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Migration Amendment Regulations 1999 (No. 11)

Statutory Rules 1999 No. 11

220

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 **22 SEP 1999** 1999.

WILLIAM DEANE
Governor-General

By His Excellency's Command,

PHILIP RUDDOCK
Minister for Immigration and Multicultural Affairs



Migration Amendment Regulations 1999 (No. 11)¹

Statutory Rules 1999 No. 11²

220

made under the

Migration Act 1958

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1999, 11

Migration Amendment Regulations 1999 (No. 11)

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1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 1999* (No. 4).

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2 Commencement

These Regulations commence as follows:

- (a) on gazettal — regulations 1 to 3, subregulation 4 (3) and Schedule 2;
- (b) on 1 November 1999 — subregulations 4 (1) and (2), regulation 5 and Schedule 1.

3 Amendment of *Migration Regulations 1994*

Schedules 1 and 2 amend the *Migration Regulations 1994*.

4 Transitional

- (1) The amendments made by items [1101], [1102], [1302], [1303] and [1309] apply in relation to an application made on or after 1 November 1999.
- (2) The amendments made by items [1307], [1308], [1310] to [1319], [1325], [1326], [1401] and [1402] apply in relation to an application:
 - (a) made, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*), before 1 November 1999; or
 - (b) made on or after 1 November 1999.
- (3) The amendment made by item [2101] applies in relation to an application made on or after the commencement of Schedule 2.

5 Transitional — applications for Distinguished Talent (Migrant) (Class AL) visas and General (Residence) (Class AS) visas made before 1 November 1999

If an application for a Distinguished Talent (Migrant) (Class AL) visa, or a General (Residence) (Class AS) visa, was made before 1 November 1999 and was not finally determined before that date, the *Migration Regulations 1994*, as in force immediately before 1 November 1999, continue to apply to the application.

Schedule 1 Amendments commencing on 1 November 1999

(regulation 3)

Part 1 Amendments of Parts 1 and 2

[1101] Subparagraph 1.15AA (1) (b) (ii)

substitute

- (ii) the medical condition is causing physical, intellectual or sensory impairment of the ability of that person to attend to the practical aspects of daily life; and

[1102] Subparagraph 1.15AA (1) (b) (iii)

omit

physical

[1103] Paragraph 1.20F (1) (b)

omit

standard business sponsor.

insert

standard business sponsor; or

[1104] After paragraph 1.20F (1) (b)

insert

- (c) gave incorrect information to Immigration in relation to:
 - (i) the application under regulation 1.20C for approval as a pre-qualified business sponsor or a standard business sponsor; or
 - (ii) any other matter relating to the person.

[1105] After subparagraph 2.43 (1) (I) (i)

insert

- (ia) does not continue to satisfy the requirements for approval as a business sponsor; or

Part 2

Amendments of Schedule 1

[1201] Subitem 1112 (1)

omit

47.

insert

47 or 47SV.

[1202] Subitem 1112 (4)

substitute

- (4) Subclasses:
 - 124 (Distinguished Talent)

[1203] After item 1112

insert

1113. Distinguished Talent (Residence) (Class BX)

- (1) Form: 47SV or 887.
- (2) Visa application charge: \$1,595.
- (3) Other:
 - (a) Application must be made in Australia but not in immigration clearance.
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Distinguished Talent (Residence) (Class BX) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
 - 858 (Distinguished Talent)

[1204] Subitem 1114 (1)

omit

47

insert

47 or 47ES

[1205] Subitem 1114 (4)

substitute

- (4) Subclasses:
 - 119 (Regional Sponsored Migration Scheme)
 - 121 (Employer Nomination Scheme)

[1206] After item 1114

insert

1114A. Employer Nomination (Residence) (Class BW)

- (1) Form: 47ES or 887.
- (2) Visa application charge: \$1,595.
- (3) Other:
 - (a) Application must be made in Australia but not in immigration clearance.
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for an Employer Nomination (Residence) (Class BW) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
 - 856 (Employer Nomination Scheme)
 - 857 (Regional Sponsored Migration Scheme)

[1207] Subitem 1119 (4)

omit

805 (Skilled)

[1208] Subitem 1121 (1)

omit

47.

insert

47 or 47ES.

[1209] After item 1121

insert

1121A. Labour Agreement (Residence) (Class BV)

- (1) Form: 47ES or 887.
- (2) Visa application charge: \$1,595.
- (3) Other:
 - (a) Application must be made in Australia but not in immigration clearance.
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Labour Agreement (Residence) (Class BV) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
 - 855 (Labour Agreement)

Part 3

Amendments of Schedule 2

[1301] After Part 110

insert

**Subclass 119 Regional Sponsored
Migration Scheme**

119.1 Interpretation

Note **approved appointment** is defined in regulation 5.19 and **vocational English** is defined in regulation 1.15B. There are no interpretation provisions specific to this Part.

