



Statutory Rules 1998 No. ¹ /

285

Migration Amendment Regulations 1998 (No. 8)²

I, WILLIAM PATRICK DEANE, 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 *25 AUGUST* 1998.

WILLIAM DEANE

Governor-General

By His Excellency's Command,

PHILIP RUDDOCK

Minister for Immigration and Multicultural Affairs

1. Name of regulations

1.1 These regulations are the *Migration Amendment Regulations 1998 (No. 8)*.

2. Commencement

2.1 These regulations commence on 1 November 1998.

3. Amendment

3.1 The Migration Regulations are amended as set out in these regulations.

4. Regulation 2.36 (Form and duration of assurance of support)

4.1 Subregulation 2.36 (1):

After paragraph 2.36 (1) (b), insert:

“; and (c) must include an undertaking to provide sufficient direct or indirect financial assistance to ensure that the applicant will not rely on any form of support mentioned in subregulation 2.38 (1).”.

5. New regulation 2.36A

5.1 After regulation 2.36, insert:

Who may give required assurances

“2.36A. (1) The Minister must not accept a required assurance unless:

- (a) the person giving the assurance:
 - (i) is employed, self-employed or is otherwise generating taxable income; and
 - (ii) shows to the Minister the notice of assessment issued by the Commissioner of Taxation in respect of the person’s income for each of the 2 financial years before the giving of the assurance; and
- (b) the person’s taxable income in each of those 2 financial years is at least equal to the amount that would be the person’s income free area under point 1069-H28 of the *Social Security Act 1991*.

“(2) This regulation applies only to an assurance that relates to a visa application made on or after 1 November 1998.”.

6. Regulation 2.39 (Bond (required assurances))

6.1 Paragraphs 2.39 (4) (a) and (b):

Omit the paragraphs, substitute:

- “(a) in relation to a visa application made before 1 November 1998:
- (i) unless subparagraph (ii) applies — \$3,500; or
 - (ii) if the application to which the assurance relates is dependent on the holding by, or grant to, another person of a visa of the same class as that sought in the application — \$1,500; and
- (b) in relation to a visa application made on or after 1 November 1998:
- (i) unless subparagraph (ii) applies — \$4,000; or
 - (ii) if the application to which the assurance relates is dependent on the holding by, or grant to, another person of a visa of the same class as that sought in the application — \$2,000.”.

7. Schedule 1 (Classes of visas)

7.1 Subitems 1107 (4), 1115 (4) and 1119 (4):

Omit “804 (Aged parent)”.

7.2 After item 1123, insert:

“1123A. Other Family (Migrant) (Class BO)

- (1) Form: 47.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$1,060
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of each applicant who was 18 years or more at time of application: \$5,000
 - (ii) In any other case: \$945
- (3) Other:
 - (a) Application must be made outside Australia.
 - (b) Applicant must be outside Australia.

- (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for an Other Family (Migrant) (Class BO) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses: 114 (Aged Dependent Relative).”.

7.3 Subitem 1124 (2):

Omit the subitem, substitute:

“(2) Visa application charge:

(a) First instalment (payable at the time application is made):

(i) In the case of each applicant who:

(A) is an aged parent; and

(B) has made a valid application for a Parent (Migrant) (Class AX) visa before 1 November 1998 in relation to which no primary decision to grant, or to refuse to grant, has been made:

Nil

(ii) In any other case:

\$1,060

(b) Second instalment (payable before grant of visa):

(i) In the case of each applicant who was 18 years or more at time of application:

\$5,000

(ii) In any other case:

\$945”.

7.4 After paragraph 1124 (3) (a), insert:

“(aa) Applicant must be outside Australia.”.

7.5 Subitem 1124 (4):

Omit “103 (Parent)”, substitute “113 (Aged Parent)”.

