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Statutory Rules 1997 No. 1

2791

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

1

1997.

1 October

1 WILLIAM DEANE

Governor-General

By His Excellency's Command,

1

PHILIP RUDDOCK

Minister for Immigration and Multicultural Affairs

1. Commencement

1.1 These Regulations commence on 1 October 1997.

2. Amendment

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

3. Regulation 1.15A (Spouse)**3.1 Paragraph 1.15A (2) (d):**

After “subject to”, insert “paragraph (e) and”.

3.2 Subregulation 1.15A (2):

Add at the end:

“; and (e) where either of them is an applicant for a Resolution of Status (Residence) (Class BL) or Resolution of Status (Temporary) (Class UH) visa—the Minister is satisfied (unless the applicant can establish compelling and compassionate circumstances for the grant of the visa) that, for the period of 12 months immediately preceding 13 June 1997:

- (i) they had a mutual commitment to a shared life as husband and wife to the exclusion of all others; and
- (ii) the relationship between them was genuine and continuing; and
- (iii) they had:
 - (A) been living together; or
 - (B) not been living separately and apart on a permanent basis.”.

4. Regulation 1.20 (Sponsorship)**4.1 Paragraph 1.20 (2) (a):**

After “Interdependency (Migrant) (Class BI)”, insert “, Resolution of Status (Residence) (Class BL)”.

4.2 Paragraph 1.20 (2) (b):

Omit “a Spouse (Provisional) (Class UF) or Interdependency (Provisional) (Class UG)”, substitute “an Interdependency (Provisional) (Class UG), Resolution of Status (Temporary) (Class UH) or Spouse (Provisional) (Class UF)”.

4.3 Subregulation 1.20 (2):

Add at the end:

“; (d) if the application is for a Resolution of Status (Temporary) (Class UH) visa made by an applicant who is outside Australia—the sponsor undertakes to assist the applicant, to the extent necessary, financially and in respect of accommodation, during the period of 2 years

immediately following the applicant's entry into Australia as the holder of the visa."

5. Regulation 2.08A (Addition of spouses and dependent children to certain applications for permanent visas)

5.1 Paragraph 2.08A (1) (a):

After "applications", insert "(except, subject to subclause (3), a Resolution of Status (Residence) (Class BL) visa)".

5.2 Add at the end:

"(3) Subregulations (1) and (2) apply to an applicant for a Resolution of Status (Residence) (Class BL) visa, so as to allow the applicant to make a request to have a dependent child of the applicant added to the application, only if the Minister is satisfied that compelling and compassionate circumstances exist for the dependent child to be added to the applicant's application."

6. Regulation 2.08B (Addition of dependent children to certain applications for temporary visas)

6.1 Paragraph 2.08B (1) (a):

Omit the paragraph, substitute:

"(a) a person (**the original applicant**) applies for:

- (i) an Extended Eligibility (Temporary) (Class TK) visa; or
- (ii) an Interdependency (Provisional) (Class UG) visa; or
- (iii) a Prospective Marriage (Temporary) (Class TO) visa; or
- (iv) a Resolution of Status (Temporary) (Class UH) visa; or
- (v) a Spouse (Provisional) (Class UF) visa; and"

6.2 Subregulation 2.08B (1)

After paragraph 2.08B (1) (d), insert:

"; and (da) the visa applied for by the original applicant is a Resolution of Status (Temporary) (Class UH) visa and the Minister is satisfied that compelling and compassionate circumstances exist for the dependent child to be added to the applicant's application;"

7. New regulation 2.08BA

7.1 After regulation 2.08B, insert:

Certain holders of Subclass 450 visas taken to have applied for Resolution of Status (Residence) (Class BL) visas

“**2.08BA.** Despite any provision in Schedule 1, a person who is the holder of a Subclass 450 (Resolution of Status—Family Member (Temporary)) visa is taken to have made a valid application for a Resolution of Status (Residence) (Class BL) visa immediately after the person is immigration cleared in relation to the person’s first entry into Australia as the holder of a Subclass 450 visa.”.

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

8.1 Subregulation 2.12 (1):

Add at the end:

- “; (n) Resolution of Status (Temporary) (Class UH);
- (o) Resolution of Status (Residence) (Class BL).”.

9. Regulation 2.16 (Notification of decision on visa application)

9.1 Subregulation 2.16 (2):

Omit “Schedule 1,”, substitute “Schedule 1 or regulation 2.08, 2.08A or 2.08B,”.