119.2 Primary criteria

Note The primary criteria must be satisfied by at least one 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.

119.21 Criteria to be satisfied at time of application

- 119.211 (1) The applicant:
- (a) has been nominated by an employer in respect of an appointment in the business of that employer; and
 - (b) either:
 - (i) in the case of an applicant who is taken, under regulation 2.08C, to have applied for an Employer Nomination (Migrant) (Class AN) visa:
 - (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 an Independent (Migrant) (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 Skilled – Independent (Migrant) (Class BN) visa or a Skill Matching (Migrant) (Class 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; and
- (D) is, or is eligible to become, the holder of a qualification of a kind specified in subregulation 5.19 (3A) if it is mandatory in Australia, in respect of work of the kind to be performed under the appointment, that a person be the holder of the qualification; or
- (ii) subject to subclause (2), in any other case:
 - (A) has not turned 45; and
 - (B) has functional English; and
 - (C) has a diploma (within the meaning of subregulation 2.26 (5)), or higher qualification, that is relevant to the appointment; and
 - (D) is, or is eligible to become, the holder of a qualification of a kind specified in subregulation 5.19 (3A) if it is mandatory in Australia, in respect of work of the kind to be performed under the appointment, that a person be the holder of the qualification.

(2) Sub-subparagraphs (1) (b) (ii) (A), (B) and (C) do not apply to an applicant if the appointment is exceptional.

119.212 If the appointment is an approved appointment, the period that has elapsed since it became an approved appointment does not exceed 6 months.

119.22 Criteria to be satisfied at time of decision

- 119.221 The appointment mentioned in paragraph 119.211 (1) (a) is an approved appointment.
- 119.222 The Minister is satisfied that the approved appointment will provide the employment referred to in the relevant employer nomination.
- 119.223 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if the applicant has previously been in Australia, satisfies special return criteria 5001 and 5002.
- 119.224 If requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.
- 119.225 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 119 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 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 119 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.
- 119.226 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 119 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.

119.3 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.

119.31 Criteria to be satisfied at time of application

119.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies, or has satisfied, the primary criteria in Subdivision 119.21.

119.32 Criteria to be satisfied at time of decision

119.321 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 119 visa.

119.322 The applicant satisfies:

- (a) public interest criteria 4001, 4002, 4003, 4004, 4009 and 4010; and
- (b) public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the applicant to undergo assessment in relation to that criterion.

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

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

119.325 If the applicant is the dependent child of a person who is the holder of a Subclass 119 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.

119.4 Circumstances applicable to grant

119.411 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.

119.5 When visa is in effect

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

119.6 Conditions

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

119.612 Condition 8502 may be imposed.

119.7 Way of giving evidence

119.711 Visa label affixed to a valid passport.

[1302] Clause 121.211

substitute

121.211 The applicant:

- (a) has been nominated by an employer in respect of an appointment in the business of that employer; and
- (b) is a highly skilled person (within the meaning of subregulation 5.19 (3)) in relation to that appointment; and
- (c) unless the appointment is exceptional:
 - (i) has not turned 45; and
 - (ii) has vocational English.

[1303] Clause 121.221

omit

paragraph 121.211 (2) (a) or (3) (a)

insert

paragraph 121.211 (a)

[1304] Part 124, heading

substitute

Subclass 124 Distinguished Talent

[1305] Clauses 124.211 and 124.212

substitute

124.211 (1) The applicant meets the requirements of subclause (2), (3) or (4).

- (2) The applicant meets the requirements of this subclause if the applicant:
- (a) has an exceptional record of achievement in an occupation, profession or activity; and
 - (b) would be an asset to the Australian community; and
 - (c) would have no difficulty in obtaining employment or in becoming established independently in Australia in that occupation, profession or activity; and
 - (d) produces a nomination testifying to the applicant's standing in the occupation, profession or activity from:
 - (i) an Australian citizen; or
 - (ii) an Australian permanent resident; or
 - (iii) an eligible New Zealand citizen; or
 - (iv) an Australian organisation;having a national reputation in relation to that occupation, profession or activity.
- (3) The applicant meets the requirements of this subclause if the applicant:
- (a) has a record of outstanding achievement, and is still prominent, in the arts or sport; and
 - (b) produces a nomination testifying to the applicant's achievement and standing in the arts or sport from:
 - (i) an Australian citizen; or
 - (ii) an Australian permanent resident; or
 - (iii) an eligible New Zealand citizen; or
 - (iv) an Australian organisation;having a national reputation in relation to the applicant's field of the arts or sport.

(4) The applicant meets the requirements of this subclause if, in the opinion of the Minister, acting on the advice of:

- (a) the Minister responsible for an intelligence or security agency within the meaning of the *Australian Security Intelligence Organisation Act 1979*; or
- (b) the Director-General of Security;
the applicant has provided specialised assistance to the Australian Government in matters of security.