7.6 After item 1124, insert:

“1124A. Parent (Residence) (Class BP)

- (1) Form: 1083.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of each applicant who:
 - (A) is an aged parent; and
 - (B) has made a valid application for a Family (Residence) (Class AO) or General (Residence) (Class AS) visa before 1 November 1998 in relation to which no primary decision to grant, or to refuse to grant, has been made: Nil
 - (ii) In any other case: \$1,570
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of each applicant who held a Subclass 410 (Retirement) visa at time of application: Nil
 - (ii) In any other case:
 - (A) if the applicant was 18 years or more at time of application: \$5,000
 - (B) if the applicant was under 18 years at time of application: \$945
- (3) Other:
 - (a) Application must be made in Australia but not in immigration clearance.
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Parent (Residence) (Class BP) visa may be made at the same time and place as, and combined with, the application by that person.

- (d) Application must be accompanied by satisfactory evidence that:
- (i) the applicant is the aged parent of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
 - (ii) either:
 - (A) the applicant is the holder of a Subclass 410 (Retirement) visa; or
 - (B) the applicant has made a valid application for a Family (Residence) (Class AO) or General (Residence) (Class AS) visa before 1 November 1998 in relation to which no primary decision to grant, or to refuse to grant, has been made.

(4) Subclasses: 819 (Aged Parent).”.

7.7 Subitems 1301 (1), 1303 (1) and 1305 (1):
Omit “1066”, substitute “1066, 1083”.

8. Schedule 2, Part 103 (Parent)

8.1 Omit the Part.

9. Schedule 2, Part 104 (Preferential Family)

Note The Note following the heading to Division 104.1 should be altered by omitting “aged dependent relative”.

9.1 Paragraph 104.211 (2) (a):
Omit “an aged dependent relative, or a remaining relative”,
substitute “a remaining relative”.

9.2 Paragraphs 104.224 (b), 104.226 (1) (b) and 104.324 (b):
Omit “an aged dependent relative or”.

10. Schedule 2, new Parts 113 and 114

10.1 After Part 110, insert Parts 113 and 114 set out in Schedule 1.

11. Schedule 2, Part 804 (Aged Parent)

11.1 Omit the Part.

12. Schedule 2, Part 806 (Family)

Note The Note following the heading to Division 806.1 should be altered by omitting “‘aged dependent relative’”.

12.1 Paragraph 806.211 (d):
Omit “an aged dependent relative,”.

12.2 Clause 806.213:
Omit “an aged dependent relative,”.

13. Schedule 2, new Part 819

13.1 After Part 814, insert Part 819 set out in Schedule 2.

SCHEDULE 1

Regulation 10

**NEW PARTS 113 AND 114 FOR INSERTION IN
SCHEDULE 2**

SUBCLASS 113 — AGED PARENT

113.1 INTERPRETATION

Note *aged parent, close relative, dependent child, eligible New Zealand citizen, guardian, settled, spouse* and *working age parent* are defined in regulation 1.03, and *balance of family test* is defined in regulation 1.05. There are no interpretation provisions specific to this Part.

113.2 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.

113.21 Criteria to be satisfied at time of application

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

(2) The applicant meets the requirements of this subclause if the applicant:

- (a) is a working age parent; and
- (b) has a dependent child in Australia who:
 - (i) has not turned 18; and
 - (ii) is a settled Australian citizen, a settled Australian permanent resident, or a settled eligible New Zealand citizen.

SCHEDULE 1 — continued

(3) The applicant meets the requirements of this subclause if the applicant is an aged parent of a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.

113.212 (1) If the applicant meets the requirements of subclause 113.211 (2), the applicant is sponsored:

- (a) by a settled dependent child of the applicant who has turned 18; or
- (b) if the applicant has no settled dependent child who has turned 18:
 - (i) by a person who:
 - (A) is a close relative or guardian of a settled dependent child of the applicant who has not turned 18; and
 - (B) has turned 18; and
 - (C) is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or
 - (ii) by a community organisation.

(2) In this clause, *settled dependent child* means a dependent child of the applicant who is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.

113.213 (1) If the applicant meets the requirements of subclause 113.211 (3) the applicant is sponsored in accordance with subclause (2) or (3).