10. Schedule 1 (Classes of visas)

10.1 After item 1127, insert item 1127A set out in Part 1 of Schedule 1.

10.2 After item 1216, insert item 1216A set out in Part 2 of Schedule 1.

10.3 Subitem 1301 (1):

Omit “or 1005.”, substitute “, 1005 or 1096.”.

10.4 Subitem 1303 (1):

Omit “or 1005.”, substitute “, 1005 or 1096.”.

10.5 Subitem 1305 (1):
Omit “or 1008.”, substitute “, 1008 or 1096.”.

11. Schedule 2, new Part 450

11.1 After Part 446, insert Part 450 set out in Part 1 of Schedule 2.

12. Schedule 2, new Parts 850 and 851

12.1 After Part 846, insert Parts 850 and 851 set out in Part 2 of Schedule 2.

SCHEDULE 1 Subregulations 10.1 and 10.2**NEW ITEMS FOR INSERTION IN SCHEDULE 1****PART 1—NEW ITEM 1127A****1127A. Resolution of Status (Residence) (Class BL)**

- (1) Form: 1096 (except if regulation 2.08BA applies, in which case no form is required).
- (2) Visa application charge: Nil
- (3) Other:
- (a) Application (except by the holder of a Subclass 450 (Resolution of Status—Family Member (Temporary)) visa) must be made during the period from 1 October 1997 to 31 March 1998 (inclusive).
 - (b) Application must be made in Australia but not in immigration clearance.
 - (c) Applicant must be in Australia but not in immigration clearance.
 - (d) Application by a person (other than the holder of a Subclass 450 (Resolution of Status—Family Member (Temporary)) visa) who claims to be a member of the immediate family of a person who is an applicant for a Resolution of Status (Residence) (Class BL) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses: 851 (Resolution of Status)

[NOTE: For application by a person who is the holder of a Subclass 450 (Resolution of Status—Family Member (Temporary)) visa, see regulation 2.08BA.]

SCHEDULE 1—continued

PART 2—NEW ITEM 1216A

1216A. Resolution of Status (Temporary) (Class UH)

- (1) Form: 1096.
- (2) Visa application charge:
- (a) First instalment (payable at the time application is made):
- (i) In the case of an application made outside Australia: Nil
 - (ii) In the case of an application made in Australia: \$2,000
- (b) Second instalment (payable before grant of visa):
- (i) In the case of each applicant who:
 - (A) is in Australia; and
 - (B) was 18 years or more at time of application; and
 - (C) is assessed as not having functional English; and
 - (D) satisfies the primary criteria for the grant of a visa of a subclass included in Resolution of Status (Temporary) (Class UH): \$4,470
 - (ii) In the case of each applicant who:
 - (A) is outside Australia; and
 - (B) was 18 years or more at time of application; and
 - (C) is assessed as not having functional English; and
 - (D) satisfies the primary criteria for the grant of a visa of a subclass included in Resolution of Status (Temporary) (Class UH): \$2,235

SCHEDULE 1—continued

- (iii) In the case of each applicant who:
 - (A) was 18 years or more at time of application; and
 - (B) is assessed as not having functional English; and
 - (C) satisfies the secondary criteria for the grant of a visa of a subclass included in Resolution of Status (Temporary) (Class UH): \$2,235
- (iv) In any other case: Nil
- (3) Other:
 - (a) Application may be made in Australia, but not in immigration clearance, if:
 - (i) it is made during the period from 1 October 1997 to 31 March 1998 (inclusive); and
 - (ii) at the time when it is made, the applicant is in Australia.
 - (b) Application may be made outside Australia if:
 - (i) subject to paragraph (i), it is made during the period from 1 October 1997 to 30 June 1998 (inclusive); and
 - (ii) at the time when it is made, the applicant is outside Australia.
 - (c) In the case of an application mentioned in paragraph (a), the application must be accompanied by satisfactory evidence that:
 - (i) the applicant, or at least 1 person who makes a combined application with the applicant, entered Australia, as the holder of:
 - (A) a valid passport of a country specified in paragraph (d); and
 - (B) an entry permit or an entry visa that had effect as an entry permit; and