[1306] Part 125

omit

[1307] Paragraph 127.212 (2) (a)

omit

AUD300,000

insert

AUD200,000

[1308] Paragraph 129.212 (2) (a)

omit

AUD200,000

insert

AUD100,000

[1309] After clause 456.611

insert

456.612 Condition 8503 may be imposed.

[1310] Paragraph 560.212 (4) (c)

substitute

- (c) the applicant produces the following evidence to the Minister:
 - (i) in the case of an applicant who is an AusAID or secondary school exchange student — evidence that the applicant has commenced a full-time course of study;
 - (ii) in any other case — evidence that the applicant has commenced a registered course.

[1311] Paragraph 560.212 (5) (c)

substitute

- (c) the applicant produces the following evidence to the Minister:
 - (i) in the case of an applicant who is an AusAID or secondary school exchange student — evidence of enrolment in a full-time course of study offered by an education provider that is not the education provider in relation to the course to which the visa held relates;
 - (ii) in any other case — evidence of enrolment in a registered course offered by an education provider that is not the education provider in relation to the course to which the visa held relates; and

[1312] Paragraph 560.230 (b)

substitute

- (b) the applicant is not:
 - (i) a citizen of a gazetted country; or

- (ii) a person who is normally resident in, and has an unlimited right of entry to, a country specified by Gazette Notice for the purposes of this paragraph; and

[1313] Sub-subparagraph 560.230 (c) (iii) (B)

omit

Executive);

insert

Executive); or

[1314] After subparagraph 560.230 (c) (iii)

insert

- (iv) as a person:
 - (A) who was not the holder of a substantive visa; and
 - (B) who, immediately before ceasing to hold a substantive visa, was the holder of a visa mentioned in subparagraph (i), (ii) or (iii);

[1315] Paragraph 560.312 (3) (d)

substitute

- (d) the applicant produces to the Minister, the following evidence in relation to the holder of the Subclass 560 visa mentioned in paragraph (c):
 - (i) if the holder of the visa is an AusAID or secondary school exchange student—evidence that the holder of the visa has commenced a full-time course of study;

- (ii) in any other case — evidence that the holder of the visa has commenced a registered course.

[1316] Paragraph 560.611 (1) (c)

substitute

- (c) if the application was made in Australia and, at the time of application, the applicant:
 - (i) met the requirements of subclause 560.212 (4); or
 - (ii) held a Student (Temporary) (Class TU) visa that was subject to condition 8105; condition 8105.

[1317] Subclause 560.611 (1A)

substitute

- (1A) Condition 8206 does not apply to a visa granted to an applicant if the application was made in Australia and, at the time of application, the applicant:
- (a) as the holder of a Subclass 560 visa, met the requirements of subclause 560.212 (5); or
 - (b) as the holder of a Subclass 562 visa, satisfied the criterion in clause 560.211 and met the requirements of subclause 560.212 (5); or
 - (c) was the holder of a Subclass 560 or 562 visa that was not subject to condition 8206.

[1318] Subclauses 560.613 (1A), (1B) and (1C)

substitute

(1A) Condition 8101 does not apply to a visa granted to an applicant if the application was made in Australia and, at the time of application, the applicant:

- (a) was the holder of a Subclass 560 or 563 visa; and
- (b) was an applicant of the kind mentioned in paragraph (1) (c); and
- (c) met the requirements of:
 - (i) subparagraph 560.312 (3) (d) (i) for a full-time course of study; or
 - (ii) subparagraph 560.312 (3) (d) (ii) for a registered course other than a non-award course.

(1B) Condition 8101 does not apply to a visa granted to an applicant if the application was made in Australia and, at the time of application, the applicant:

- (a) was the holder of a Subclass 560 or 563 visa; and
- (b) was an applicant of the kind mentioned in paragraph (1) (d); and
- (c) met the requirements of:
 - (i) subparagraph 560.312 (3) (d) (i) for a full-time course of study; or
 - (ii) subparagraph 560.312 (3) (d) (ii) for a registered course other than a non-award course.

(1C) Condition 8101 does not apply to a visa granted to an applicant if the application was made in Australia and, at the time of application, the applicant:

- (a) was a member of the family unit of a person who was enrolled in a course of study or research for a master's degree or a doctorate; and
- (b) either:
 - (i) met the requirements of subclause 560.312 (3); or
 - (ii) is the holder of a Student (Temporary) (Class TU) visa that is not subject to condition 8101.

[1319] Paragraph 563.211A (d)

substitute

- (d) produces to the Minister, the following evidence in relation to the holder of the Subclass 562 visa:
 - (i) if the holder of the visa is an AusAID student or secondary school exchange student — evidence that the holder of the visa has commenced a full-time course of study;
 - (ii) in any other case — evidence that the holder of the visa has commenced a registered course.

