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Migration Amendment Regulations 1999 (No. 5)

Statutory Rules 1999 No. 5

76

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 12 MAY 1999 1999.

WILLIAM DEANE
Governor-General

By His Excellency's Command,

PHILIP RUDDOCK
Minister for Immigration and Multicultural Affairs



Migration Amendment Regulations 1999 (No. 5)¹

Statutory Rules 1999 No. 5²

76

made under the

Migration Act 1958

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1999, 5

Migration Amendment Regulations 1999 (No. 5)

1

76 5

1 Name of regulations

These regulations are the *Migration Amendment Regulations 1999 (No. 2)*.

5

2 Commencement

These regulations commence on 1 July 1999.

3 Amendment of *Migration Regulations 1994*

Schedule 1 amends the *Migration Regulations 1994*.

4 Transitional

- (1) The amendments made by items [1309] to [1313] of Schedule 1 to these regulations apply in relation to an application for a Short Stay (Visitor) (Class TR) visa made on or after 1 July 1999.
- (2) The amendments made by items [1304] to [1308] of Schedule 1 to these regulations apply in relation to an application for a Temporary Business Entry (Class UC) visa made on or after 1 July 1999.

Schedule 1 Amendments

(regulation 3)

Part 1 Amendments of Parts 1, 2 and 5

[1101] Regulation 1.03, after definition of *designated APEC economy*

insert

designated language means a language that is specified by Gazette Notice as a designated language.

designated security means an investment in a security specified under regulation 2.26C.

[1102] Regulation 1.03, after definition of *Migration (1993) Regulations*

insert

migration occupation in demand means a skilled occupation that is specified by Gazette Notice as a migration occupation in demand.

[1103] Regulation 1.03, after definition of *relative*

insert

relevant assessing authority means a person or body specified under regulation 2.26B.

[1104] Regulation 1.03, after definition of *settled*

insert

skilled occupation means an occupation that is specified by Gazette Notice as a skilled occupation for which a number of points specified in the Notice are available.

[1105] Regulation 1.15B

substitute

1.15B Vocational English

- (1) In this regulation:
vocational English, for a person, has the meaning given in subregulation (3) or (5).
- (2) Subregulation (3) applies to a person if, on or after 1 July 1999, the person has applied for a visa a criterion for the grant of which is that the person has vocational English.
- (3) A person to whom this subregulation applies has *vocational English* if:
 - (a) the person satisfies the Minister that the person has achieved an IELTS test score of at least 5 for each of the 4 test components of speaking, reading, writing and listening in a test conducted:
 - (i) not more than 12 months before the day on which the application was lodged; or
 - (ii) during processing of the application; or
 - (b) the Minister:
 - (i) determines that it is not reasonably practicable, or not necessary, for the person to be tested using the IELTS test; and
 - (ii) is satisfied that the person is proficient in English to a standard that is not less than the standard required under paragraph (a).
- (4) Subregulation (5) applies to a person if, before 1 July 1999, the person has applied for a visa a criterion for the grant of which is that the person has vocational English.

-
- (5) A person to whom this subregulation applies has *vocational English* if the person satisfies the Minister that he or she is proficient in English to at least the standard required for the award of 15 points in the language skill factor of the general points test specified in Part 3 of Schedule 6.

[1106] Regulation 1.19

omit

Gazette Notice

insert

notice in the *Gazette*

[1107] Subregulation 2.07AB (1)

omit

made outside Australia

insert

made in Australia (except in immigration clearance), or outside Australia,

[1108] Paragraph 2.07AB (1) (g)

omit

sub-subparagraph 2.10 (1) (a) (iii) (B).

insert

sub-subparagraph 2.10 (1) (a) (iii) (B) or 2.10 (1) (b) (i) (B).

[1109] Regulations 2.08C and 2.08D

substitute

**2.08C Certain applicants taken to have applied also
for Employer Nomination (Migrant) (Class AN)
visas**

- (1) An applicant for an Independent (Migrant) (Class AT) visa, a Skilled-Independent (Migrant) (Class BN) visa or a Skill Matching (Migrant) (Class BR) visa, who has been nominated by an employer in respect of an appointment in the business of that employer, is taken also to have applied for an Employer Nomination (Migrant) (Class AN) visa on the day when Immigration receives the employer nomination, if each of the following requirements is satisfied as at that date:
- (a) the applicant was less than 45 years of age at the time of the application for the Class AT, BN or BR visa;
 - (b) a decision to grant, or refuse to grant, to the applicant a Subclass 126 (Independent), Subclass 134 (Skill Matching) or Subclass 136 (Skilled-Independent) visa has not been made;
 - (c) for an applicant for a Class AT or BN visa — the applicant:
 - (i) has been assessed in relation to a Subclass 126 (Independent) or Subclass 136 (Skilled-Independent) visa under Subdivision B of Division 3 of Part 2 of the Act; and
 - (ii) was given an assessed score that is more than or equal to the applicable pool mark at the time when the score was assessed;
 - (d) the appointment for which the applicant has been nominated is an approved appointment in accordance with subregulation 5.19 (4);
 - (e) the applicant:
 - (i) for a Class AT visa:
 - (A) has functional English; and

- (B) has a diploma (within the meaning of subregulation 2.26 (5)) or higher qualification; and
 - (ii) for a Class BN or BR visa:
 - (A) has vocational English; and
 - (B) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification.
- (2) If subregulation (1) applies to an applicant for a Class AT, BN or BR visa:
- (a) the applicant's application for an Employer Nomination (Migrant) (Class AN) visa is taken to have been made outside Australia, whether the employer nomination in relation to that application is received in or outside Australia; and
 - (b) any other person included in the applicant's application for a Class AT, BN or BR visa is taken also to be included in the applicant's application for an Employer Nomination (Migrant) (Class AN) visa.

2.08D Certain applicants for Independent (Migrant) (Class AT) or Skilled — Australian-linked (Migrant) (Class AJ) visas may make further application

- (1) This regulation applies to a person if:
- (a) the person applied for an Independent (Migrant) (Class AT) visa or a Skilled — Australian-linked (Migrant) (Class AJ) visa; and
 - (b) on or after 1 July 1999, the Minister made an assessment under subsection 93 (1) of the Act in relation to that application; and
 - (c) the Minister has refused to grant the visa, or the application was taken to be put into a pool under paragraph 94 (3) (b) of the Act; and

(d) the Minister is satisfied that, on the basis of information available to the Minister, if the person had applied for a Skilled – Independent (Migrant) (Class BN) or Skilled – Australian-sponsored (Migrant) (Class BQ) visa, it is likely that the application would have been granted.

