

Migration Regulations (Amendment) 1994 No. 452

EXPLANATORY STATEMENT

STATUTORY RULES 1994 No. 452

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

Migration Act 1958

Migration Regulations (Amendment)

Section 504 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 to be prescribed by the Act or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. Without limiting the generality of section 504, particular provision is made in paragraph 504(1)(a) of the Act for regulations to be made providing for the charging and recovery of fees in respect of any matter under the Act or the regulations.

In addition, regulations may be made pursuant to the following powers:

- subsection 29(2) of the Act provides that the regulations may prescribe a period during which the holder of a visa may travel to, enter and remain in Australia;
- subsection 29(3) of the Act provides that the regulations may prescribe a period during which the holder of a visa may travel to, enter, re-enter and remain in Australia;
- subsection 31(1) of the Act provides that the regulations are to prescribe classes of visas;
- subsection 31(3) of the Act provides that the regulations may prescribe criteria for visas of a specified class;
- subsection 31(4) of the Act provides for the regulations to prescribe whether visas are visas to travel to and enter, or to remain in Australia, or both;
- subsection 39(1) of the Act provides that regulations may prescribe criteria for visas of a class which limit the number of visas of that class granted in a particular financial year;
- subsection 40(1) of the Act provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- section 41 of the Act provides that, without limiting the generality of the section, the regulations may provide that visas or visas of a specified class are subject to specified conditions;
- subsection 45(1) of the Act provides that the regulations may make provision in relation to applications for visas;
- subsection 45(2) of the Act provides that, without limiting the generality of subsection 45(1), the regulations may prescribe the way for making applications for visas of a specified class in specified circumstances, and in specified circumstances for visas of a specified class; and
- subsection 45(3) of the Act provides that, without limiting the generality of subsection 45(1), the regulations may provide for the place in which an applicant must be when an application for a visa of a specified class is made.

The purpose of the Regulations is:

- to create a new class of visa - Sri Lankan (Special Assistance) (Class BF) - for Sri Lankan citizens usually resident in Sri Lanka who are in Sri Lanka at the time of application and whose lives have been seriously disrupted by fighting in the previous 18 months ending on the date of application. The main criteria for grant of the visa are that:
 - applicants must have suffered, and continue to suffer, substantial discrimination because of ethnic origin or political beliefs and must be unable to lead a normal life in Sri Lanka;
 - applicants must have a near relative (that is, a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece) who is an Australian citizen, Australian permanent resident or eligible New Zealand citizen usually resident in Australia who provides an undertaking to provide specified assistance;
 - permanent settlement in Australia must be the appropriate course for the applicant and not contrary to the interests of Australia;
 - there must be compelling reasons for giving special consideration to granting the visa;
 - an applicant who is eligible for the grant of any other permanent visa is not eligible for grant of the new visa;
 - the maximum number of visas available in a financial year may be limited to a number specified by the Minister in a Gazette Notice;
 - certain public interest criteria must be met by an applicant and members of the family unit; and
- to expand the categories of East Timorese applicants eligible for grant of a special assistance visa by providing that an applicant must have been living in Portugal, Macau or Mozambique on 30 June 1994 and from that date must have lived continuously in one or more of Portugal, Macau or Mozambique. The applicant must also have a relative (being a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece) who was permanently resident in Australia on and from 30 June 1993. Previously, eligibility was restricted to applicants who were living in Portugal on 30 April 1991 and had a relative who was living permanently in Australia on and from 1 January 1992.

Details of the Regulations are set out in the Attachment.

The Regulations commenced on 9 January 1995.

ATTACHMENT

Regulation 1 - Commencement

This regulation provides for the Regulations to commence on 9 January 1995.

Regulation 2 - Amendment

This regulation provides that the Migration Regulations are amended as set out in these Regulations.

Regulation 3 - Schedule 1 (Classes of visas)

Subregulation 3.1 omits item 1113 of Schedule 1 and substitutes a new item 1113 which changes the name of the class to East Timorese in Portugal, Macau or Mozambique (Special Assistance) (Class AM). The new name reflects policy changes extending eligibility to East Timorese in locations other than Portugal. The new item also makes a corresponding change in the name of subclass 208. For further details of the policy changes reflected by these amendments, see the notes on regulation 4 of these Regulations below.