SCHEDULE 1—continued

- (ii) the applicant or the person, as the case requires, so entered Australia on or before the date specified in paragraph (d) in relation to that country.
- (d) The countries and dates mentioned in paragraph (c) are as follows:
 - (i) Iraq—31 October 1991;
 - (ii) Kuwait—31 October 1991;
 - (iii) Lebanon—30 November 1991;
 - (iv) PRC—1 November 1993;
 - (v) Sri Lanka—1 November 1993;
 - (vi) Socialist Federal Republic of Yugoslavia—1 November 1993;
 - (vii) Federal Republic of Yugoslavia—1 November 1993;
 - (viii) Former Yugoslav Republic of Macedonia—1 November 1993;
 - (ix) Republic of Bosnia and Herzegovina—1 November 1993;
 - (x) Republic of Croatia—1 November 1993;
 - (xi) Republic of Slovenia—1 November 1993.
- (e) In the case of an application mentioned in paragraph (a), the application must be made at the same time and place as an application, by the applicant, for a Resolution of Status (Residence) (Class BL) visa.
- (f) In the case of an application mentioned in paragraph (a) by an applicant who claims to be a member of the immediate family of a person who is also making an application mentioned in that paragraph, the application may be made at the same time and place as, and combined with, the application by that person.

SCHEDULE 1—continued

- (g) In the case of an application mentioned in paragraph (b), subject to paragraph (i), the application specifies a valid application mentioned in paragraph (a), by another person (“**the sponsor**”), that identifies the applicant as:
- (i) a member of the immediate family of the sponsor; and
 - (ii) a person who is sponsored by the sponsor.
- (h) An application mentioned in paragraph (b) may be made at the same time and place as, and combined with, another such application if both applicants claim to be:
- (i) identified, in the application of a person (“**the sponsor**”) who has made a valid application mentioned in paragraph (a), as members of the immediate family of the sponsor; and
 - (ii) sponsored by the sponsor.
- (i) If:
- (i) the applicant is a dependent child of a person (“**the sponsor**”) who has made a valid application mentioned in paragraph (a); and
 - (ii) the applicant is sponsored by the sponsor; and
 - (iii) the Minister is satisfied that compelling and compassionate circumstances exist for the applicant to make the application;
- the application:
- (iv) may be made outside Australia at any time before the grant to the sponsor of a Resolution of Status (Residence) (Class BL) visa; and
 - (v) need not specify the valid application made by the sponsor.

SCHEDULE 1—continued

- (4) Subclasses: 450 (Resolution of Status—Family Member
(Temporary))
850 (Resolution of Status (Temporary))
-

SCHEDULE 2

Regulations 11 and 12

NEW PARTS FOR INSERTION IN SCHEDULE 2**PART 1—NEW PART 450****SUBCLASS 450—RESOLUTION OF STATUS—FAMILY MEMBER (TEMPORARY)****450.1 INTERPRETATION**

[NOTE: “member of the family unit” is defined in regulation 1.12, and “member of the immediate family” in regulation 1.12AA. There are no interpretation provisions specific to this Part.]

450.2 PRIMARY CRITERIA

[NOTE: All applicants must satisfy the primary criteria.]

450.21 Criteria to be satisfied at time of application

450.211 The applicant:

- (a) is a member of the immediate family of a person (“**the sponsor**”) who:
 - (i) has made an application for a Resolution of Status (Temporary) (Class UH) visa mentioned in paragraph 1216A (3) (a) of Schedule 1; and
 - (ii) on the basis of the information provided in that application, appears to satisfy the criteria in Subdivision 850.21; and
- (b) is sponsored by the sponsor.

450.212 Except if the applicant became a dependent child of the sponsor after 13 June 1997, the applicant was, on that date, a member of the immediate family of the sponsor.

450.213 Except if the applicant became a dependent child of the sponsor after the date of the application, by the sponsor, that is mentioned in subparagraph 450.211 (a) (i), the applicant is, in that application:

- (a) identified as a member of the immediate family of the sponsor; and

SCHEDULE 2—continued

(b) sponsored by the sponsor.

450.22 Criteria to be satisfied at time of decision

450.221 The applicant continues to satisfy clause 450.211 and the sponsor is a person who, having satisfied the primary criteria, is the holder of a Subclass 850 (Resolution of Status (Temporary)) or Subclass 851 (Resolution of Status) visa.