(2) The Minister may invite the person to make an application (*a further application*) for a Skilled – Independent (Migrant) (Class BN) or Skilled – Australian-sponsored (Migrant) (Class BQ) visa.

Note Regulation 5.03 provides when an invitation is taken to be received.

(3) If the person is invited to make a further application, and wishes to make the application, the application must be made not later than 12 months after the day on which the invitation is received.

[1110] Subparagraph 2.10 (1) (b) (i)

substitute

- (i) if the application is for an Electronic Travel Authority (Class UD) visa — either:
 - (A) in immigration clearance; or
 - (B) at an office of an agent who is approved in writing by the Minister as an agent with whom an application for an Electronic Travel Authority (Class UD) visa may be made; or

[1111] Regulation 2.26, heading

substitute

2.26 Prescribed qualifications and number of points — Independent (Migrant) (Class AT) and Skilled — Australian-linked (Migrant) (Class AJ) visas

[1112] Before subregulation 2.26 (1)

insert

(1A) This regulation applies to an applicant for an Independent (Migrant) (Class AT) or a Skilled — Australian-linked (Migrant) (Class AJ) visa.

[1113] Subregulation 2.26 (2), note

omit

[1114] Paragraph 2.26 (3) (a)

omit

an applicant

insert

the applicant

[1115] Paragraph 2.26 (3) (c)

omit

an applicant

insert

the applicant

[1116] Paragraph 2.26 (3) (d)

omit each mention of

an applicant

insert

the applicant

[1117] Paragraph 2.26 (4) (a)

omit

an applicant

insert

the applicant

[1118] Paragraph 2.26 (4) (a)

omit

; and

insert

; or

[1119] Subregulation 2.26 (5), definition of *relevant Australian authority*, paragraph (a)

omit

on behalf of NOOSR

[1120] Paragraph 2.26 (6) (b)

substitute

- (b) a reference to a step-relationship is a reference to a step-relationship in which the applicant and the relevant step-relative of the applicant have been members of the same family unit for a reasonable period.

[1121] After regulation 2.26

insert

2.26A Prescribed qualifications and number of points — Skilled – Australian-sponsored (Migrant) (Class BQ) and Skilled – Independent (Migrant) (Class BN) visas

- (1) This regulation applies to an applicant for a Skilled – Australian-sponsored (Migrant) (Class BQ) or Skilled – Independent (Migrant) (Class BN) visa.
- (2) For subsection 93 (1) of the Act (which deals with determination of an applicant’s points score):
 - (a) each qualification specified in column 2 of an item in Part 1, 2, 3, 4, 5, 6, 7 or 8 of Schedule 6A is prescribed as a qualification in relation to the grant, to the applicant, of a Subclass 136 (Skilled – Independent) or Subclass 137 (Skilled – State/Territory-nominated Independent) visa; and
 - (b) each qualification specified in column 2 of an item in Part 1, 2, 3, 4, 5, 6, 7, 8 or 9 of Schedule 6A is prescribed as a qualification in relation to the grant, to the applicant, of a Subclass 138 (Skilled – Australian-sponsored) visa.
- (3) The number of points prescribed for a qualification specified in column 2 in an item in Schedule 6A is specified in column 3 in the item.

- (4) For subsection 93 (1) of the Act, the Minister:
- (a) must not give the applicant a prescribed number of points for more than 1 prescribed qualification in each Part of Schedule 6A; and
 - (b) must give the applicant only the number of points applicable to the prescribed qualification that meets the applicant's circumstances and for which the prescribed number of points is the highest for any such prescribed qualification.
- (5) The Minister may determine that the applicant is proficient in English to a level equivalent to that mentioned in an item in Part 3 of Schedule 6A, if the Minister determines that it is not reasonably practicable, or not necessary, for the applicant to be tested using the IELTS test.
- (6) In Part 6 of Schedule 6A:
- degree*** means a formal educational qualification awarded by an Australian educational institution as a degree or a postgraduate diploma for which:
- (a) the entry level to the course leading to the qualification is:
 - (i) in the case of a bachelor's degree — satisfactory completion of year 12 in the Australian school system or of equivalent schooling; and
 - (ii) in the case of a master's degree — satisfactory completion of a bachelor's degree awarded at an Australian tertiary educational institution or of an equivalent award; and
 - (iii) in the case of a doctoral degree — satisfactory completion of a bachelor's degree awarded with honours, or a master's degree, at an Australian tertiary educational institution or of an equivalent award; and

- (iv) in the case of a postgraduate diploma — satisfactory completion of a bachelor's degree or diploma awarded at an Australian tertiary educational institution or of an equivalent award; and
- (b) in the case of a bachelor's degree, not less than 3 years of full-time study, or the equivalent period of part-time study, is required.

diploma means:

- (a) an associate diploma, or a diploma, within the meaning of the Register of Australian Tertiary Education (as current when this definition commences), that is awarded by a body authorised to award diplomas of those kinds; or
- (b) a diploma, or an advanced diploma, under the Australian Qualifications Framework, that is awarded by a body authorised to award diplomas of those kinds.

trade qualification means:

- (a) an Australian trade qualification obtained as a result of the completion of:
 - (i) an indentured apprenticeship; or
 - (ii) a training contract;
that is required by State or Territory industrial training legislation or a relevant Federal, State or Territory industrial award and involves:
 - (iii) part-time formal training at a technical college or a college of technical and further education; and
 - (iv) employment within the meaning of:
 - (A) an industrial award under a law of the Commonwealth or of a State or Territory; or
 - (B) a law of a State or Territory dealing with commercial or industrial training; or

- (b) a qualification, under the Australian Qualifications Framework, of at least the Certificate III level for a skilled occupation in Major Group IV in the Australian Standard Classification of Occupations that is:
 - (i) published by AusInfo; and
 - (ii) current when this definition commences.
- (7) In Parts 4, 5 and 8 of Schedule 6A:
employed means engaged in an occupation for remuneration for at least 20 hours weekly.
- (8) In Part 9 of Schedule 6A:
 - (a) a reference to adoption is a reference to an adoption occurring before the adopted person turned 18; and
 - (b) a reference to a step-relationship is a reference to a step-relationship in which the applicant and the relevant step-relative of the applicant have been members of the same family unit for a reasonable period.

