be granted in Australia

27. (1) This regulation applies to a decision (other than a decision referred to in regulation 29) on a primary application to which Part 5 of the amended Act applies.

(2) In relation to review of a decision to which this regulation applies, Part 5 of the amended Act has effect as if subparagraphs (e) (i), (f) (i), (g) (i) and (h) (i) were omitted from the definition of "Part 5 reviewable decision" in section 337 of that Act.

Review of decision—Class 124 or 419 visa

28. (1) This regulation applies to a decision to refuse a non-citizen a visa of any of the following classes:

(a) distinguished talent (Australian support) (code number 124) under the Migration (1989) Regulations or Class 124 (distinguished talent—Australian support) under the Migration (1993) Regulations;

(b) visiting academic (code number 419) under the Migration (1989) Regulations or Class 419 (Visiting academic) under the Migration (1993) Regulations;

if the primary application included:

(c) in the case of an application for a visa of a class referred to in paragraph (a)—particulars of an Australian citizen, an Australian permanent resident, or an eligible New Zealand citizen who, or an Australian organisation that, had given written testimony to the applicant's standing; or

(d) in the case of an application for a visa of a class referred to in paragraph (b)—particulars of an Australian tertiary institution or research institution that had invited the applicant to visit it.

(2) Part 5 of the amended Act has effect in relation to a decision to which this regulation applies as if:

(a) subparagraph (e) (ii) of the definition of "Part 5 reviewable decision" in section 337 were omitted and the following subparagraph substituted:

"(ii) in accordance with a criterion for the grant of the visa, the non-citizen's application included particulars of:

(A) an Australian citizen, an Australian permanent resident, an eligible New Zealand citizen, or an Australian organisation, having a national reputation in relation to the applicant's profession, occupation or activity who or that has given written testimony to the applicant's standing in that profession, occupation or activity; or

(B) an Australian tertiary institution or research institution that has invited the applicant to visit it; or";

and

(b) paragraph 339 (2) (b) were omitted and the following paragraphs substituted:

"(b) if the decision is covered by subparagraph (e) or (h) of that definition and was not a decision to refuse to grant a visa of a class referred to in paragraph (ba) or (bb)—the sponsor or nominator; or

(ba) if the decision is a decision to refuse to grant a distinguished talent (Australian support) (code number 124) visa under the Migration (1989) Regulations or a Class 124 (distinguished talent—Australian support) visa under the Migration (1993) Regulations—the Australian citizen, Australian permanent resident or eligible New Zealand citizen who, or the Australian organisation that, gave written testimony as to the applicant's standing; or

(bb) if the decision is a decision to refuse to grant a visiting academic (code number 419) visa under the Migration (1989) Regulations or a Class 419 (visiting academic) visa under the Migration (1993) Regulations—the Australian tertiary institution or research institution that invited the applicant to visit it; or";

and

(c) paragraph 347 (2) (b) of the Act were omitted and the following paragraphs substituted:

"(b) if the primary decision is covered by subparagraph (e) or (h) of that definition and was not a decision to refuse to grant a visa of a class referred to in paragraph (ba) or (bb)—the sponsor or nominator; or

(ba) if the primary decision is a decision to refuse to grant a distinguished talent (Australian support) (code number 124) visa under the Migration (1989) Regulations or a Class 124 (distinguished talent—Australian support) visa under the

Migration (1993) Regulations—the Australian citizen, Australian permanent resident or eligible New Zealand citizen who, or the Australian organisation that, gave written testimony as to the applicant's standing; or

(bb) if the primary decision is a decision to refuse to grant a visiting academic (code number 419) visa under the Migration (1989) Regulations or a Class 419 (visiting academic) visa under the Migration (1993) Regulations—the Australian tertiary institution or research institution that invited the applicant to visit it; or".

Review of certain visa decisions

29. If the application for review is for review of a decision to refuse a primary application for:

(a) a PRC (temporary) (code number 783) visa under the Migration (1989) Regulations or a visa of a class mentioned in Part 2 of Schedule 2 of those Regulations; or

(b) a Class 437 (PRC (temporary)) or Group 1.3 (permanent resident (refugee and humanitarian)) visa under the Migration (1993) Regulations;

Part 5 of the amended Act has effect as if the definition of "Part 5 reviewable decision" in section 337 of the amended Act were amended by inserting after "a visa" in paragraph (e) "(other than a PRC (temporary) (code number 783) visa or a visa mentioned in Part 2 of Schedule 2 of the Migration (1989) Regulations or a Class 437 (PRC (temporary)) or Group 1.3 visa under the Migration (1993) Regulations)"

Division 2—Review of cancellation

Cancellation of visas

30. (1) This regulation applies to a decision made before 1 September 1994 to cancel a visa.