450.222 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

450.223 Each member of the family unit of the applicant who is not an applicant for a Subclass 450 visa is a person who satisfies:

- (a) public interest criteria 4001, 4002, 4003 and 4004; and
- (b) public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

450.224 If the applicant is, or has been, a student under a scholarship scheme or training program approved by AusAID:

- (a) the applicant made the application more than 2 years after the applicant's departure from Australia on ceasing the course of studies under the scheme or program; or
- (b) the applicant has the support in writing of AusAID for the grant of the visa.

450.225 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

450.226 The Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the applicant.

450.3 SECONDARY CRITERIA: Nil.

[NOTE: All applicants must satisfy the primary criteria.]

450.4 CIRCUMSTANCES APPLICABLE TO GRANT

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

[NOTE: The second instalment of the visa application charge must be paid before the visa can be granted.]

SCHEDULE 2—continued**450.5 WHEN VISA IS IN EFFECT**

- 450.511 Temporary visa permitting the holder:
- (a) to travel to and enter Australia until a date specified by the Minister; and
 - (b) to remain in Australia until the end of the day on which:
 - (i) the holder is notified that the holder's application for a Resolution of Status (Residence) (Class BL) visa has been decided; or
 - (ii) that application is withdrawn.

450.6 CONDITIONS

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

450.612 Condition 8515 may be imposed.

450.7 WAY OF GIVING EVIDENCE

450.711 Visa label affixed to a valid passport.

SCHEDULE 2—continued

PART 2—NEW PARTS 850 AND 851

SUBCLASS 850—RESOLUTION OF STATUS (TEMPORARY)

850.1 INTERPRETATION

[NOTE: “member of the family unit” is defined in regulation 1.12, and “member of the immediate family” in regulation 1.12AA. There are no interpretation provisions specific to this Part.]

850.2 PRIMARY CRITERIA

[NOTE: The primary criteria must be satisfied by at least 1 person. The members of the immediate family of that person who are applicants for a visa of this Subclass need satisfy only the secondary criteria.]

850.21 Criteria to be satisfied at time of application

850.211 If:

- (a) the applicant:
 - (i) was in Australia on 1 September 1994; and
 - (ii) was, immediately before 1 September 1994, a person to whom section 37 of the Act as in force immediately before that date applied; and
 - (iii) has not been granted a substantive visa on or after 1 September 1994; or
- (b) the applicant is a person to whom section 48 of the Act applies;

the applicant has not been refused a visa, or had a visa cancelled, under section 501 of the Act.

850.212 (1) The applicant entered Australia, as the holder of:

- (a) a valid passport of a country mentioned in subclause (3); and
- (b) an entry permit or an entry visa that had effect as an entry permit.

(2) The applicant so entered Australia on or before the date specified in subclause (3) in relation to that country.

SCHEDULE 2—continued

(3) The countries and dates mentioned in subclauses (1) and (2) are as follows:

- (a) Iraq—31 October 1991;
- (b) Kuwait—31 October 1991;
- (c) Lebanon—30 November 1991;
- (d) PRC—1 November 1993;
- (e) Sri Lanka—1 November 1993;
- (f) Socialist Federal Republic of Yugoslavia—1 November 1993;
- (g) Federal Republic of Yugoslavia—1 November 1993;
- (h) Former Yugoslav Republic of Macedonia—1 November 1993;
- (i) Republic of Bosnia and Herzegovina—1 November 1993;
- (j) Republic of Croatia—1 November 1993;
- (k) Republic of Slovenia—1 November 1993.

850.213 Immediately before the date when the applicant entered Australia as mentioned in clause 850.212, the applicant was a citizen of the country the government of which issued the passport, and was usually resident:

- (a) if the applicant was a citizen of Iraq—in Iraq; or
- (b) if the applicant was a citizen of Kuwait—in Kuwait; or
- (c) if the applicant was a citizen of Lebanon—in Lebanon; or
- (d) if the applicant was a citizen of PRC—in PRC; or
- (e) if the applicant was a citizen of Sri Lanka—in Sri Lanka; or
- (f) if the applicant was a citizen of:
 - (i) the Socialist Federal Republic of Yugoslavia; or
 - (ii) the Federal Republic of Yugoslavia; or
 - (iii) the Former Yugoslav Republic of Macedonia; or
 - (iv) the Republic of Bosnia and Herzegovina; or
 - (v) the Republic of Croatia; or
 - (vi) the Republic of Slovenia—
in a place that, on 19 June 1991, formed part of the Socialist Federal Republic of Yugoslavia.