2.26B Relevant assessing authorities

The Minister may, by notice in the *Gazette*, specify a person or body as the relevant assessing authority for a skilled occupation if the person or body is approved in writing by the Minister or NOOSR as the relevant assessing authority for the occupation.

2.26C Designated securities

- (1) The Minister may, by notice in the *Gazette*, specify a security issued by an Australian State or Territory government authority as a security in which an investment is a designated security for the purposes of Part 8 of Schedule 6A.
- (2) The Minister must not specify a security unless:
 - (a) an investment in the security matures in not less than 1 year from its date of issue; and

- (b) repayment of principal is guaranteed by the issuing authority; and
- (c) an investment in the security cannot be transferred or redeemed before maturity except by operation of law or under other conditions acceptable to the Minister; and
- (d) investment in the security is open to the general public at commercially competitive rates of return; and
- (e) the Minister is satisfied that the Commonwealth will not be exposed to any liability as a result of an investment in the security by a person.

[1122] Regulation 2.27, heading

substitute

**2.27 Combination of scores — points system:
 applicants for Skilled — Australian-linked
 (Migrant) (Class AJ) visas**

[1123] After regulation 2.27

insert

**2.27A Combination of scores — points system:
 applicants for Skilled — Australian-sponsored
 (Class BQ) visas**

- (1) This regulation applies if:
 - (a) an applicant for a Skilled — Australian-sponsored (Class BQ) visa (*the primary applicant*) does not receive the pass or pool mark under regulation 2.26A; and
 - (b) the spouse of the primary applicant is also an applicant for a visa of that class.

- (2) The primary applicant is taken to have received the pass or pool mark if the sum of the following points equals or exceeds the pass or pool mark:
- (a) the points that the spouse could receive under Parts 1, 2, 3, 4, 5, 6, 7 and 8 of Schedule 6A;
 - (b) the points that the primary applicant receives under Part 9 of Schedule 6A.

Note Pool marks and pass marks are set from time to time by the Minister by notice in the *Gazette* (Act, s 96).

2.27B Skills assessment for skilled occupations

- (1) This regulation applies to a person if:
- (a) the person's skills for a skilled occupation have been assessed by a relevant assessing authority; and
 - (b) the authority has certified that those skills are suitable for the occupation; and
 - (c) the person is an applicant for a Skilled – Australian-sponsored (Migrant) (Class BQ) or Skilled – Independent (Migrant) (Class BN) visa; and
 - (d) the Minister is satisfied, on the basis of the person's educational qualifications and work history, that:
 - (i) the applicant has qualifications or experience in a skilled occupation that has not been nominated in the visa application; and
 - (ii) the occupation is a skilled occupation for which persons are required to be licensed or registered under a law of the Commonwealth, or of a State or Territory, to engage in the occupation; and
 - (iii) it would be appropriate for the applicant to be assessed by the relevant assessing authority for that skilled occupation.

-
- (2) The Minister may invite the person in writing to have his or her skills for a skilled occupation that is mentioned in subparagraph (1) (d) (ii) assessed by the relevant assessing authority for the occupation.
 - (3) If, under subregulation (2), the Minister invites the person to have his or her skills assessed for a skilled occupation, that occupation is taken to be the skilled occupation nominated by the person in his or her visa application.
 - (4) If the person gives an assessment of the person's skills to the Minister in response to the Minister's invitation, that assessment is taken to be an assessment accompanying the visa application made by the person.

[1124] Paragraph 2.43 (1) (k)

omit

purposes.

insert

purposes;

[1125] After paragraph 2.43 (1) (k)

insert

- (1) in the case of the holder of a Subclass 457 (Business (Long Stay)) visa who was granted the visa on the basis of being employed in Australia by a business sponsor — that the visa holder's current business sponsor:
 - (i) has not complied, or is not complying, with the undertaking given by the business sponsor in accordance with approved form 1067; or

- (ii) gave incorrect information to Immigration in relation to:
 - (A) the application (if any) under regulation 1.20C for approval as a business sponsor; or
 - (B) any other matter relating to the business sponsor.

[1126] After subregulation 2.43 (2)

insert

- (3) In subregulation (1):
 - business sponsor*** means:
 - (a) a person approved as a pre-qualified business sponsor, or a standard business sponsor, in accordance with regulation 1.20D (whether or not the approval has ceased to have effect); or
 - (b) a person (except a person mentioned in paragraph (a)) who has given an undertaking in accordance with approved form 1067.

[1127] After regulation 5.41

insert

5.42 Skill matching fee

- (1) A skill matching fee of \$150 is payable for the purposes of an application for a Skill Matching (Migrant) (Class BR) visa.
- (2) The fee must be paid at the time the application is made.

Part 2 Amendments of Schedule 1

[1201] Subparagraph 1114 (2) (b) (ii)

after

each applicant

insert

(including a person taken by paragraph 2.08C (2) (b) to be included in an application)

[1202] Subparagraph 1114 (2) (b) (iv)

substitute

- (iv) In the case of a Skill Matching (Migrant) (Class BR) visa applicant who is taken, under regulation 2.08C, to have applied for an Employer Nomination (Migrant) (Class AN) visa: \$1,060.
- (v) In any other case: Nil.

[1203] After paragraph 1120 (3) (b)

insert

- (c) Application must be made before 1 July 1999.

[1204] After item 1128

insert

1128AA. Skill Matching (Migrant) (Class BR)

- (1) Form: 47SK.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): Nil.

- (b) Second instalment (payable before grant of visa):
 - (i) \$1,060; and
 - (ii) For each applicant whose age was 18 years or more at the time of application and is assessed as not having functional English: \$2,240.

(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 Skill Matching (Migrant) (Class BR) visa may be made at the same time and place as, and combined with, the application by that person.
- (c) Application must be accompanied by satisfactory evidence that a relevant assessing authority has assessed the skills of the applicant for his or her nominated skilled occupation.
- (d) Application must be accompanied by satisfactory evidence that the applicant has provided the personal and occupational information required for inclusion in Immigration's skill matching database.

Note For the skill matching fee payable, see regulation 5.42.

(4) Subclasses:

134 (Skill Matching)

[1205] Subitem 1128A (2), note

omit

[1206] After paragraph 1128A (3) (b)

insert

- (c) Application must be made before 1 July 1999.

