

Migration Amendment Regulations 1999 (No. 2) 1999 No. 58

EXPLANATORY STATEMENT

STATUTORY RULES 1999 NO. 58

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

Migration Act 1958

Migration Amendment Regulations 1999 (No. 2)

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, 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 travel 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 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, including but not limited to a condition restricting work rights;
- subsection 45(2) of the Act provides that the regulations may prescribe the way for as making applications for a visa of a specified class in specified circumstances, and in specified circumstances for a visa of a specified class;
- section 45B of the Act provides that the amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application;
- subsection 46(2) of the Act provides for prescribing a class of visas an application for which may be taken under the regulations to have been validly made; and
- subsection 71(1) of the Act provides for the regulations to prescribe the way in which evidence of a visa is to be given;

The purpose of the Regulations is to amend the *Migration Regulations 1994* to cater for the temporary entry of certain persons displaced from Kosovo since 25 March 1999. In particular, the Regulations will:

- establish the Temporary Safe Haven Class (Class UJ) and prescribe how a valid application for a Class W visa may be made (items 1 and 2);
- establish the Kosovar Safe Haven (Temporary) visa subclass (Subclass 448) within Class 1JJ, and prescribe criteria for the grant of such a visa (item 3);
- prescribe that a Kosovar Safe Haven (Temporary) visa is a temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister (item 3);
- prescribe mandatory and discretionary conditions attaching to a Kosovar Safe Haven (Temporary) visa (item 3); and

insert a new condition regarding medical examinations and x-rays into Schedule 8 to the Regulations (item 4). Details of the Regulations are set out in the AttachmentThe Regulations commence on gazettal -

ATTACHMENT

Regulation 1 - Name of regulations

This regulation provides that these regulations are the *Migration Amendment Regulations 1999* (NO. 2).

Regulation 2 - Commencement

This regulation provides that these regulations commence on gazettal.

Regulation 3 - Amendment of Migration Regulations 1294

This regulation provides that the *Migration Regulations 1994* are amended as set out in Schedule 1 to these regulations.

Schedule 1 - Amendments

Item 1 - After regulation 2.07AB

This item inserts new regulation 2.07AC. This regulation provides that an application for a Temporary Safe Haven (Class UJ) visa is taken to have been validly made in the following circumstances:

for an applicant outside Australia, an application is made by the person indicating acceptance of the Australian Government's offer of temporary stay in Australia, and that acceptance being endorsed by an authorised officer. A valid application is also taken to be made overseas by anyone who that person identifies as being a member of his or her family unit, and

an application is made by a person in Australia if the person entered Australia as the holder of a Temporary Safe Haven (Class UJ) visa and an authorised officer re-endorses, in writing, the person's original acceptance of the Australian *Government's* offer of temporary stay in Australia. A valid application is also made in Australia. by anyone who that person identifies as being a member of his or her family unit.

Item 2 - Schedule 1, Part 2, after item 1223A

This item inserts a new Class into Schedule 1 to the Regulations, to be known as the "Temporary Safe Haven (Class UJ)". This Class contains new Subclass 448 (Kosovar Safe Haven (Temporary)).

Item 3 - Schedule 2, after Part 446

This item inserts new Part 448 (Kosovar Safe Haven (Temporary)) into Schedule 2 to the Regulations.

There are no criteria to be satisfied at the time of application in relation to this Subclass.

For applicants applying overseas, the criteria to be met at time of decision are either:

- * the applicant was resident in Kosovo in the Federal Republic of Yugoslavia on 25 March 1999, and was displaced from there since 25 March 1999. Overseas members of the family unit of such persons are also eligible for the grant of the visa; or
- * the applicant is a member of the immediate family of a holder of a Subclass 448 visa ("the visa holder"), and was a member of the visa holder's immediate family when the visa holder was first granted a Subclass 448 visa (this is intended to, cover the possibility that further family

members overseas may be identified after the visa holder's arrival in Australia). Overseas members of the applicant's immediate family are also eligible for the grant of the visa

All applicants applying overseas must satisfy certain public interest criteria, and must undergo a medical examination.

Persons applying in Australia seeking to meet primary criteria must hold a Subclass 448 visa at time of decision and must meet certain public interest criteria. Members of the family unit of such persons are also eligible for the grant of the visa, subject to meeting the same public interest criteria.

The grant of a Subclass 448 visa is also subject to the requirement that any cap under section 39 of the Act has not been reached.

New Part 448 provides that a Subclass 448 visa is a temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister. It also provides that visas applied for by persons overseas are subject to the following mandatory conditions: 8101 (no work),- 8506 (holder must notify Immigration in advance of any change of address); and new condition 8529 (inserted by these Regulations and referred to below). For visas applied for by persons in Australia, conditions 8101 and 8506 are mandatory. Condition 8303 (holder must not engage in disruptive activities) may be imposed for any Subclass 448 visa.

Item 4 - Schedule-1 after item 8528

This item inserts a new condition into Schedule 8 to the Regulations. New condition 8529 requires the holder to undergo a medical examination and chest x-ray after arrival in Australia. Pregnant women and children under 16 years may be exempted from the requirement to undergo a chest X-ray.