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Statutory Rules 1994 No. *L 452*

Migration 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 *L* 1994.

20 December

L BILL HAYDEN
 Governor-General

By His Excellency's Command,

L NICK BOLKUS
 Minister for Immigration and Ethnic Affairs

1. Commencement

1.1 These Regulations commence on 9 January 1995.

2. Amendment

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

3. Schedule 1 (Classes of visas)**3.1 Item 1113:**

Omit the item, substitute:

“1113. East Timorese in Portugal, Macau or Mozambique (Special Assistance) (Class AM)

- (1) Form: 917.
- (2) Fee: Nil.
- (3) Other:
 - (a) Application must be made outside Australia.
 - (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for an East Timorese in Portugal, Macau or Mozambique (Special Assistance) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses: 208 (East Timorese in Portugal, Macau or Mozambique).”

3.2 After item 1129, insert:**“1129A. Sri Lankan (Special Assistance) (Class BF)**

- (1) Form: 917.
- (2) Fee: Nil.
- (3) Other:
 - (a) Application must be made outside Australia.
 - (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Sri Lankan (Special Assistance) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses: 215 (Sri Lankan (special assistance))”.

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

4.1 Omit the Part heading, substitute:

“SUBCLASS 208—EAST TIMORESE IN PORTUGAL, MACAU OR MOZAMBIQUE”.

4.2 Paragraphs 208.211 (b) and (c):

Omit the paragraphs, substitute:

“(b) was living in Portugal, Macau or Mozambique on 30 June 1994; and

(c) lived continuously in 1 or more of Portugal, Macau and Mozambique from that date to the time of application.”.

4.3 Clause 208.213:

Omit “Portuguese society.”, substitute “the society of whichever of Portugal, Macau or Mozambique the applicant has lived in for the greatest total time since 30 June 1994.”.

4.4 Paragraph 208.214 (a):

Omit “1 January 1992”, substitute “30 June 1993”.

5. Schedule 2, new Part 215

5.1 After Part 214, insert Part 215 set out in the Schedule.

SCHEDULE

Regulation 5

NEW PART 215 FOR INSERTION IN SCHEDULE 2

SUBCLASS 215—SRI LANKAN (SPECIAL ASSISTANCE)

215.1 INTERPRETATION

215.111 (1) For the purposes of this Part, “**eligible New Zealand citizen**” includes a person who, at all times between 1 September 1992 and 31 August 1994:

- (a) was a New Zealand citizen; and
- (b) was normally resident in Australia; and
- (c) was an exempt non-citizen; and
- (d) met the requirements of subclauses (2) and (3).

(2) A person meets the requirements of this subclause if he or she is not a person who:

- (a) has been convicted of a crime and sentenced to death or to imprisonment, for at least 1 year; or
- (b) has been convicted of 2 or more crimes and sentenced to imprisonment, for periods that add up to at least 1 year if:
 - (i) any period concurrent with part of a longer period is disregarded; and
 - (ii) any periods not disregarded that are concurrent with each other are treated as 1 period; whether or not:
 - (iii) the crimes were of the same kind; or
 - (iv) the crimes were committed at the same time; or
 - (v) the convictions were at the same time; or
 - (vi) the sentencings were at the same time; or
 - (vii) the periods were consecutive; or
- (c) has been charged with a crime and either:
 - (i) found guilty of having committed the crime while of unsound mind; or
 - (ii) acquitted on the ground that the crime was committed while the person was of unsound mind;
- (d) has been removed or deported from Australia or removed or deported from another country; or
- (e) has been excluded from another country in the circumstances set out in regulation 7.12 of the Migration (1993) Regulations;

SCHEDULE—continued

where “**sentenced to imprisonment**” includes ordered to be confined in a corrective institution.

(3) A person satisfies the requirements of this subclause if he or she is not a person who suffers from a disease or a physical or mental condition of a kind set out in regulation 7.11 of the Migration (1993) Regulations.