[1207] After item 1128A

insert

**1128B. Skilled – Australian-sponsored (Migrant)
(Class BQ)**

- (1) Form: 47SK.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant who is taken under regulation 2.08D to have applied for a Skilled – Australian-sponsored (Migrant) (Class BQ) visa: Nil.
 - (ii) In any other case: \$1,060.
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of each applicant whose age was 18 years or more at the time of application and who is assessed as not having functional English: \$2,240.
 - (ii) In any other case: 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 Skilled – Australian-sponsored (Migrant) (Class BQ) visa may be made at the same time and place as, and combined with, the application by that person.
 - (c) Application must be accompanied by satisfactory evidence that a relevant assessing authority has assessed the skills of the applicant, or of the applicant's spouse, for his or her nominated skilled occupation.
- (4) Subclasses:
 - 138 (Skilled – Australian-sponsored)
 - 139 (Skilled – Regional-sponsored)

1128C. Skilled – Independent (Migrant) (Class BN)

- (1) Form: 47SK.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant who is taken under regulation 2.08D to have applied for a Skilled – Independent (Migrant) (Class BN) visa: Nil.
 - (ii) In any other case: \$1,060.
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of each applicant whose age was 18 years or more at the time of application and who is assessed as not having functional English: \$2,240.
 - (ii) In any other case: 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 Skilled – Independent (Migrant) (Class BN) visa may be made at the same time and place as, and combined with, the application by that person.
 - (c) Application must be accompanied by satisfactory evidence that a relevant assessing authority has assessed the skills of the applicant for his or her nominated skilled occupation.
- (4) Subclasses:
 - 136 (Skilled – Independent)
 - 137 (Skilled – State/Territory-nominated Independent)

[1208] Paragraph 1208A (3) (a)

substitute

- (a) Application may be made in or outside Australia.

[1209] Paragraph 1208A (3) (ba)

substitute

- (ba) If the application is made in Australia (except in immigration clearance), or outside Australia, applicant must be outside Australia.

[1210] Paragraph 1218 (1) (a)

substitute

- (a) If the applicant is outside Australia:
- (i) if the applicant is a citizen of PRC and is intending to travel to Australia as a member of a tour organised by a travel agent specified in a Gazette Notice for the purpose of paragraph 676.212A (b) of Schedule 2: 48G.
 - (ii) in any other case (whether or not the application is made outside Australia): 48 or 48R.

[1211] After paragraph 1218 (3) (b)

insert

- (ba) Despite paragraphs (a) and (b), an applicant mentioned in subparagraph (1) (a) (i) must:
- (i) be in PRC; and
 - (ii) make the application at a diplomatic or consular office maintained by, or on behalf of, the Commonwealth in PRC.

Part 3 Amendments of Schedule 2

[1301] Sub-subparagraphs 121.211 (3) (c) (i) (A), (B) and (C)

substitute

- (A) had not turned 45 at the time of the application for an Independent (Migrant) (Class AT) visa, a Skilled-Independent (Migrant) (Class BN) visa or a Skill Matching (Migrant) (Class BR) visa; and
- (B) for a Class AT visa:
 - (I) has functional English; and
 - (II) has a diploma (within the meaning of subregulation 2.26 (5)), or higher qualification, that is, unless the appointment is exceptional, relevant to the appointment; and
- (C) for a Class BN or BR visa:
 - (I) has vocational English; and
 - (II) has a diploma (within the meaning of subregulation 2.26A (6)), or higher qualification, that is, unless the appointment is exceptional, relevant to the appointment; or

[1302] After Part 131

insert

Subclass 134 Skill Matching

134.1 Interpretation

134.111 In this Part:

completed includes having met the requirements for award of a degree, diploma or trade qualification.

degree and *diploma* have the meanings given in subregulation 2.26A (6).

employed has the meaning given in subregulation 2.26A (7).

trade qualification has the meaning given in subregulation 2.26A (6).

Note 1 For *relevant assessing authority* and *skilled occupation*, see regulation 1.03.

Note 2 For *vocational English*, see regulation 1.15B.

134.2 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.

134.21 Criteria to be satisfied at time of application

134.211 The applicant is less than 45 years of age.

134.212 The applicant has vocational English.

134.213 The applicant has nominated a skilled occupation in his or her application.

134.214 The skills of the applicant for the nominated skilled occupation have been assessed by the relevant assessing authority as suitable for that occupation.

134.215 (1) Subject to subclause (2), the applicant has been employed in a skilled occupation for a period of, or for periods totalling, at least 6 months in the period of 12 months immediately before the day on which the application was made.

(2) Subclause (1) does not apply to an applicant who has, in the 6 months immediately before the day on which the application was made, completed a degree, diploma or trade qualification for award by an Australian educational institution as a result of at least 1 year of full-time study in Australia.

134.216 The applicant has provided the personal and occupational information required for inclusion in Immigration's skill matching database.

134.22 Criteria to be satisfied at time of decision

134.221 No evidence has become available since the time of application that the information given or used as part of the assessment mentioned in paragraph 1128AA (3) (c) of Schedule 1 is false or misleading in a material particular.

134.222 (1) The applicant has been nominated by a State or Territory government agency and the nomination has been accepted by the Minister within 2 years after it was established that the applicant satisfies the primary criteria in Subdivision 134.21.

(2) A nomination made under subclause (1) must be:

- (a) made on Form 1100; and
- (b) lodged at an office of Immigration in the relevant State or Territory.

- (3) The Minister must not accept a nomination if its acceptance would result in the number of Subclass 134 visa nominations made in a financial year, for a State or Territory, exceeding the maximum number of Subclass 134 visa nominations, as determined by Gazette Notice, that may be accepted, for that State or Territory, in that financial year.
- 134.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 134.224 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 134.225 If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.
- 134.226 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 134 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she 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 for a Subclass 134 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.
- 134.227 If either:
- (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 134 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.

134.228 Approval of the application would not result in either:

- (a) the number of Subclass 134 visas granted in a financial year exceeding the maximum number of Subclass 134 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 134) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in a financial year.

134.3 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.

134.31 Criteria to be satisfied at time of application

134.311 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 134.21.

134.32 Criteria to be satisfied at time of decision

134.321 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 134 visa.

-
- 134.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 134.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 134.324 Either:
- (a) the applicant is included in any 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.
- 134.325 If the applicant is the dependent child of a person who is a holder of a Subclass 134 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.

134.4 Circumstances applicable to grant

- 134.411 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.

134.5 When visa is in effect

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

134.6 Conditions

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

134.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.