850.214 (1) The applicant was in Australia for a period that is, or for periods that total, not less than 90% of the period that began on a date when the applicant entered Australia as mentioned in clause 850.212 and ended on the date of the making of the application.

SCHEDULE 2—continued

(2) For the purposes of subclause (1), where the applicant was not in Australia for 90% of the period, the Minister may include periods when the applicant was outside Australia if:

- (a) the applicant has maintained close business, cultural or personal ties in Australia; and
- (b) the Minister is satisfied that compelling or strongly compassionate circumstances exist that explain why the applicant was outside Australia during those periods.

850.215 On 13 June 1997:

- (a) the applicant was in Australia; or
- (b) the applicant was outside Australia and was the holder of a visa that was in effect and permitted the applicant to travel to and enter Australia.

850.216 The applicant is not the holder of a Diplomatic (Temporary) (Class TF) visa or a transitional (temporary) visa that the applicant is taken to hold because the applicant, before 1 September 1994, held, or applied for:

- (a) a diplomatic (code number 995) visa under the Migration (1989) Regulations; or
- (b) a Class 995 (Diplomatic) visa under the Migration (1993) Regulations.

850.217 If 2 or more persons have made a combined application as mentioned in paragraph 1216A (3) (f) of Schedule 1, the applicant is 18 years or more.

850.22 Criteria to be satisfied at time of decision

850.221 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

850.222 Each member of the immediate family of the applicant who is an applicant for a Subclass 850 visa is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

850.223 Each member of the family unit of the applicant who is not an applicant for a Subclass 850 visa is a person who satisfies:

- (a) public interest criteria 4001, 4002, 4003 and 4004; and
- (b) public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

SCHEDULE 2—continued

850.224 The applicant has never entered Australia otherwise than as the holder of:

- (a) a valid passport; and
- (b) a visa or entry permit.

850.225 If the applicant is, or has been, a student under a scholarship scheme or training program approved by AusAID:

- (a) the applicant made the application more than 2 years after the applicant's departure from Australia on ceasing the course of studies under the scheme or program; or
- (b) the applicant has the support in writing of AusAID for the grant of the visa.

850.226 The Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, a dependent child of the applicant.

850.3 SECONDARY CRITERIA

[NOTE: A member of the immediate family of an applicant who satisfies the primary criteria is also eligible for the grant of the visa if the member satisfies the secondary criteria.]

850.31 Criteria to be satisfied at time of application

850.311 The applicant is a member of the immediate family of a person (“**the principal person**”) who:

- (a) has made an application for a Resolution of Status (Temporary) (Class UH) visa mentioned in paragraph 1216A (3) (a) of Schedule 1; and
- (b) on the basis of the information provided in that application, appears to satisfy the criteria in Subdivision 850.21.

850.312 Except if the applicant became a dependent child of the principal person after 13 June 1997, the applicant was, on that date, a member of the immediate family of the principal person.

850.313 The applicant has made (or is taken by regulation 2.08B to have made) a combined application with the principal person.

850.314 The applicant is not the holder of a Diplomatic (Temporary) (Class TF) visa or a transitional (temporary) visa that

SCHEDULE 2—continued

the applicant is taken to hold because the applicant, before 1 September 1994, held, or applied for:

- (a) a diplomatic (code number 995) visa under the Migration (1989) Regulations; or
- (b) a Class 995 (Diplomatic) visa under the Migration (1993) Regulations.

850.32 Criteria to be satisfied at time of decision

850.321 (1) The applicant meets the requirements of subclause (2) or (3).

(2) The applicant is a member of the immediate family of a person who, having satisfied the primary criteria, is the holder of a Subclass 850 visa.

- (3) If:
 - (a) at the time of the application, the applicant was the spouse of a person (“**the principal holder**”) who, having satisfied the primary criteria, is the holder of a Subclass 850 visa; and
 - (b) the applicant would meet the requirements of subclause (2) except that the relationship between the applicant and the principal holder has ceased; and
 - (c) the applicant:
 - (i) has custody or joint custody of, or access to; or
 - (ii) has a residence order or contact order made under the *Family Law Act 1975* relating to; at least 1 child in respect of whom the principal holder:
 - (iii) has been granted joint custody or access by a court; or
 - (iv) has a residence order or contact order made under the *Family Law Act 1975*; or
 - (v) has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation.

