

Migration Regulations (Amendment) 1995 No. 411

EXPLANATORY STATEMENT

STATUTORY RULES 1995 No. 411

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. In addition, subsection 31(1) of the Act provides that the regulations are to prescribe classes of visas, and subsection 31(3) of the Act provides that the regulations may prescribe criteria for visas of a specified class. In addition, regulations may be made pursuant to the following powers:

- 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 33(2) of the Act provides for regulations to be made which prescribe status for the purpose of the grant of special purpose visas; and
- section 48 of the Act provides for prescribing classes of visas which are the only classes of visas for which a person whose visa has been cancelled, or whose application for a visa has been refused, may apply.

The purpose of the Regulations is to:

- make consequential amendments to the Migration Regulations resulting from the commencement of sections 48A and 48B of the Migration Act 1958:

Section 48A provides that a non-citizen, while he or she remains in the migration zone, who has made an application or applications for protection visas which have been refused, may not make a further application for a protection visa. This provision applies even if a non-citizen's application for a protection visa has not been finally determined (that is, if, for example, it is being reviewed by the Refugee Review Tribunal). Section 48B provides the Minister with the power to exercise a non-compellable discretion in favour of allowing a particular non-citizen to lodge another protection visa application if the Minister thinks it is in the public interest to do so. This power may only be exercised by the Minister personally;

- enable citizens of Singapore travelling direct to the Christmas Island casino from either Indonesia or Singapore to be granted special purpose visas;
- omit the requirement that an applicant held an entry permit on 31 December 1991, or at some time after that date, or held a substantive visa on 1 September 1994, or at some time after that date, from the prescribed criteria for the grant of a Citizens of Former Yugoslavia (Temporary) (Class TC) visa and Sri Lankan (Temporary) (Class TT) visa;
- require the Minister to separately specify the period for travel to and entry to Australia and the period for remaining in Australia when granting a Working Holiday (Temporary) (Class TZ) visa; and

- omit the evidencing requirement (which requires a visa label to be attached to the visa holder's passport) in relation to the grant of a Temporary Business Entry (Class UC) visa. Details of the Regulations are set out in the Attachment.

Regulations 6 and 13 commence on 19 December 1995. Regulations 10, 11 and 12 commence on 1 February 1996. Regulation 9 commences on 1 April 1996. Regulations 3, 4, 5, 7 and 8 commence on gazettal.

ATTACHMENT

Regulation 1 - Commencement

This regulation provides for the Migration Regulations (Amendment) to commence on a number of different dates:

- subregulation 1.1 provides for regulations 6 and 13 to commence on 19 December 1995;
- subregulation 1.2 provides for regulations 10, 11 and 12 to commence on 1 February 1996; and
- subregulation 1.3 provides for regulation 9 to commence on 1 April 1996.

Regulation 2 - Amendment

This regulation provides for *the* Migration Regulations to be amended as set out in these Regulations.

Regulation 3 - Regulation 1.03 (Interpretation)

This regulation amends the definition of "review authority" in Regulation 1.03 of the Migration Regulations by omitting the reference to Part 042 in the existing definition. This amendment is consequential to the deletion, by regulation 8 of these Regulations, of subclass 042 (Prospective Protection Visa Applicant) from the Migration Regulations.

Regulation 4 - Regulation 2.12 (Certain non-citizens whose applications refused in Australia (Act, s.48))

Subregulation 4.1 amends paragraph 2.12(1)(c) of the Migration Regulations by omitting the existing reference to subregulation (2). This amendment is consequential to the omission of subregulation 2.12(2) of the Immigration Regulations.

Subregulation 4.2 omits subregulation 2.12(2) of the Migration Regulations.

The effect of this regulation is to remove the existing limitation imposed by subregulation 2.12(2) of the Migration Regulations that a person who has already applied in Australia for a protection visa and who has been refused can only make a new application in Australia under certain circumstances. The circumstances in which it is possible for a person to make a repeat protection visa application is determined by the provisions sections 48A and 48B of the Migration Act 1958. Therefore subregulation 2.12(2) of the Migration Regulations is no longer required.

Regulation 5 - Regulation 2.22 (Invalid application for substantive visa)

Regulation 2.22 of the Migration Regulations provides that a non-citizen is taken to have applied for a Bridging D (Class WD) visa in certain circumstances when making an invalid application for a substantive visa.