134.7 Way of giving evidence

134.711 Visa label affixed to a valid passport.

[1303] After Part 135

insert

Subclass 136 Skilled – Independent

136.1 Interpretation

136.111 In this Part:

completed includes having met the requirements for award of a degree, diploma or trade qualification.

degree and *diploma* have the meanings given in subregulation 2.26A (6).

employed has the meaning given in subregulation 2.26A (7).

trade qualification has the meaning given in subregulation 2.26A (6).

Note 1 For *relevant assessing authority* and *skilled occupation*, see regulation 1.03.

Note 2 For *vocational English*, see regulation 1.15B.

136.2 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.

136.21 Criteria to be satisfied at time of application

136.211 The applicant is less than 45 years of age.

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- 136.212 The applicant has nominated a skilled occupation in his or her application.
- 136.213 (1) Subject to subclause (2), the applicant has been employed in a skilled occupation:
- (a) if 60 points are specified by Gazette Notice as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 12 months in the period of 18 months immediately before the day on which the application was made; or
 - (b) if 40 or 50 points are specified by Gazette Notice as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 24 months in the period of 36 months immediately before the day on which the application was made.
- (2) Subclause (1) does not apply to an applicant who has, in the 6 months immediately before the day on which the application was made, completed a degree, diploma or trade qualification for award by an Australian educational institution as a result of at least 1 year of full-time study in Australia.

136.22 Criteria to be satisfied at time of decision

- 136.221 If regulation 2.27B applies, the applicant provides, for the purposes of the application, the assessment of his or her skills mentioned in subregulation 2.27B (4).
- 136.222 The skills of the applicant for the nominated skilled occupation have been assessed by the relevant assessing authority as suitable for that occupation.

- 136.223 The applicant has the qualifying score when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.
- Note* That Subdivision of the Act provides in ss 92 to 96 for the application of a *points system*, under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are provided for in Division 2.2 (see regulation 2.26A), and Schedule 6A, of these regulations. Pool marks and pass marks are set from time to time by the Minister by notice in the *Gazette* (Act, s 96).
- 136.224 The applicant has vocational English.
- 136.225 No evidence has become available since the time of application that the information given or used as part of the assessment mentioned in paragraph 1128C (3) (c) of Schedule 1 is false or misleading in a material particular.
- 136.226 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 136.227 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 136.228 If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.
- 136.229 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 136 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she 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 for a Subclass 136 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.

136.230 If either:

- (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 136 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.

136.231 Approval of the application would not result in either:

- (a) the number of Subclass 136 visas granted in a financial year exceeding the maximum number of Subclass 136 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 136) 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.

136.3 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.

136.31 Criteria to be satisfied at time of application

136.311 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 136.21.

136.32 Criteria to be satisfied at time of decision

136.321 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 136 visa.

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

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

136.324 Either:

- (a) the applicant is included in any 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.

136.325 If the applicant is the dependent child of a person who is the holder of a Subclass 136 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.

136.4 Circumstances applicable to grant

136.411 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.

136.5 When visa is in effect

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

136.6 Conditions

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

136.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.

136.7 Way of giving evidence

136.711 Visa label affixed to a valid passport.

Subclass 137 Skilled – State/Territory- nominated Independent

137.1 Interpretation

137.111 In this Part:

completed includes having met the requirements for award of a degree, diploma or trade qualification.

degree and *diploma* have the meanings given in subregulation 2.26A (6).

employed has the meaning given in subregulation 2.26A (7).

trade qualification has the meaning given in subregulation 2.26A (6).

Note 1 For *relevant assessing authority* and *skilled occupation*, see regulation 1.03.

Note 2 For *vocational English*, see regulation 1.15B.

137.2 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.

137.21 Criteria to be satisfied at time of application

- 137.211 The applicant is less than 45 years of age.
- 137.212 The applicant has nominated a skilled occupation in his or her application.
- 137.213 The skills of the applicant for the nominated skilled occupation have been assessed by the relevant assessing authority as suitable for that occupation.
- 137.214 (1) Subject to subclause (2), the applicant has been employed in a skilled occupation:
- (a) if 60 points are specified by Gazette Notice as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 12 months in the period of 18 months immediately before the day on which the application was made; or
 - (b) if 40 or 50 points are specified by Gazette Notice as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 24 months in the period of 36 months immediately before the day on which the application was made.

(2) Subclause (1) does not apply to an applicant who has, in the 6 months immediately before the day on which the application was made, completed a degree, diploma or trade qualification for award by an Australian educational institution as a result of at least 1 year of full-time study in Australia.

137.22 Criteria to be satisfied at time of decision

137.221 The applicant has a score that is equal to, or more than, the pool mark when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

Note That Subdivision of the Act provides in ss 92 to 96 for the application of a *points system*, under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are provided for in Division 2.2 of Part 2 (see regulation 2.26A), and Schedule 6A, of these regulations. Pool marks and pass marks are set from time to time by the Minister by notice in the *Gazette* (Act, s 96).

137.222 The applicant has vocational English.

137.223 No evidence has become available since the time of application that the information given or used as part of the assessment mentioned in paragraph 1128C (3) (c) of Schedule 1 is false or misleading in a material particular.

137.224 (1) The applicant has been nominated by a State or Territory government agency and the nomination has been accepted by the Minister.

(2) A nomination made under subclause (1) must be:

- (a) made on Form 1100; and
- (b) lodged at an office of Immigration in the relevant State or Territory.

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- (3) The Minister must not accept a nomination if its acceptance would result in the number of Subclass 137 visa nominations made in a financial year, for a State or Territory, exceeding the maximum number of Subclass 137 visa nominations, as determined by Gazette Notice, that may be accepted, for that State or Territory, in that financial year.
- 137.225 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 137.226 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 137.227 If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.
- 137.228 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 137 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she 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 for a Subclass 137 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.
- 137.229 If either:
- (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 137 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.

137.230 Approval of the application would not result in either:

- (a) the number of Subclass 137 visas granted in a financial year exceeding the maximum number of Subclass 137 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 137) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in a financial year.

137.3 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.

137.31 Criteria to be satisfied at time of application

137.311 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 137.21.

137.32 Criteria to be satisfied at time of decision

137.321 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 137 visa.

- 137.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 137.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 137.324 Either:
- (a) the applicant is included in any 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.
- 137.325 If the applicant is the dependent child of a person who is a holder of a Subclass 137 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.

137.4 Circumstances applicable to grant

- 137.411 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.

137.5 When visa is in effect

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

137.6 Conditions

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

137.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.