850.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

850.323 The applicant has never entered Australia otherwise than as the holder of:

- (a) a valid passport; and
- (b) a visa or entry permit.

SCHEDULE 2—continued

850.324 If the applicant is, or has been, a student under a scholarship scheme or training program approved by AusAID:

- (a) the applicant made the application more than 2 years after the applicant's departure from Australia on ceasing the course of studies under the scheme or program; or
- (b) the applicant has the support in writing of AusAID for the grant of the visa.

850.325 The Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the applicant.

850.4 CIRCUMSTANCES APPLICABLE TO GRANT

850.411 The applicant must be in Australia, but not in immigration clearance, when the visa is granted.

[NOTE: The second instalment of the visa application charge must be paid before the visa can be granted.]

850.5 WHEN VISA IS IN EFFECT

850.511 Temporary visa permitting the holder:

- (a) to travel to and enter Australia until a date specified by the Minister; and
- (b) to remain in Australia until the end of the day on which:
 - (i) the holder is notified that the holder's application for a Resolution of Status (Residence) (Class BL) visa has been decided; or
 - (ii) that application is withdrawn.

850.6 CONDITIONS: Nil.

850.7 WAY OF GIVING EVIDENCE

850.711 Visa label affixed to a passport.

SCHEDULE 2—continued

SUBCLASS 851—RESOLUTION OF STATUS

851.1 INTERPRETATION

[NOTE: “member of the family unit” is defined in regulation 1.12, and “member of the immediate family” in regulation 1.12AA. There are no interpretation provisions specific to this Part.]

851.2 PRIMARY CRITERIA

[NOTE: The primary criteria must be satisfied by at least 1 person. The members of the immediate family of that person who are applicants for a visa of this Subclass need satisfy only the secondary criteria.]

851.21 [No criteria to be satisfied at time of application]

851.22 Criteria to be satisfied at time of decision

851.221 Either:

- (a) the applicant is the holder of a Subclass 850 (Resolution of Status (Temporary)) visa; or
- (b) if the applicant held a Subclass 850 visa that ceased on notification of a decision of the Minister to refuse a Subclass 851 visa—a review officer or the Tribunal has determined that the applicant satisfies the criteria for the grant of a Subclass 851 visa apart from the criterion that the applicant hold a Subclass 850 visa.

851.222 (1) The applicant has been in Australia for a period of, or for periods that total, not less than 10 years in the 12 years from the date, or the date that is the earliest of the dates, in relation to which the applicant satisfies the criterion mentioned in clause 850.214.

if:

(2) The Minister may waive the requirement in subclause (1)

- (a) at least 12 years have passed since the date mentioned in subclause (1); and
- (b) the applicant has maintained close business, cultural or personal ties in Australia; and

SCHEDULE 2—continued

- (c) the Minister is satisfied that compelling or strongly compassionate circumstances exist for the failure of the applicant to comply with the requirement in subclause (1).

(3) Nothing in subclause (1) prevents the Minister, less than 12 years after the date mentioned in that clause, from refusing to grant a Subclass 851 visa.

851.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

851.224 Each member of the immediate family of the applicant who is an applicant for a Subclass 851 visa is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

851.225 Each member of the family unit of the applicant who is not an applicant for a Subclass 851 visa is a person who satisfies:

- (a) public interest criteria 4001, 4002, 4003 and 4004; and
- (b) public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

851.226 The Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, a dependent child of the applicant.

851.3 SECONDARY CRITERIA

[NOTE: A member of the immediate family of an applicant who satisfies the primary criteria is also eligible for the grant of the visa if the member satisfies the secondary criteria.]

851.31 Criteria to be satisfied at time of application

851.311 The applicant has made (or is taken by regulation 2.08B to have made) a combined application with the person who satisfies the primary criteria unless the applicant is the holder of a Subclass 450 visa.

851.32 Criteria to be satisfied at time of decision

851.321 (1) The applicant meets the requirements of subclause (2), (3), (4), (5), (6) or (7).