(2) If the relevant child has turned 18, the applicant is sponsored by:

- (a) that child; or
- (b) that child's cohabiting spouse, if that spouse:
 - (i) has turned 18; and
 - (ii) is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.

SCHEDULE 1 — continued

113.225 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

113.226 An assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

113.227 (1) Each member of the family unit of the applicant who is an applicant is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if the member has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

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

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

113.228 If:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of a Subclass 113 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

113.3 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.

113.31 Criteria to be satisfied at time of application

113.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 113.21.

SCHEDULE 1 — continued

113.312 The sponsorship referred to in clause 113.212 or 113.213 of the person who satisfies the primary criteria includes sponsorship of the applicant.

113.32 Criteria to be satisfied at time of decision

113.321 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 113 visa.

113.322 The sponsorship referred to in clause 113.312 has been approved by the Minister and is still in force.

113.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

113.324 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

113.325 Either:

- (a) the applicant is included in the assurance of support given in respect of the person who satisfies the primary criteria, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

113.326 If the applicant is a dependent child, 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.

113.4 CIRCUMSTANCES APPLICABLE TO GRANT

113.411 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.

113.5 WHEN VISA IS IN EFFECT

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

SCHEDULE 1 — continued

113.6 CONDITIONS

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

113.612 Either or both of conditions 8502 and 8515 may be imposed.

113.7 WAY OF GIVING EVIDENCE

113.711 Visa label affixed to a valid passport.

SCHEDULE 1 — continued

SUBCLASS 114 — AGED DEPENDENT RELATIVE

114.1 INTERPRETATION

Note *aged dependent relative*, *dependent child*, *eligible New Zealand citizen*, *settled*, and *spouse* are defined in regulation 1.03. There are no interpretation provisions specific to this Part.

114.2 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.

114.21 Criteria to be satisfied at time of application

114.211 The applicant is an aged dependent relative of a person who is:

- (a) an Australian citizen; or
- (b) an Australian permanent resident; or
- (c) an eligible New Zealand citizen.

114.212 (1) The applicant is sponsored:

- (a) if the Australian relative has turned 18 and is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen — by the Australian relative; or
- (b) by the spouse of the Australian relative, if the spouse:
 - (i) cohabits with the Australian relative; and
 - (ii) is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; and
 - (iii) has turned 18.

(2) In this clause, *the Australian relative* means the person mentioned in clause 114.211 of whom the applicant is an aged dependent relative.

114.22 Criteria to be satisfied at time of decision

114.221 The applicant continues to satisfy the criterion specified in clause 114.211.

SCHEDULE 1 — continued

114.222 The sponsorship referred to in clause 114.212 has been approved by the Minister and is still in force.

114.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

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

114.225 An assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

114.226 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 114 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if the member has previously been in Australia, satisfies special return criteria 5001 and 5002.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 114 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

114.227 If:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of a Subclass 114 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

114.3 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.

SCHEDULE 1 — continued

114.31 Criteria to be satisfied at time of application

114.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 114.21.

114.312 The sponsorship referred to in clause 114.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

114.32 Criteria to be satisfied at time of decision

114.321 The applicant continues to be a member of the family unit of a person who is the holder of a Subclass 114 visa.

114.322 The sponsorship referred to in clause 114.312 has been approved by the Minister and is still in force.

114.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

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

114.325 Either:

- (a) the applicant is included in the assurance of support given in respect of the person who satisfies the primary criteria, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

114.326 If the applicant is a dependent child, 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.

114.4 CIRCUMSTANCES APPLICABLE TO GRANT

114.411 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 1 — continued

114.5 WHEN VISA IS IN EFFECT

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

114.6 CONDITIONS

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

114.612 Either or both of conditions 8502 and 8515 may be imposed.

114.7 WAY OF GIVING EVIDENCE

114.711 Visa label affixed to a valid passport.

SCHEDULE 2

Regulation 13

NEW PART 819 FOR INSERTION IN SCHEDULE 2

SUBCLASS 819 — AGED PARENT

819.1 INTERPRETATION

Note *aged parent*, *dependent child* and *eligible New Zealand citizen* are defined in regulation 1.03, and *balance of family test* is defined in regulation 1.05. There are no interpretation provisions specific to this Part.