137.7 Way of giving evidence

137.711 Visa label affixed to a valid passport.

Subclass 138 Skilled – Australian-sponsored

138.1 Interpretation

138.111 In this Part:

completed includes having met the requirements for award of a degree, diploma or trade qualification.

degree and *diploma* have the meanings given in subregulation 2.26A (6).

employed has the meaning given in subregulation 2.26A (7).

trade qualification has the meaning given in subregulation 2.26A (6).

Note 1 For *relevant assessing authority* and *skilled occupation*, see regulation 1.03.

Note 2 For *vocational English*, see regulation 1.15B.

138.2 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.

138.21 Criteria to be satisfied at time of application

- 138.211 The applicant has one of the following relationships to a person (*the sponsor*) who has turned 18 and is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen:
- (a) a parent;
 - (b) a child or adoptive child, or a step-child, who is not a dependent child of the sponsor;
 - (c) a brother or sister, an adoptive brother or sister or a step-brother or step-sister;
 - (d) a nephew or niece, an adoptive nephew or niece or a step-nephew or step-niece.
- 138.212 The applicant is sponsored by the sponsor.
- 138.213 An assurance of support in relation to the applicant has been given, and has been accepted by the Minister.
- 138.214 The applicant is less than 45 years of age.
- 138.215 The applicant has nominated a skilled occupation in his or her application.
- 138.216 (1) Subject to subclause (2), the applicant has been employed in a skilled occupation:
- (a) if 60 points are specified by Gazette Notice as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 12 months in the period of 18 months immediately before the day on which the application was made; or
 - (b) if 40 or 50 points are specified by Gazette Notice as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 24 months in the period of 36 months immediately before the day on which the application was made.

(2) Subclause (1) does not apply to an applicant who has, in the 6 months immediately before the day on which the application was made, completed a degree, diploma or trade qualification for award by an Australian educational institution as a result of at least 1 year of full-time study in Australia.

138.22 Criteria to be satisfied at time of decision

- 138.221 The sponsorship referred to in clause 138.212 has been approved by the Minister and is still in force.
- 138.222 The assurance of support referred to in clause 138.213 continues to be acceptable to the Minister.
- 138.223 If regulation 2.27B applies, the applicant provides, for the purposes of the application, the assessment of his or her skills mentioned in subregulation 2.27B (4).
- 138.224 The skills of the applicant for the nominated skilled occupation have been assessed by the relevant assessing authority as suitable for that occupation.
- 138.225 The applicant has the qualifying score when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

Note That Subdivision of the Act provides in ss 92 to 96 for the application of a *points system*, under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are provided for in Division 2.2 (regulation 2.26A), and Schedule 6A, of these regulations. In certain circumstances, attributes of the spouse of an applicant may be taken into account (regulation 2.27A). Pool marks and pass marks are set from time to time by the Minister by notice in the *Gazette* (Act, s 96).

- 138.226 The applicant has vocational English.
- 138.227 No evidence has become available since the time of application that the information given or used as part of the assessment mentioned in paragraph 1128B (3) (c) of Schedule 1 is false or misleading in a material particular.

- 138.228 If the applicant satisfies the criterion specified in clause 138.225 because of regulation 2.27A, the applicant's spouse satisfies criteria of the kind mentioned in clauses 138.214, 138.215, 138.216, 138.223, 138.224, 138.226 and 138.227.
- 138.229 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 138.230 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 138.231 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 138 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she 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 for a Subclass 138 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.
- 138.232 If either:
- (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 138 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.

138.233 Approval of the application would not result in either:

- (a) the number of Subclass 138 visas granted in a financial year exceeding the maximum number of Subclass 138 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 138) 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.

138.3 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.

138.31 Criteria to be satisfied at time of application

138.311 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 138.21.

138.312 The sponsorship referred to in clause 138.212 in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.

- 138.313 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.

138.32 Criteria to be satisfied at time of decision

- 138.321 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 138 visa.
- 138.322 The sponsorship referred to in clause 138.312 has been approved by the Minister and is still in force.
- 138.323 The assurance of support referred to in clause 138.313 continues to be acceptable to the Minister.
- 138.324 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 138.325 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 138.326 If the applicant is the dependent child of a person who is the holder of a Subclass 138 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.

138.4 Circumstances applicable to grant

- 138.411 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.

138.5 When visa is in effect

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

138.6 Conditions

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

138.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.

138.7 Way of giving evidence

138.711 Visa label affixed to a valid passport.

Subclass 139 Skilled – Regional-sponsored

139.1 Interpretation

139.111 In this Part:

completed includes having met the requirements for award of a degree, diploma or trade qualification.

degree has the meaning given in subregulation 2.26A (6).

designated area means an area specified by Gazette Notice under item 6701 in Schedule 6 as a designated area.

diploma has the meaning given in subregulation 2.26A (6).

employed has the meaning given in subregulation 2.26A (7).

trade qualification has the meaning given in subregulation 2.26A (6).

Note 1 For *relevant assessing authority* and *skilled occupation*, see regulation 1.03.

Note 2 For *vocational English*, see regulation 1.15B.

139.2 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.

139.21 Criteria to be satisfied at time of application

139.211 The applicant has one of the following relationships to a person (*the sponsor*) who has turned 18 and is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen:

- (a) a parent;
- (b) a child or adoptive child, or a step-child, who is not a dependent child of the sponsor;
- (c) a brother or sister, an adoptive brother or sister or a step-brother or step-sister;
- (d) a nephew or niece, an adoptive nephew or niece or a step-nephew or step-niece;
- (e) a grandchild or first cousin.

139.212 The applicant is sponsored by the sponsor.

139.213 The sponsor:

- (a) is resident in a designated area; and
- (b) was resident in one or other of the designated areas throughout the period of 12 months immediately before Immigration receives the relevant sponsorship (except for short absences for the purposes of business or recreation).

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

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- 139.215 The applicant is less than 45 years of age.
- 139.216 The applicant has nominated a skilled occupation in his or her application.
- 139.217 (1) Subject to subclause (2), the applicant has been employed in a skilled occupation:
- (a) if 60 points are specified by Gazette Notice as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 6 months in the period of 12 months immediately before the day on which the application was made; or
 - (b) if 40 or 50 points are specified by Gazette Notice as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 12 months in the period of 18 months immediately before the day on which the application was made.
- (2) Subclause (1) does not apply to an applicant who has, in the 6 months immediately before the day on which the application was made, completed a degree, diploma or trade qualification for award by an Australian educational institution as a result of at least 1 year of full-time study in Australia.
- 139.218 Despite clauses 139.215, 139.216 and 139.217, the applicant satisfies the criteria in each of those clauses if the applicant's spouse is an applicant for a Subclass 139 visa who satisfies each of those criteria.