Regulation 5 inserts a new paragraph (d) in regulation 2.22 of the Migration Regulations. This amendment ensures that there is no deemed application for a Bridging D (Class WD) visa if an application for a protection visa, which is a substantive visa, is invalid because of the operation of section 48A of the Migration Act 1958. There is no deemed application for a Bridging D (Class WD) visa whether or not the Minister has made a determination under subsection 48B(1) of the *Migration Act 1958* in relation to the application or action has been taken by any person to seek the making by the Minister of such a determination.

Regulation 6 - Regulation 2.40 (Persons having a prescribed status - special purpose visas (Act. s.33(2)(a)))

Subregulation 6.1 omits paragraph 2.40(1)(r) of the Migration Regulations and substitutes new paragraphs 2.40(1)(r) and 2.40(1)(s). New paragraph 2.40(1)(r) repeats the provisions of the omitted paragraph with a technical amendment. New paragraph 2.40(1)(s) provides for an additional class of persons to have a prescribed status - Singaporean citizens visiting the casino on Christmas Island. The effect of this provision is that persons in this class are taken to have been granted a special purpose visa.

Subregulation 6.2 inserts a new subregulation 2.40(15) into the Migration Regulations. Subregulation 2.40(15) provides that persons in the class covered in the new paragraph 2.40(1)(s) (Singaporean citizens visiting the casino on Christmas Island) have a prescribed status (and therefore are taken to hold special purpose visas) only while they are travelling directly from Singapore or Indonesia to Christmas Island and staying on Christmas Island. They must hold and produce a Singaporean passport that is in force and carry a valid invitation acceptable to the Minister to visit the casino. The prescribed status ceases five days after arrival on Christmas Island or upon departure from Christmas Island, whichever occurs first. The special purpose visa does not allow travel to mainland Australia.

Regulation 7 - Schedule 1 (Classes of visas)

This regulation amends subitem 1304(4) of Schedule 1 of the Migration Regulations by omitting subclass 042 (Prospective Protection Visa Applicant). Subclass 042 is omitted from Bridging D (Class WD) visas. This amendment is consequential upon the amendment to the Migration Regulations referred to in regulation 5 of these Regulations.

Regulation 8 - Schedule 2, Part 042 (Bridging Visa (Prospective Protection Visa Applicant))

This regulation omits Part 042 (Bridging Visa (Prospective Protection Visa Applicant)) of Schedule 2 of the Migration Regulations. This amendment is consequential upon the amendment to the Migration Regulations referred to in regulation 5 of these Regulations.

Regulation 9 - Schedule 2, Part 417 (Working Holiday)

This regulation omits clause 417.511 of Part 417 of Schedule 2 of the Migration Regulations and substitutes a new clause. The new clause requires the Minister to separately specify the period for the visa holder to travel to and enter Australia and the period for the visa holder to remain in Australia. The purpose of this amendment is to provide a Working Holiday (Temporary) (Class TZ) visa holder with one period to travel to and enter Australia and another period to remain in Australia.

Regulation 10 - Schedule 2, Part 435 (Sri Lankan)

This regulation omits clause 435.213 of Part 435 of Schedule 2 of the Migration Regulations. This amendment omits, as a criterion for the grant of a Sri Lankan (Temporary) (Class TT) visa, the requirement that an applicant held an entry permit on 31 December 1991 or at some time after that date, or held a substantive visa on 1 September 1994 or at some time after that date.

Regulation 11 - Schedule 2, Part 443 (Citizens of Former Yugoslavia)

This regulation omits clause 443.213 of Part 443 of Schedule 2 of the Migration Regulations. This amendment omits, as a criterion for the grant of a Citizens of Former Yugoslavia (Temporary) (Class TC) visa, the requirement that an applicant held an entry permit on 31 December 1991 or at some time after that date, or held a substantive visa on 1 September 1994 or at some time after that date.

Regulation 12 - Schedule 2, Part 456 (Business (Short Stay))

This regulation omits clause 456.711 of Part 456 of Schedule 2 of the Immigration Regulations and substitutes a new clause. The regulation omits the existing evidencing requirement (which requires a visa label to be attached to the visa holder's passport) and substitutes a new provision which does not require the giving of any evidence that the visa has been granted. This provision provides greater convenience for the entry of business visitors.

Regulation 13 - Schedule 9, Part 1 (Persons to whom special arrangements apply under section 166 of the Act)

This regulations inserts new item 20 into Part 1 of Schedule 9 of the Migration Regulations. This amendment is a consequence of the amendment made to regulation 2.40 of the Migration Regulations by regulation 6 of these Regulations.