819.2 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.

819.21 Criteria to be satisfied at time of application

819.211 The applicant is nominated for the grant of the visa by a child of the applicant who:

- (a) has turned 18; and
- (b) is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.

819.212 If the applicant is the holder of a Subclass 410 (Retirement) visa, the applicant has been, for a period of 10 years, or for periods that total 10 years, the holder of a visa, or visas, of the following kinds:

- (a) a Subclass 410 visa;
- (b) a Transitional (Temporary) (Class UA) visa that:
 - (i) was granted on the basis of an application for a Class 410 (retirement) visa or entry permit under the Migration (1993) Regulations or a retirement (code number 410) visa or entry permit under the Migration (1989) Regulations; or
 - (ii) was taken to be held by a person on the basis of having held a visa or entry permit of a kind mentioned in subparagraph (i);

SCHEDULE 2 — continued

- (c) a Class 410 (retirement) visa under the Migration (1993) Regulations;
- (d) a retirement (code number 410) visa under the Migration (1989) Regulations.

819.22 Criteria to be satisfied at time of decision

819.221 The applicant is an aged parent of the Australian citizen, Australian permanent resident or eligible New Zealand citizen referred to in clause 819.211.

819.222 The applicant continues to satisfy the criterion in clause 819.211.

819.223 If the applicant has made a valid application for a Family (Residence) (Class AO) or General (Residence) (Class AS) visa before 1 November 1998 in relation to which no primary decision to grant, or to refuse to grant, has been made:

- (a) the applicant satisfies the balance of family test; and
- (b) an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

819.224 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

819.225 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 819 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 819 visa:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

819.226 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.

SCHEDULE 2 — continued**819.3 SECONDARY CRITERIA**

Note If a person satisfies the primary criteria, members of the family unit of that person are eligible for the grant of the visa if they satisfy the secondary criteria and their applications are made before the Minister has decided to grant or refuse to grant the visa to the first person.

819.31 Criteria to be satisfied at time of application

819.311 The applicant is:

- (a) the spouse of an applicant for a Subclass 819 visa who satisfies the criterion in subclause 819.212; or
- (b) a member of the family unit of an applicant for a Subclass 819 visa mentioned in clause 819.223;

and the Minister has not decided to grant or refuse to grant the visa to that other applicant.

819.32 Criteria to be satisfied at time of decision

819.321 The person referred to in clause 819.311 of whom the applicant is the spouse, or of whose family unit the applicant is a member, is the holder of a Subclass 819 visa, having satisfied the primary criteria.

819.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

819.323 If an assurance of support is required, either:

- (a) an assurance of support in relation to the relevant person who satisfies the primary criteria, that includes the applicant, has been given, and has been accepted by the Minister; or
- (b) an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

819.324 If the applicant is a dependent child, 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.

SCHEDULE 2 — continued

819.4 CIRCUMSTANCES APPLICABLE TO GRANT

819.411 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 (if any) must be paid before the visa can be granted.

819.5 WHEN VISA IS IN EFFECT

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

819.6 CONDITIONS: Nil.

819.7 WAY OF GIVING EVIDENCE

819.711 Visa label affixed to a passport.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on ^h 1998.
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 (regulations 7 and 8 were disallowed by the Senate on 11 September 1996), 76, 108, 121, 135, 198, 211 (regulations 4, 10, 11, 13.3, 14-37, 47-49, 51, 53-55, 74, 77.16, 77.19, 78, 85, 119 and 114 were disallowed by the Senate on 7 November 1996) and 276; 1997 Nos. 17, 64, 91, 92, 109, 137, 184, 185, 216, 263, 279, 288, 301 and 354; 1998 Nos. 36, 37, 104 (regulation 15 was disallowed by the Senate on 2 July 1998), 139, 210 and 214.

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