[1320] Part 805

omit

[1321] Clause 808.221

omit

subparagraph 808.221 (b) (ii)

insert

subparagraph 808.211 (b) (ii)

[1322] Clause 808.221

omit

(Class TD)

insert

(Class AK)

[1323] Clause 808.511

omit

paragraph 808.221 (a)

insert

paragraph 808.211 (a)

[1324] Clause 808.512

omit

paragraph 808.221 (b)

insert

paragraph 808.211 (b)

[1325] Paragraph 840.213 (2) (a)

omit

AUD300,000

insert

AUD200,000

[1326] Paragraph 842.213 (2) (a)

omit

AUD200,000

insert

AUD100,000

[1327] Sub-subparagraphs 844.212 (b) (i) (D), (E), (F), (G) and (H)

substitute

- (D) Expatriate (Temporary) (Class TJ);
- (E) Medical Practitioner (Temporary) (Class UE);
- (F) Retirement (Temporary) (Class TQ);
- (G) Supported Dependant (Temporary) (Class TW);
- (H) Working Holiday (Temporary) (Class TZ); or

[1328] After Part 851

insert

Subclass 855 Labour Agreement

855.1 Interpretation

Note award course, category A course, category B student and labour agreement are defined in regulation 1.03, and associate diploma is defined in subregulation 2.26 (5). There are no interpretation provisions specific to this Part.

855.2 Primary criteria

Note The primary criteria must be satisfied by at least one 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.

855.21 Criteria to be satisfied at time of application

- 855.211 (1) The applicant is not the holder of:
- (a) a visa of one of the following classes:
 - (i) Electronic Travel Authority (Class UD);
 - (ii) Long Stay (Visitor) (Class TN);
 - (iii) Short Stay (Visitor) (Class TR);
 - (iv) Special Category (Temporary) (Class TY);
 - (v) Special Tourist (Visitor) (Class TS); or
 - (b) a special purpose visa; or
 - (c) a Subclass 456 (Business (Short Stay)) visa.
- (2) If the applicant is not the holder of a substantive visa:
- (a) the applicant satisfies Schedule 3 criteria 3001, 3003 and 3004; and
 - (b) the last substantive visa held by the applicant was not:
 - (i) a visa of one of the following classes:
 - (A) Electronic Travel Authority (Class UD);
 - (B) Long Stay (Visitor) (Class TN);
 - (C) Short Stay (Visitor) (Class TR);
 - (D) Special Category (Temporary) (Class TY);
 - (E) Special Tourist (Visitor) (Class TS);or
 - (ii) a special purpose visa; or
 - (iii) a Subclass 456 (Business (Short Stay)) visa.

- 855.212 (1) Subject to subclause (2), the applicant meets the requirements of subclause (3), (5), (6) or (7).
- (2) Subclause (1) does not apply to an applicant who does not hold a substantive visa if he or she would have satisfied the requirements of that subclause if the application had been made immediately before his or her substantive visa ceased.
- (3) The applicant meets the requirements of this subclause if the applicant holds a qualifying visa within the meaning of subclause (4).
- (4) For the purposes of subclause (3), a visa is a qualifying visa if it is:
- (a) a visa of one of the following classes:
- (i) Business (Temporary) (Class TB);
 - (ii) Cultural/Social (Temporary) (Class TE);
 - (iii) Educational (Temporary) (Class TH);
 - (iv) Family Relationship (Temporary) (Class TL);
 - (v) Interdependency (Temporary) (Class TM);
 - (vi) Medical Practitioner (Temporary) (Class UE);
 - (vii) Supported Dependant (Temporary) (Class TW); or
- (b) a Subclass 457 (Business (Long Stay)) visa; or
- (c) a Confirmatory (Temporary) (Class TD) visa granted on the basis that the applicant:
- (i) had applied for a visa of a class specified in paragraph (a) or (b), but needed to travel to Australia before a criterion, or criteria, for the grant of that visa had been satisfied; and
 - (ii) subsequently satisfied that criterion or those criteria.

(5) The applicant meets the requirements of this subclause if he or she:

- (a) held one or more Group 2.6 (refugee and humanitarian (temporary entry)) entry permits under the Migration (1993) Regulations permitting temporary residence in Australia for a total period of more than 12 months; and
- (b) is taken to hold a transitional (temporary) visa under the Migration Reform (Transitional Provisions) Regulations on the basis that he or she held a Group 2.6 (refugee and humanitarian (temporary entry)) entry permit under the Migration (1993) Regulations immediately before 1 September 1994.