139.22 Criteria to be satisfied at time of decision

- 139.221 The sponsorship referred to in clause 139.212 has been approved by the Minister and is still in force.
- 139.222 The sponsor is still resident in a designated area.
- 139.223 The assurance of support referred to in clause 139.214 continues to be acceptable to the Minister.

- 139.224 If regulation 2.27B applies, the applicant provides, for the purposes of the application, the assessment of his or her skills mentioned in subregulation 2.27B (4).
- 139.225 The skills of the applicant for the nominated skilled occupation have been assessed by the relevant assessing authority as suitable for that occupation.
- 139.226 Either the applicant has vocational English, or:
- (a) he or she has proficiency in English of at least the standard required for the award of 10 points for the language skill factor of the general points test specified in item 6311 of Schedule 6; and
 - (b) his or her sponsor lives in a State or Territory specified by Gazette Notice as a State or Territory in which arrangements are established for suitable English-language training for applicants to whom this subclause applies; and
 - (c) the Minister is satisfied that he or she has paid any fee or charge for that training.
- 139.227 No evidence has become available since the time of application that the information given or used as part of the assessment mentioned in paragraph 1128B (3) (c) of Schedule 1 is false or misleading in a material particular.
- 139.228 Despite clauses 139.224, 139.225, 139.226 and 139.227, the applicant satisfies the criteria in each of those clauses if:
- (a) the applicant satisfied the criteria in clause 139.218 at the time of application; and
 - (b) the applicant's spouse continues to satisfy the criteria in each of clauses 139.215, 139.216 and 139.217; and
 - (c) the applicant's spouse satisfies the criteria in each of clauses 139.224, 139.225, 139.226 and 139.227.
- 139.229 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

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- 139.230 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 139.231 Each member of the family unit of the applicant who is an applicant for a Subclass 139 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- 139.232 Each member of the family unit of the applicant who is not an applicant for a Subclass 139 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.
- 139.233 If either:
- (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 139 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.

- 139.234 Approval of the application would not result in either:
- (a) the number of Subclass 139 visas granted in a financial year exceeding the maximum number of Subclass 139 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 139) 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.

139.3 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.

139.31 Criteria to be satisfied at time of application

- 139.311 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 139.21.
- 139.312 The sponsorship referred to in clause 139.212 in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.
- 139.313 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.

139.32 Criteria to be satisfied at time of decision

- 139.321 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 139 visa.
- 139.322 The sponsorship referred to in clause 139.312 has been approved by the Minister and is still in force.
- 139.323 The assurance of support referred to in clause 139.313 continues to be acceptable to the Minister.
- 139.324 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 139.325 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 139.326 If the applicant is the dependent child of a person who is a holder of a Subclass 139 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.

139.4 Circumstances applicable to grant

- 139.411 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.

139.5 When visa is in effect

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

139.6 Conditions

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

139.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.

139.7 Way of giving evidence

139.711 Visa label affixed to a valid passport.

[1304] Clause 457.211

omit

If the application is made in Australia:

insert

If the applicant is in Australia:

[1305] After clause 457.211

insert

- 457.212 (1) If the applicant is the holder of a Student (Temporary) (Class TU) visa:
- (a) the applicant has successfully completed a course in Australia at Associate Diploma level or above; and
 - (b) if the applicant is a private subsidised student — the Minister is satisfied that it would not be detrimental to Australia's policies in respect of overseas students to grant the visa.
- (2) Subclause (1) does not apply to an applicant who meets the requirements of subclause 457.223 (3).

[1306] Clause 457.222

omit

[1307] After paragraph 457.223 (5) (e)

insert

- (ea) where the application is made for a stay in Australia for 12 months or less, the applicant demonstrates (if so required by the Minister) that he or she has the skills necessary to perform the activity; and

[1308] After clause 457.327

insert

457.328 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.

[1309] After clause 676.212

insert

- 676.212A If the application is made by a citizen of PRC mentioned in subparagraph 1218 (1) (a) (i) of Schedule 1:
- (a) the applicant is a resident of an area in PRC specified in a Gazette Notice for the purpose of this paragraph; and
 - (b) the travel agent organising the applicant's tour to Australia is specified in a Gazette Notice for the purpose of this paragraph; and
 - (c) the applicant provides a written statement of the details of the tour arrangements with his or her application.

[1310] Subclause 676.221 (1)

substitute

- 676.221 (1) The applicant:
- (a) in the case of an applicant mentioned in clause 676.212A — meets the requirements of subclause (5); and
 - (b) in any other case — meets the requirements of subclause (2), (3) or (4).

[1311] After subclause 676.221 (4)

insert

- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant continues to satisfy the criteria in clauses 676.211, 676.212 and 676.212A; and
 - (b) the tour arrangements provided with the applicant's application are approved, in writing, by the Minister; and
 - (c) the applicant satisfies the Minister that the expressed intention of the applicant only to visit Australia is genuine; and
 - (d) the Minister is satisfied that the grant of the visa would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the applicant; and
 - (e) the applicant satisfies public interest criteria 4001 to 4005, 4011, 4013, 4014; and
 - (f) if the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

[1312] After clause 676.411

insert

676.411A In the case of an applicant mentioned in clause 676.212A, the applicant must be in PRC at the time of grant.

[1313] Division 676.6

substitute

676.6 Conditions

676.611 In the case of a visa granted to an applicant who meets the requirements of subclause 676.221 (4):

- (a) conditions 8201 and 8205; and
- (b) condition 8503 may be imposed.

676.612 In the case of a visa granted to an applicant who meets the requirements of subclause 676.221 (5): conditions 8101, 8207, 8503 and 8530.

676.613 In any other case:

- (a) conditions 8101, 8201 and 8205; and
- (b) condition 8503 may be imposed.

[1314] Paragraph 773.213 (2) (zg)

substitute

- (zg) Territorial Asylum (Residence) (Class BE);
- (zh) Skilled – Independent (Migrant) (Class BN);
- (zi) Skilled – Australian-sponsored (Migrant) (Class BQ).