(2) In its application to a decision to which this regulation applies, Part 5 of the amended Act has effect as if, at the end of paragraph (b) of the definition of "Part 5 reviewable decision" in section 337 of that Act, there were added the following subparagraph:

"(iv) made before 1 September 1994; or".

Division 3—Other matters concerning review

Decision of review officer affirming decision

31. (1) In relation to a decision by a review officer affirming a primary decision made before 1 September 1994, Part 5 of the amended Act has effect as if, at the end of the definition of "Part 5 reviewable decision" in section 337 of that Act, there were added:

"; or (j) a decision by a review officer affirming the decision under review, if the decision under review was made before 1 September 1994.".

(2) A decision of a review officer affirming a primary decision made before 1 September 1994 is an IRT-reviewable decision.

Criterion regarding section 47 temporary entry permit

32. On and after 1 September 1994, if a review authority is reviewing a decision to refuse a visa for which the application was constituted by an application for an entry permit:

(a) if it was a criterion under the Migration (1993) Regulations for the grant of an entry permit of that class that the applicant hold a section 47 temporary entry permit; or

(b) if under the Migration (1989) Regulations, a criterion for the grant of the entry permit was to the same effect as a criterion referred to in paragraph (a);

that criterion does not apply:

(c) to that review; or

(d) if the application is remitted to a decision-maker for reconsideration—to the reconsideration.

PART 8—STATUTORY VISITORS UNDER THE OLD ACT

Justice certificate issued under old Act

33. (1) In this regulation:

"justice certificate" means a certificate that was issued before 1 September 1994 under subsection 51 (1) of the old Act.

(2) A justice certificate issued before 1 September 1994 is taken to continue in effect on and after that date as a Commonwealth criminal justice entry certificate issued under section 145 of the amended Act.

(3) A non-citizen in relation to whom a Commonwealth criminal justice entry certificate is taken to be in force under subregulation (2) is taken to hold a criminal justice entry visa on and from 1 September 1994.

Statutory visitor visas

34. A statutory visitor (code number 992) visa under the Migration (1989) Regulations, or a Class 992 (statutory visitor) visa under the Migration (1993) Regulations, granted in respect of a non-citizen who, immediately before 1 September 1994, was outside Australia, is taken, after 1 September 1994, to continue in force as a criminal justice entry visa under subsection 155 (1) of the amended Act.

PART 9—IMMIGRATION CLEARANCE OF CERTAIN NON-CITIZENS

Modification of section 172

35. Section 172 of the amended Act applies to a non-citizen who was in Australia on 1 September 1994 as if, at the end of

subsection (1), there were added the following word and paragraphs:

"; or (d) the person entered Australia lawfully before 1 September 1994 and has not left Australia; or

(e) the person:

(i) entered Australia unlawfully before 1 September 1994; and

(ii) was subsequently granted an entry permit under the old Act and the Regulations as in force before that date; and

(iii) has not left Australia after being granted that entry permit.".

PART 10—MISCELLANEOUS

Non-citizens eligible to apply for Class 817 entry permits

36. (1) A non-citizen who:

(a) was in Australia on 1 September 1994; and

(b) immediately before that date held a domestic protection (temporary) (code number 784) or a refugee (restricted) or refugee B (restricted) (code number 781) entry permit under the Migration (1989) Regulations or Class 784 (domestic protection (temporary)) entry permit under the Migration (1993) Regulations; and

(c) had not applied for a Class 817 (protection (permanent)) entry permit under the Migration (1993) Regulations;

is taken to have applied on that date for a Protection (Class AZ) visa.

(2) A person who is taken, under subregulation (1), to have applied for a Class AZ visa is taken, on 1 September 1994, to have been granted a bridging visa Class A that has the same visa period and is subject to the same conditions as if it had been granted under the amended Act and the Migration Regulations.

Special provision for holders of transitional (temporary) visas replacing entry permits

37. (1) If before 1 September 1994, a non-citizen held an entry permit that is continued in effect after that date under regulation 4 as a transitional (temporary) visa:

(a) the non-citizen may apply in the way set out in Schedule 1 to the Migration Regulations for a substantive visa equivalent to the entry permit that he or she held immediately before 1 September 1994; and

(b) no fee is payable on that application; and

(c) if in that application he or she does not seek a visa having a visa period extending beyond the end of the visa period of the transitional (temporary) visa, then, despite anything in the Migration Regulations, he or she need only satisfy the criterion that the Minister is satisfied that it would be reasonable to grant the substantive visa; and

(d) despite anything in the Migration Regulations, a visa that is granted on the basis of that application is not to have a visa period extending beyond the date on which the entry permit would have stopped being in force.