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

- (a) he or she:
 - (i) is the holder of a Student (Temporary) (Class TU) visa granted in relation to an award course at associate diploma level or above completed by the applicant while he or she was the holder of that visa; and
 - (ii) subject to subclause (8), is not an assisted student; or
- (b) he or she:
 - (i) is the holder of a Group 2.2 (student) entry permit granted under the Migration (1993) Regulations in relation to a formal course, or a category A course, completed by the applicant while the holder of that permit; and
 - (ii) is not a category B student for the purposes of the Migration (1993) Regulations or, subject to subclause (8), an assisted student.

(7) The applicant meets the requirements of this subclause if he or she is the holder of a Working Holiday (Temporary) (Class TZ) visa.

(8) For the purposes of subparagraphs (6) (a) (ii) and (6) (b) (ii), *assisted student* does not include a student granted entry to Australia for the purpose of study or training under the Subsidised Overseas Students Program.

855.213 The applicant:

- (a) has been nominated by an employer in respect of a permanent appointment in an industry for which there is a labour agreement; and
- (b) has qualifications and experience that are suitable for the position to be taken by the applicant under the labour agreement; and
- (c) unless exceptional circumstances apply, has not turned 45.

855.22 Criteria to be satisfied at time of decision

855.221 The appointment mentioned in paragraph 855.213 (a) has been approved.

855.222 The Minister is satisfied that the appointment mentioned in paragraph 855.213 (a) will provide the employment referred to in the relevant nomination.

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

855.224 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.

855.225 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 855 visa is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 855 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.

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

855.3 Secondary criteria

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

855.31 Criteria to be satisfied at time of application

855.311 The applicant is a member of the family unit of a person who:

- (a) has applied for a Labour Agreement (Residence) (Class BV) visa; and
- (b) on the basis of the information provided in his or her application, appears to satisfy the criteria in Subdivision 855.21;

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

855.312 Any sponsorship or nomination given in respect of that other person includes the applicant.

855.32 Criteria to be satisfied at time of decision

855.321 (1) The applicant meets the requirements of subclause (2), (3) or (4).

(2) The applicant meets the requirement of this subclause if the applicant is a member of the family unit of a person (*the non-dependent holder*) who, having satisfied the primary criteria, is the holder of a Subclass 855 visa.

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

- (a) the applicant is the spouse of the non-dependent holder; and
- (b) the relationship between the non-dependent holder and the applicant has ceased; and
- (c) one or more of the following:
 - (i) the applicant;
 - (ii) a member of the family unit of the applicant who has made a combined application with the non-dependent holder;
 - (iii) a dependent child of the applicant or of the non-dependent holder;has suffered domestic violence committed by the non-dependent holder.

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

- (a) the applicant is a member of the family unit of the spouse of the non-dependent holder; and
- (b) the spouse meets the requirements of subclause (3); and
- (c) the applicant has made a combined application with the non-dependent holder; and
- (d) the spouse has been granted a Subclass 855 visa.

Note For special provisions relating to domestic violence, see Division 1.5.

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

855.323 If an assurance of support has been requested by the Minister in relation to the relevant person who satisfies the primary criteria:

- (a) an assurance of support in relation to that person, that includes the applicant, has been given, and has been accepted by the Minister; or

(b) an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

855.324 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.

855.4 Circumstances applicable to grant

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

855.5 When visa is in effect

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

855.6 Conditions: Nil.

855.7 Way of giving evidence

855.711 Visa label affixed to a passport.

Subclass 856 Employer Nomination Scheme

856.1 Interpretation

Note *award course*, *category A course* and *category B student* are defined in regulation 1.03, *approved appointment* is defined in regulation 5.19, *associate diploma* is defined in subregulation 2.26 (5), and *vocational English* is defined in regulation 1.15B. There are no interpretation provisions specific to this Part.

856.2 Primary criteria

Note The primary criteria must be satisfied by at least one 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.

856.21 Criteria to be satisfied at time of application

- 856.211 (1) The applicant is not the holder of:
- (a) a visa of one of the following classes:
 - (i) Electronic Travel Authority (Class UD);
 - (ii) Long Stay (Visitor) (Class TN);
 - (iii) Short Stay (Visitor) (Class TR);
 - (iv) Special Category (Temporary) (Class TY);
 - (v) Special Tourist (Visitor) (Class TS); or
 - (b) a special purpose visa; or
 - (c) a Subclass 456 (Business (Short Stay)) visa.
- (2) If the applicant is not the holder of a substantive visa:
- (a) the applicant satisfies Schedule 3 criteria 3001, 3003 and 3004; and
 - (b) the last substantive visa held by the applicant was not:
 - (i) a visa of one of the following classes:
 - (A) Electronic Travel Authority (Class UD);
 - (B) Long Stay (Visitor) (Class TN);
 - (C) Short Stay (Visitor) (Class TR);
 - (D) Special Category (Temporary) (Class TY);
 - (E) Special Tourist (Visitor) (Class TS); or
 - (ii) a special purpose visa; or
 - (iii) a Subclass 456 (Business (Short Stay)) visa.

