

Migration Amendment Regulations 1999 (No. 7) 1999 No. 82

EXPLANATORY STATEMENT

STATUTORY RULES 1999 NO. 92

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

Migration Act 1958

Migration Amendment Regulations 1999 (No. 7)

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 remain in Australia;
- subsection 29(3) of the Act provides that the regulations may prescribe a period during which the holder of a visa may travel to, enter, re-enter and remain in Australia;
- subsection 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 31(4) of the Act provides for the regulations to prescribe whether visas are visas to travel to and enter or remain in Australia, or both;
- 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;
- section 40 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(1) of the Act provides that the regulations may make provision in relation to applications for visas;
- subsection 45(2) of the Act provides that, without limiting the generality of subsection 45(1), the regulations may prescribe the way for making applications for a visa of a specified class, and in specified circumstances for a visa of a specified class;
- subsection 45(3) of the Act provides that, without limiting the generality of subsection 45(1), the regulations may provide for the place in which an applicant must be when an application for a visa of a specified class is made;
- subsection 46(2) of the Act provides that an application for a visa is valid if it is for a prescribed class of visas for the purposes of this subsection where under the regulations, it is taken to have been validly made;
- 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 create a new subclass under the Temporary Safe Haven (Class UJ) visa class. This new subclass *is to be* known as a Humanitarian Stay (Temporary) (Subclass 449) and Subclass 449 visas will allow applicants to be granted visas if they have been, or will likely be, displaced from their place of residence and they hold a grave fear for their personal safety as a result.

In particular, the Regulations will:

- establish the Humanitarian Stay (Temporary) (Subclass 449) visa within the Temporary Safe Haven (Class UJ) visa class, and prescribe criteria for the grant of such a visa (items 1 and 2);
- prescribe that a Humanitarian Stay (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 2);
- prescribe mandatory and discretionary conditions attaching to a Humanitarian Stay (Temporary) visa (item 2).

Details of the Regulations are set out in the Attachment.

The Regulations commence on 1 June 1999.

ATTACHMENT

Regulation 1 -Name of regulations

This regulation provides that these regulations are the *Migration Amendment Regulations 1999 (No. 7)*.

Regulation 2 - Commencement

This regulation provides that these regulations commence on 1 June 1999.

Regulation 3 - Amendment of *Migration Regulations 1994*

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

Schedule 1 - Amendments

Item 1 - Schedule 1, subitem 1223B(3)

This item inserts a new subclass into the "Temporary Safe Haven (Class UJ)" visa class in Schedule 1 to the Regulations. This subclass is known as Subclass 449 (Humanitarian Stay (Temporary)).

Item 2 - Schedule 2, after Part 448

This item inserts new Part 449 (Humanitarian Stay (Temporary)) into Schedule 2 to the Regulations.

Primary Criteria Criteria to be satisfied at time of application

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

Criteria to be satisfied at time of decision

Under new clause 449.22 1, applicants who apply overseas, must meet the requirements of either subclause 449.221(2) or (3). New subclause 449.221(2) provides that an applicant satisfies the criteria of this subclause if.

the applicant: .

- has been displaced from his or her place of residence;
- cannot reasonably return to that residence; and
- is in grave fear of his or her personal safety because of circumstances or reasons that resulted in the applicant being displaced from that residence; or

the applicant:

- has not been displaced from his or her place of residence;
- has a strong likelihood of being displaced from that residence; and
- is in grave fear his or her personal safety because of circumstances or reasons that are likely to result in the applicant being displaced from that residence.

New subclause 449.221(3) provides that an applicant satisfies the criteria of this subclause if the applicant:

* is a member of the immediate family of a person who holds a Subclass 449 visa ("the visa holder"); and

* was a member of the visa holder's immediate family when the visa holder was first granted a Subclass 449 visa.

This is intended to cover the possibility that further family members overseas may be identified after the visa holder's arrival in Australia.

New clause 449.222 provides that applicants who apply in Australia must hold a Subclass 449 visa at the time of decision.

New clause 449.223 provides that the grant of a Subclass 449 visa is subject to the requirement that any cap under section 39 of the Act has not been reached.

New clause 449.224 provides that applicants must satisfy public interest criteria 4002, 4003 and 4007.

Secondary Criteria

Criteria to be satisfied at time of application

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

Criteria to be satisfied at time of decision

New clause 449.321 provides that applicants can satisfy the secondary criteria if the applicant:

* is a member of the family unit of a person who met the requirements of new subclause 449.221(2); or

* is a member of the immediate family of a person who met the requirements of new subclause 449.221(3).

New clause 449.322 provides that applicants must satisfy public interest criteria 4002, 4003 and 4007.

Circumstances applicable to grant

New clause 449.411 provides that if the applicant is outside Australia at the time of application then the applicant must be outside Australia at the time of grant of the Subclass 449 visa.

New clause 449.412 provides that if the applicant is in Australia at the time of application then the applicant must be in Australia at the time of grant of the Subclass 449 visa.

When visa is in effect

New clause 449.511 provides that the Subclass 449 visa is a temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

Conditions

New clause 449.611 provides that visas granted to holders will be subject to mandatory condition 8506 (holder must notify Immigration at least 2 working days in advance of any change of address).

New clause 449.612 provides that conditions 8101 (no work) and 8303 (holder must not engage in disruptive activities) may be imposed for any Subclass 449 visa

Way of giving evidence

New clause 449.711 provides that evidence of the visa label is to be affixed to a valid passport.