(2) For the purposes of this regulation, a substantive visa is equivalent to an entry permit if the criteria that are applicable to the class to which the substantive visa belongs are the same in effect as:

(a) the grounds for the grant of the entry permit (being an entry permit of a kind available for grant under the Act as in force before 19 December 1989); or

(b) the criteria applicable to the class (being a class under the Migration (1989) Regulations or the Migration (1993) Regulations) of entry permit to which the entry permit belonged.

Special provision for grant outside Australia of visas to former holders of temporary entry permits

38. (1) This regulation applies to a non-citizen if:

(a) the non-citizen was outside Australia on 1 September 1994; and

(b) before he or she last left Australia before that date, the non-citizen held a temporary entry permit under the Migration (1993) Regulations (other than an excluded entry permit, being an entry permit mentioned in subregulation (4)); and

(c) that entry permit would have been in force immediately before 1 September 1994 if the non-citizen had not left Australia.

(2) Despite anything in the Migration Regulations, a non-citizen to whom this regulation applies may apply outside Australia for a substantive visa corresponding to that entry permit.

(3) Despite anything in the Migration Regulations, if the non-citizen:

(a) pays the prescribed fee (if any) in respect of the application; and

(b) the day by which, according to the application, the non-citizen intends to return to Australia is before the end of the period for which the entry permit was granted; and

(c) the Minister has no reason to believe that the non-citizen does not continue to satisfy the criteria prescribed under the Migration (1989) Regulations or the Migration (1993) Regulations for the grant before entry of the visa that corresponds to the entry permit; and

(d) the Minister is satisfied that it would be reasonable to grant the visa;

the non-citizen is taken to satisfy the prescribed criteria for the grant of the visa.

(4) The excluded entry permits referred to in paragraph (1) (b) are:

(a) entry permits of Class 12 in Schedule 3 to the Migration (1989) Regulations;

(b) entry permits included in Group 2.5 (extended eligibility) under the Migration (1993) Regulations;

(c) entry permits of the following classes:

(i) working holiday (code number 417);

(ii) PRC (temporary) (code number 437);

(iv) processing (code number 825);

under the Migration (1989) Regulations;

(d) entry permits of the following classes

(i) Class 417 (working holiday);

(ii) Class 437 (PRC (temporary));

(iii) Class 562 (Iranian postgraduate student);

(iv) Class 828 (processing (temporary));

(v) Class 829 (processing (residence));

(vi) Class 830 (1 November 1993 (processing));

under the Migration (1993) Regulations.

(5) For the purposes of this regulation, a substantive visa is equivalent to an entry permit if the criteria that are applicable to the class to which the substantive visa belongs are the same in effect as:

(a) the grounds for the grant of the entry permit (being an entry permit of a kind available for grant under the old Act as in force before 19 December 1989); or

(b) the criteria applicable to the class (being a class under the Migration (1989) Regulations or the Migration (1993) Regulations) of entry permit to which the entry permit belonged.

References to conditions of visas by numbers

39. In the record of a visa, or in the evidence of the visa, a reference to a condition by an old number is taken to be a reference to the condition by the new number, in accordance with the following table:

Old number	New number	Old number	New number
9101	8101	9109	8501
9102	8102	9205	8502
9103	8103	9225	8503
9104	8104	9235	8504
9105	8105	9303	8505
9215	8106	9304	8506
9216	8107	9306	8507
9217	8108	9307	8508

Old number	New number	Old number	New number
9218	8109	9308	8509
9219	8110	9309	8510
9220	8111	9310	8511
		9311	8512
9106	8201	9312	8513
9107	8202	9113	8514
9231	8203	9204	8515
9232	8204	9222	8516
9234	8205	9110	8517
		9111	8518
9206	8301	9207	8519
9211	8302	9208	8520
9212	8303	9224	8521
		9226	8522
9300	8401	9227	8523
9301	8402	9236	8524
9302	8403	9112	8525
		9228	8526

PART 11—REPEAL

Repeal of Migration (1993) Regulations and Migration (Review) (1993) Regulations

40. The Statutory Rules set out in the Schedule are repealed.

SCHEDULE

Regulation 40

REPEALED STATUTORY RULES

1. Statutory Rules:
1992 No. 367;
1993 Nos. 19, 29, 88, 169, 175, 218, 235, 253, 267, 283, 309, 310, 329, 363 and 371;
1994 Nos. 11, 38, 39, 87, 141 and 240.

2. Statutory Rules:
1993 Nos. 18, 53, 109, 176, 219 and 232;
1994 Nos. 10, 37 and 88.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 28 July 1994.