- 856.212 (1) Subject to subclause (2), the applicant meets the requirements of subclause (3), (5), (6) or (7).
- (2) Subclause (1) does not apply to an applicant who does not hold a substantive visa if he or she would have satisfied the requirements of that subclause if the application had been made immediately before his or her substantive visa ceased.
- (3) The applicant meets the requirements of this subclause if the applicant holds a qualifying visa within the meaning of subclause (4).
- (4) For the purposes of subclause (3), a visa is a qualifying visa if it is:
- (a) a visa of one of the following classes:
 - (i) Business (Temporary) (Class TB);
 - (ii) Cultural/Social (Temporary) (Class TE);
 - (iii) Educational (Temporary) (Class TH);
 - (iv) Family Relationship (Temporary) (Class TL);
 - (v) Interdependency (Temporary) (Class TM);
 - (vi) Medical Practitioner (Temporary) (Class UE);
 - (vii) Supported Dependant (Temporary) (Class TW); or
 - (b) a Subclass 457 (Business (Long Stay)) visa; or
 - (c) a Confirmatory (Temporary) (Class TD) visa granted on the basis that the applicant:
 - (i) had applied for a visa of a class specified in paragraph (a) or (b), but needed to travel to Australia before a criterion, or criteria, for the grant of that visa had been satisfied; and
 - (ii) subsequently satisfied that criterion or those criteria.

(5) The applicant meets the requirements of this subclause if he or she:

- (a) held one or more Group 2.6 (refugee and humanitarian (temporary entry)) entry permits under the Migration (1993) Regulations permitting temporary residence in Australia for a total period of more than 12 months; and
- (b) is taken to hold a transitional (temporary) visa under the Migration Reform (Transitional Provisions) Regulations on the basis that he or she held a Group 2.6 (refugee and humanitarian (temporary entry)) entry permit under the Migration (1993) Regulations immediately before 1 September 1994.

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

- (a) he or she:
 - (i) is the holder of a Student (Temporary) (Class TU) visa granted in relation to an award course at associate diploma level or above completed by the applicant while he or she was the holder of that visa; and
 - (ii) subject to subclause (8), is not an assisted student; or
- (b) he or she:
 - (i) is the holder of a Group 2.2 (student) entry permit granted under the Migration (1993) Regulations in relation to a formal course, or a category A course, completed by the applicant while the holder of that permit; and
 - (ii) is not a category B student for the purposes of the Migration (1993) Regulations or, subject to subclause (8), an assisted student.

(7) The applicant meets the requirements of this subclause if he or she is the holder of a Working Holiday (Temporary) (Class TZ) visa.

(8) For the purposes of subparagraphs (6) (a) (ii) and (6) (b) (ii), *assisted student* does not include a student granted entry to Australia for the purpose of study or training under the Subsidised Overseas Students Program.

- 856.213 The applicant:
- (a) has been nominated in accordance with subregulation 5.19 (2) by an employer in respect of an appointment in the business of that employer; and
 - (b) is a highly skilled person, within the meaning of regulation 5.19, in relation to that appointment; and
 - (c) unless the appointment is exceptional:
 - (i) has not turned 45; and
 - (ii) has vocational English.
- 856.214 If the appointment is an approved appointment, the period that has elapsed since it became an approved appointment does not exceed 6 months.

856.22 Criteria to be satisfied at time of decision

- 856.221 The appointment mentioned in paragraph 856.213 (a) is an approved appointment.
- 856.222 The Minister is satisfied that the appointment mentioned in paragraph 856.213 (a) will provide the employment referred to in the relevant employer nomination.
- 856.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 856.224 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.
- 856.225 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 856 visa is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 856 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.

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

856.3 Secondary criteria

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

856.31 Criteria to be satisfied at time of application

856.311 The applicant is a member of the family unit of a person who:

- (a) has applied for an Employer Nomination (Residence) (Class BW) visa; and
- (b) on the basis of the information provided in his or her application, appears to satisfy the criteria in Subdivision 856.21;

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

856.312 Any sponsorship or nomination given in respect of that other person includes the applicant.

856.32 Criteria to be satisfied at time of decision

856.321 (1) The applicant meets the requirements of subclause (2), (3) or (4).

(2) The applicant meets the requirement of this subclause if the applicant is a member of the family unit of a person (*the non-dependent holder*) who, having satisfied the primary criteria, is the holder of a Subclass 856 visa.

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

- (a) the applicant is the spouse of the non-dependent holder; and
- (b) the relationship between the non-dependent holder and the applicant has ceased; and
- (c) one or more of the following:
 - (i) the applicant;
 - (ii) a member of the family unit of the applicant who has made a combined application with the non-dependent holder;
 - (iii) a dependent child of the applicant or of the non-dependent holder;has suffered domestic violence committed by the non-dependent holder.