SCHEDULE 2—continued

- (2) An applicant meets the requirements of this subclause if the applicant is a person who:
- (a) is the holder of a Subclass 450 visa; and
 - (b) is a member of the immediate family of a person who:
 - (i) sponsored the applicant as mentioned in clause 450.211; and
 - (ii) having satisfied the primary criteria, is the holder of a Subclass 851 visa.
- (3) An applicant meets the requirements of this subclause if:
- (a) the applicant is:
 - (i) the holder of a Subclass 850 visa; and
 - (ii) a member of the immediate family of a person with whom the applicant has made (or is taken by regulation 2.08B to have made) a combined application for a Subclass 851 visa; and
 - (b) that other person, having satisfied the primary criteria, is the holder of a Subclass 851 visa.
- (4) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 450 or Subclass 850 visa; and
 - (b) at the time of the application, the applicant was a dependent child, or a dependent child of a dependent child, of a person (“**the principal holder**”) who, having satisfied the primary criteria, is the holder of a Subclass 851 visa; and
 - (c) either the principal holder:
 - (i) sponsored the applicant as mentioned in clause 450.211; or
 - (ii) is a person with whom the applicant has made (or is taken by regulation 2.08B to have made) a combined application for a Subclass 851 visa; and
 - (d) the applicant would meet the requirements of subclause (2) or (3) except that:
 - (i) the applicant has ceased to be a dependent child of the principal holder; or
 - (ii) the person of whom the applicant was a dependent child at the time of the application has ceased to be a dependent child of the principal holder.

SCHEDULE 2—continued

- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 450 or Subclass 850 visa; and
 - (b) the applicant would meet the requirements of subclause (2) or (3) except that the person who would have satisfied the primary criteria has died; and
 - (c) the Minister is satisfied that:
 - (i) the applicant would have continued to be a member of the immediate family of that person if the person had not died; and
 - (ii) the applicant has maintained close business, cultural or personal ties in Australia.
- (6) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 450 or Subclass 850 visa; and
 - (b) at the time of the application, the applicant was the spouse of a person (“**the principal holder**”) who either:
 - (i) sponsored the applicant as mentioned in clause 450.211; or
 - (ii) was a person with whom the applicant has made (or is taken by regulation 2.08B to have made) a combined application for a Subclass 851 visa; and
 - (c) the applicant would meet the requirements of subclause (2) or (3) except that the relationship between the applicant and the principal holder has ceased; and
 - (d) either or both of the following circumstances applies:
 - (i) either or both of the following:
 - (A) the applicant;
 - (B) a member of the immediate family of the principal holder or of the applicant or of both of them;
 has suffered domestic violence committed by the principal holder;
 - (ii) the applicant:
 - (A) has custody or joint custody of, or access to; or
 - (B) has a residence order or contact order made under the *Family Law Act 1975* relating to; at least 1 child in respect of whom the principal holder:
 - (C) has been granted joint custody or access by a court; or

SCHEDULE 2—continued

- (D) has a residence order or contact order made under the *Family Law Act 1975*; or
- (E) has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation.

[NOTE: For special provisions relating to domestic violence, see Division 1.5.]

- (7) An applicant meets the requirements of this subclause if:
 - (a) the applicant was the holder of a Subclass 450 or Subclass 850 visa that ceased on notification of a decision to refuse a Subclass 851 visa to the person of whose immediate family the applicant is a member; and
 - (b) that person has subsequently been granted a Subclass 851 visa.

- (8) In this clause, a person “A” is a member of the immediate family of another person “B” if:
 - (a) A is a spouse of B; or
 - (b) A is a dependent child of B; or
 - (c) A is a parent of B, and B had not turned 18 at the time of the application; or
 - (d) A is a dependent child of a person who is, or has been, a dependent child of B.

851.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

851.323 The Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the applicant.

851.4 CIRCUMSTANCES APPLICABLE TO GRANT

851.411 The applicant must be in Australia, but not in immigration clearance, when the visa is granted.

851.5 WHEN VISA IS IN EFFECT

851.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from date of grant.

SCHEDULE 2—continued**851.6 CONDITIONS:** Nil.**851.7 WAY OF GIVING EVIDENCE**

851.711 Visa label affixed to a passport.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on *h* 1997.
2. Statutory Rules 1994 No. 268 as amended by 1994 Nos. 280, 322, 376 and 452; 1995 Nos. 3, 38, 117, 134, 268, 302 and 411; 1996 Nos. 12, 75, 76, 108, 121, 135, 198, 211 and 276; 1997 Nos. 17, 64, 91, 92, 109, 137, 184, 185, 216 and 263.

1 October