215.2 PRIMARY CRITERIA

[NOTE: The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.]

215.21 Criteria to be satisfied at time of application

215.211 The applicant:

- (a) is a citizen of Sri Lanka; and
- (b) is usually resident in Sri Lanka; and
- (c) is in Sri Lanka at the time of application.

215.212 The applicant’s life has been seriously disrupted by fighting in Sri Lanka within the period of 18 months ending on the date of application.

215.213 The applicant has suffered, and continues to suffer, substantial discrimination because of his or her ethnic origins or political beliefs.

215.214 The Minister is satisfied that, at the time of application, the applicant is unable to live a normal life in Sri Lanka.

215.215 The applicant has a near relative (being a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece of the applicant) who:

- (a) was an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen on 1 January 1994; and
- (b) continues to be an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- (c) is usually resident in Australia; and

SCHEDULE—continued

- (d) gives the Minister a written undertaking that specifies assistance:
- (i) that the near relative will provide to the applicant and the applicant's dependants after their entry to Australia; and
 - (ii) that is acceptable to the Minister, having regard to the needs of the applicant in the period of 6 months following the applicant's entry to Australia;
- with regard to the following matters:
- (iii) food, clothing, accommodation and household goods;
 - (iv) personal support;
 - (v) access to community and public services;
 - (vi) obtaining employment;
 - (vii) language interpretation and securing English language instruction;
 - (viii) community involvement and self-reliance;
 - (ix) reimbursing the Commonwealth for its costs (if any) in providing accommodation services to the applicant.

215.22 Criteria to be satisfied at time of decision

215.221 The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

215.222 The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a visa.

215.223 Grant of the visa would not result in either:

- (a) the number of subclass 215 visas granted in a financial year exceeding the maximum number of subclass 215 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes, including subclass 215, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

SCHEDULE—continued

215.224 The Minister is satisfied, on the basis of the information contained in the application, that the applicant is not eligible for a permanent visa of any other class.

215.225 The applicant satisfies public interest criteria 4001 to 4004 and 4007 to 4010.

215.226 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5003, 5005 and 5007 to 5009.

215.227 (1) Each member of the family unit of the applicant who is an applicant for a subclass 215 visa is a person who:

- (a) satisfies public interest criteria 4001 to 4004 and 4007 to 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5003, 5005 and 5007 to 5009.

(2) Each member of the family unit of the applicant who is not an applicant for a subclass 215 visa is a person who:

- (a) satisfies public interest criteria 4001 to 4004; and
- (b) satisfies public interest criteria 4007 and 4008, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to those criteria.

215.228 If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

215.3 SECONDARY CRITERIA

[NOTE: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.]

215.31 Criteria to be satisfied at the time of application

215.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 215.21.

SCHEDULE—continued

215.312 The written undertaking made under clause 215.215 in respect of a person who is a member of the family unit of the applicant and satisfies the primary criteria includes the applicant.

215.32 Criteria to be satisfied at the time of decision

215.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 215 visa.

215.322 The applicant:

- (a) satisfies public interest criteria 4001 to 4004 and 4007 to 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5003, 5005 and 5007 to 5009.

215.323 If the applicant is the dependent child of a person who is the holder of a subclass 215 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

215.4 CIRCUMSTANCES APPLICABLE TO GRANT

215.411 The applicant must be outside Australia when the visa is granted.

215.5 WHEN VISA IS IN EFFECT

215.511 Permanent visa permitting the holder to travel to and enter Australia within 4 years of grant.

215.6 CONDITIONS

215.611 First entry must be made before the date specified by the Minister for the purpose.

215.612 Condition 8502 may be imposed.

215.7 WAY OF GIVING EVIDENCE

215.711 Visa label affixed to a valid passport.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on ^L 1994. 30 December
2. Statutory Rules 1994 No. 268 as amended by 1994 Nos. 280, 322 and 376.