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

- (a) the applicant is a member of the family unit of the spouse of the non-dependent holder; and
- (b) the spouse meets the requirements of subclause (3); and
- (c) the applicant has made a combined application with the non-dependent holder; and
- (d) the spouse has been granted a Subclass 856 visa.

Note For special provisions relating to domestic violence, see Division 1.5.

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

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

856.324 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.

856.4 Circumstances applicable to grant

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

856.5 When visa is in effect

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

856.6 Conditions: Nil.

856.7 Way of giving evidence

856.711 Visa label affixed to a passport.

Subclass 857 Regional Sponsored Migration Scheme

857.1 Interpretation

Note *award course*, *category A course* and *category B student* are defined in regulation 1.03, *approved appointment* is defined in regulation 5.19, *associate diploma* is defined in subregulation 2.26 (5), and *vocational English* is defined in regulation 1.15B. There are no interpretation provisions specific to this Part.

857.2 Primary criteria

Note The primary criteria must be satisfied by at least one 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.

857.21 Criteria to be satisfied at time of application

- 857.211 (1) The applicant is not the holder of:
- (a) a visa of one of the following classes:
 - (i) Electronic Travel Authority (Class UD);
 - (ii) Long Stay (Visitor) (Class TN);
 - (iii) Short Stay (Visitor) (Class TR);
 - (iv) Special Category (Temporary) (Class TY);
 - (v) Special Tourist (Visitor) (Class TS); or
 - (b) a special purpose visa; or
 - (c) a Subclass 456 (Business (Short Stay)) visa.
- (2) If the applicant is not the holder of a substantive visa:
- (a) the applicant satisfies Schedule 3 criteria 3001, 3003 and 3004; and
 - (b) the last substantive visa held by the applicant was not:
 - (i) a visa of one of the following classes:
 - (A) Electronic Travel Authority (Class UD);

- (B) Long Stay (Visitor) (Class TN);
 - (C) Short Stay (Visitor) (Class TR);
 - (D) Special Category (Temporary) (Class TY);
 - (E) Special Tourist (Visitor) (Class TS);
or
 - (ii) a special purpose visa; or
 - (iii) a Subclass 456 (Business (Short Stay)) visa.
- 857.212 (1) Subject to subclause (2), the applicant meets the requirements of subclause (3), (5), (6) or (7).
- (2) Subclause (1) does not apply to an applicant who does not hold a substantive visa if he or she would have satisfied the requirements of that subclause if the application had been made immediately before his or her substantive visa ceased.
- (3) The applicant meets the requirements of this subclause if the applicant holds a qualifying visa within the meaning of subclause (4).
- (4) For the purposes of subclause (3), a visa is a qualifying visa if it is:
- (a) a visa of one of the following classes:
 - (i) Business (Temporary) (Class TB);
 - (ii) Cultural/Social (Temporary) (Class TE);
 - (iii) Educational (Temporary) (Class TH);
 - (iv) Family Relationship (Temporary) (Class TL);
 - (v) Interdependency (Temporary) (Class TM);
 - (vi) Medical Practitioner (Temporary) (Class UE);
 - (vii) Supported Dependant (Temporary) (Class TW); or
 - (b) a Subclass 457 (Business (Long Stay)) visa; or

-
- (c) a Confirmatory (Temporary) (Class TD) visa granted on the basis that the applicant:
- (i) had applied for a visa of a class specified in paragraph (a) or (b), but needed to travel to Australia before a criterion, or criteria, for the grant of that visa had been satisfied; and
 - (ii) subsequently satisfied that criterion or those criteria.
- (5) The applicant meets the requirements of this subclause if he or she:
- (a) held one or more Group 2.6 (refugee and humanitarian (temporary entry)) entry permits under the Migration (1993) Regulations permitting temporary residence in Australia for a total period of more than 12 months; and
 - (b) is taken to hold a transitional (temporary) visa under the Migration Reform (Transitional Provisions) Regulations on the basis that he or she held a Group 2.6 (refugee and humanitarian (temporary entry)) entry permit under the Migration (1993) Regulations immediately before 1 September 1994.
- (6) The applicant meets the requirements of this subclause if:
- (a) he or she:
 - (i) is the holder of a Student (Temporary) (Class TU) visa granted in relation to an award course at associate diploma level or above completed by the applicant while he or she was the holder of that visa; and
 - (ii) subject to subclause (8), is not an assisted student; or

- (b) he or she:
- (i) is the holder of a Group 2.2 (student) entry permit granted under the Migration (1993) Regulations in relation to a formal course, or a category A course, completed by the applicant while the holder of that permit; and
 - (ii) is not a category B student for the purposes of the Migration (1993) Regulations or, subject to subclause (8), an assisted student.