Subregulation 3.2 inserts a new item 1129A in Schedule 1. This item creates a new class of visa - Sri Lankan (Special Assistance) (Class BF) - and prescribes the way an application must be made. Approved form 917 must be completed and the application must be made outside Australia. There is no fee for the application. An application by a member of the family unit of another applicant may be made at the same time and place as, and combined with, that other person's application. The prescribed criteria for grant of a visa of the new class is in subclass 215 - Sri Lankan (special assistance) - inserted in Schedule 2 by regulation 5 of, and the Schedule to, these Regulations. For further details of the new visa class, see the notes on regulation 5 and the Schedule below.

Regulation 4 - Schedule 2. Part 208 (East Timorese in Portugal (Special Assistance))

This regulation amends Part 208 of Schedule 2 to reflect policy changes which extend the categories of East Timorese able to meet the prescribed criteria for the grant of an East Timorese in Portugal, Macau or Mozambique (Special Assistance) (Class AM) visa. The name of this class of visa is changed by subregulation 3.1 of these Regulations.

Subregulation 4.1 omits the heading of Part 208 and substitutes a new heading - East Timorese in Portugal, Macau or Mozambique - to reflect the policy that an eligible applicant may be living in Macau, Mozambique or Portugal.

Subregulation 4.2 omits paragraphs 208.211 (b) and (c) and substitutes new paragraphs. The effect of the new paragraphs is to enable the criteria to be met by East Timorese who were living in Portugal, Macau or Mozambique on 30 June 1994 and then lived in one or more of Portugal, Macau or Mozambique continuously from that date until the date of the application. Previously, eligibility was restricted to East Timorese who were living in Portugal on 30 April 1991.

Subregulation 4.3 amends clause 208.213 by inserting additional references to the society of Macau and Mozambique. This amendment reflects the policy that an eligible applicant may be living in Portugal, Macau or Mozambique. Applicants' prospects of adapting to Australian society are to be assessed against their prospects of adapting to the relevant society in which they have lived for the greatest total time since 30 June 1994 to the time of application.

Subregulation 4.4 amends paragraph 208.214(a) by changing the date from 1 January 1992 to 30 June 1993. This is the date on and from which an applicant's relative (being a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece) must be an Australian citizen, Australian permanent resident or eligible New Zealand citizen usually resident in Australia. Bringing forward the date by which the relative must have been permanently settled in Australia assists the eligibility of an applicant who lived in Portugal, Macau or Mozambique since 30 June 1994. At the same time, the new date will continue to ensure that near relatives have been in Australia for a significant period before successful applicants arrive and are therefore more likely to be in a position to assist with their settlement.

Regulation 5 - Schedule 2, new Part 215

This regulation provides for a new Part 215 to be inserted in Schedule 2 of the Migration Regulations, as set out in the Schedule to these Regulations.

Schedule - New Part 215 for insertion in Schedule 2

The Schedule sets out the new Part 215 - Subclass 215 - Sri Lankan (Special Assistance) inserted in Schedule 2 of the Migration Regulations by these Regulations. The new Part 215 prescribes the criteria to be met by an applicant for a Sri Lankan (Special Assistance) (Class BF) permanent visa, created by these Regulations (see the notes on subregulation 3.2 of these Regulations above).

To be eligible for grant of the visa, an applicant must be a citizen of Sri Lanka who is usually resident in Sri Lanka and is in Sri Lanka at the time of application. The applicant's life must have been seriously disrupted by fighting in Sri Lanka within the period of 18 months ending on the date of the application. The applicant must have suffered, and continue to suffer, substantial discrimination because of ethnic origin or political beliefs and must be unable to lead a normal life in Sri Lanka.

The applicant must have a near relative (that is, a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece) residing permanently in Australia who gives a written undertaking to provide specified assistance to the applicant and his or her dependants after their entry to Australia. The Minister must be satisfied that permanent settlement in Australia is the appropriate course for the applicant and would not be contrary to the interests of Australia. The Minister must also be satisfied that there are compelling reasons for giving special consideration to granting a visa to the applicant.

There is provision for the grant of a visa to members of the family unit of an applicant, where the applications of members of the family unit were combined with that of the applicant. The applicant and members of the applicant's family unit are required to meet certain public interest criteria and special return criteria.

An applicant who is eligible for the grant of any other permanent visa is not eligible to be granted the new subclass 215 visa. This provision ensures that the limited places available in the special assistance category program are not taken by applicants who are eligible under the normal migration program.

The maximum number of visas available in a financial year may be limited to a number specified by the Minister in a Gazette Notice.

Applicants must be outside Australia at the time the visa is granted. The visa permits the applicant to travel to and enter Australia as a permanent resident on any number of occasions for 4 years from the date of grant, subject to the condition that the holder must first enter Australia by a specified date.