Part 4 New Schedule 6A

[1401] After Schedule 6

insert

Schedule 6A General points test — qualifications and points

(regulations 2.26A and 2.27A)

Part 1 Skill qualifications

| Column 1 Item | Column 2 Qualification | Column 3 Number of points |
|------------------|--|---------------------------------|
| 6A11 | The occupation nominated by the applicant in his or her application is specified by Gazette Notice as a skilled occupation for which 60 points are available | 60 |
| 6A12 | The occupation nominated by the applicant in his or her application is specified by Gazette Notice as a skilled occupation for which 50 points are available | 50 |
| 6A13 | The occupation nominated by the applicant in his or her application is specified by Gazette Notice as a skilled occupation for which 40 points are available | 40 |

Part 2 Age qualifications

| Column 1 Item | Column 2 Qualification | Column 3 Number of points |
|------------------|--|---------------------------------|
| 6A21 | The applicant is aged not less than 18 years and under 30 years at the time of application | 30 |
| 6A22 | The applicant is aged not less than 30 years and under 35 years at the time of application | 25 |
| 6A23 | The applicant is aged not less than 35 years and under 40 years at the time of application | 20 |
| 6A24 | The applicant is aged not less than 40 years and under 45 years at the time of application | 15 |

Part 3 Language skill qualifications

| Column 1 Item | Column 2 Qualification | Column 3 Number of points |
|------------------|---|---------------------------------|
| 6A31 | The applicant provides evidence of having achieved an IELTS test score of at least 6 for each of the 4 test components of speaking, reading, writing and listening in a test conducted: (a) not more than 12 months before the day on which the application was made; or (b) during processing of the application | 20 |
| 6A32 | The applicant provides evidence of having passed the Occupational English Test: (a) not more than 12 months before the day on which the application was lodged; or (b) during processing of the application | 20 |

| Column 1 Item | Column 2 Qualification | Column 3 Number of points |
|------------------|---|---------------------------------|
| 6A33 | <p>The applicant provides evidence of having achieved an IELTS test score of at least 5 on each of the 4 test components of speaking, reading, writing and listening in a test conducted:</p> <p>(a) not more than 12 months before the day on which the application was made; or</p> <p>(b) during processing of the application</p> | 15 |

Part 4 Employment experience qualifications

| Column 1 Item | Column 2 Qualification | Column 3 Number of points |
|------------------|--|---------------------------------|
| 6A41 | For a period of, or for periods totalling, at least 36 months in the 48 months immediately before the day on which the application was made, the applicant has been employed in the nominated skilled occupation, or a closely related skilled occupation, that is specified by Gazette Notice as a skilled occupation for which 60 points are available | 10 |
| 6A42 | The applicant has been employed in a skilled occupation for a period of, or for periods totalling, at least 36 months in the 48 months immediately before the day on which the application was made | 5 |

Part 5 Spouse skill qualifications

| Column 1 Item | Column 2 Qualification | Column 3 Number of points |
|------------------|---|---------------------------------|
| 6A51 | <p>The spouse of the applicant:</p> <ul style="list-style-type: none"> (a) is, at the time of application, under 45 years of age; and (b) has vocational English; and (c) has nominated a skilled occupation in his or her application; and (d) has been assessed by the relevant assessing authority for a skilled occupation as having suitable skills for that occupation; and (e) unless, in the 6 months immediately before the day on which the application was made, the spouse has completed a degree, diploma or trade qualification for award by an Australian educational institution for at least 1 year of full-time study in Australia, he or she has, at the time of application, been employed in a skilled occupation for a period of, or for periods totalling, at least: <ul style="list-style-type: none"> (i) if 60 points are specified by Gazette Notice as available for the nominated skilled occupation — 12 months in the 18 months immediately before that day; or (ii) if 40 or 50 points are specified by Gazette Notice as available for the nominated skilled occupation — 24 months in the 36 months immediately before that day | 5 |

Part 6 Australian educational qualification

| Column 1 Item | Column 2 Qualification | Column 3 Number of points |
|--------------------------|---|--|
| 6A61 | The applicant has met the requirements for award of a degree, diploma or trade qualification by an Australian educational institution after a period of at least 12 months full-time study in Australia | 5 |

Part 7 Skills targeting qualifications

| Column 1 Item | Column 2 Qualification | Column 3 Number of points |
|--------------------------|---|--|
| 6A71 | The applicant: (a) has nominated a migration occupation in demand in his or her application; and (b) has an offer of full-time employment in that occupation, or a closely related skilled occupation, in an organisation that had at least 10 full-time employees at all times in the 24 months immediately before the day on which the application was made | 10 |
| 6A72 | The applicant has nominated a migration occupation in demand in his or her application | 5 |

Part 8 Bonus points qualification

| Column 1 Item | Column 2 Qualification | Column 3 Number of points |
|------------------|---|---------------------------------|
| 6A81 | <p>The applicant:</p> <ul style="list-style-type: none">(a) has deposited at least \$100,000 in a designated security for a term of not less than 12 months; or(b) has been employed in Australia in a skilled occupation for a period of, or for periods totalling, at least 6 months in the 48 months immediately before the day on which the application was made while holding a substantive visa authorising him or her to work; or(c) is the holder of a qualification (that is of an equivalent standard to a degree awarded by an Australian tertiary educational institution) the tuition for which was conducted in a designated language; or(d) is accredited as a professional interpreter or translator (level 3) in a designated language by the National Accreditation Authority for Translators and Interpreters | 5 |

Part 9 Sponsorship qualification

| Column 1 Item | Column 2 Qualification | Column 3 Number of points |
|------------------|--|---------------------------------|
| 6A91 | The applicant is sponsored by his or her: (a) parent; or (b) brother or sister, adoptive brother or sister or step-brother or step-sister; or (c) aunt or uncle, adoptive aunt or uncle or step-aunt or step-uncle; or (d) child or adoptive child, or step-child, who is not a dependent child of the applicant | 15 |

Part 5 Amendments of Schedule 8

[1501] After item 8206

insert

8207 The holder must not engage in any studies or training in Australia.

[1502] After item 8529

insert

8530 The holder must not discontinue, or deviate from, the tour arrangements approved, in writing, by the Minister under paragraph 676.221 (5) (b).

Notes

1. These regulations amend 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, 214, 284, 285 (disallowed by the Senate on 31 March 1999), 304, 305, 306 and 322; 1999 Nos. 8, 58, 64 and 68.
2. Made by the Governor-General on \mathcal{L} 1999, and notified in the *Commonwealth of Australia Gazette* on \mathcal{L} 1999.

12 May
19 May