(7) The applicant meets the requirements of this subclause if he or she is the holder of a Working Holiday (Temporary) (Class TZ) visa.

(8) For the purposes of subparagraphs (6) (a) (ii) and (6) (b) (ii), *assisted student* does not include a student granted entry to Australia for the purpose of study or training under the Subsidised Overseas Students Program.

857.213 The applicant:

- (a) has been nominated by an employer in respect of an appointment in the business of that employer; and
- (b) unless the appointment is exceptional:
 - (i) has not turned 45; and
 - (ii) has functional English; and
 - (iii) has a diploma (within the meaning of subregulation 2.26 (5)) or higher qualification that is relevant to that appointment; and
- (c) is, or is eligible to become, the holder of a qualification of a kind specified in subregulation 5.19 (3A) if it is mandatory in Australia, in respect of work of the kind to be performed under the appointment, that a person be the holder of the qualification.

- 857.214 If the appointment is an approved appointment, the period that has elapsed since it became an approved appointment does not exceed 6 months.
- 857.22 Criteria to be satisfied at time of decision**
- 857.221 The appointment mentioned in paragraph 857.213 (a) is an approved appointment.
- 857.222 The Minister is satisfied that the appointment mentioned in paragraph 857.213 (a) will provide the employment referred to in the relevant employer nomination.
- 857.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 857.224 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.
- 857.225 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 857 visa is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 857 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.
- 857.226 The Minister is satisfied that the grant of the visa would not prejudice the rights of any person who has custody or guardianship of, or access to, a dependent child of the applicant.

857.3 Secondary criteria

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

857.31 Criteria to be satisfied at time of application

857.311 The applicant is a member of the family unit of a person who:

- (a) has applied for an Employer Nomination (Residence) (Class BW) visa; and
- (b) on the basis of the information provided in his or her application, appears to satisfy the criteria in Subdivision 857.21;

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

857.312 Any sponsorship or nomination given in respect of that other person includes the applicant.

857.32 Criteria to be satisfied at time of decision

857.321 (1) The applicant meets the requirements of subclause (2), (3) or (4).

(2) The applicant meets the requirement of this subclause if the applicant is a member of the family unit of a person (*the non-dependent holder*) who, having satisfied the primary criteria, is the holder of a Subclass 857 visa.

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

- (a) the applicant is the spouse of the non-dependent holder; and
- (b) the relationship between the non-dependent holder and the applicant has ceased; and
- (c) one or more of the following:
 - (i) the applicant;

- (ii) a member of the family unit of the applicant who has made a combined application with the non-dependent holder;
- (iii) a dependent child of the applicant or of the non-dependent holder;
has suffered domestic violence committed by the non-dependent holder.

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

- (a) the applicant is a member of the family unit of the spouse of the non-dependent holder; and
- (b) the spouse meets the requirements of subclause (3); and
- (c) the applicant has made a combined application with the non-dependent holder; and
- (d) the spouse has been granted a Subclass 857 visa.

Note For special provisions relating to domestic violence, see Division 1.5.

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

857.323 If an assurance of support has been requested by the Minister in relation to the relevant person who satisfies the primary criteria:

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

857.324 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.

857.4 Circumstances applicable to grant

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

857.5 When visa is in effect

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

857.6 Conditions: Nil.

857.7 Way of giving evidence

857.711 Visa label affixed to a passport.

Subclass 858 Distinguished Talent

858.1 Interpretation

Note There are no interpretation provisions specific to this Part.

858.2 Primary criteria

Note The primary criteria must be satisfied by at least one 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.

858.21 Criteria to be satisfied at time of application

- 858.211 (1) The applicant is not the holder of:
- (a) a visa of one of the following classes:
 - (i) Electronic Travel Authority (Class UD);
 - (ii) Long Stay (Visitor) (Class TN);
 - (iii) Short Stay (Visitor) (Class TR);
 - (iv) Special Category (Temporary) (Class TY);
 - (v) Special Tourist (Visitor) (Class TS); or

- (b) a special purpose visa; or
 - (c) a Subclass 456 (Business (Short Stay)) visa.
- (2) If the applicant is not the holder of a substantive visa:
- (a) the applicant satisfies Schedule 3 criteria 3001, 3003 and 3004; and
 - (b) the last substantive visa held by the applicant was not:
 - (i) a visa of one of the following classes:
 - (A) Electronic Travel Authority (Class UD);
 - (B) Long Stay (Visitor) (Class TN);
 - (C) Short Stay (Visitor) (Class TR);
 - (D) Special Category (Temporary) (Class TY);
 - (E) Special Tourist (Visitor) (Class TS);or
 - (ii) a special purpose visa; or
 - (iii) a Subclass 456 (Business (Short Stay)) visa.
- 858.212 (1) The applicant meets the requirements of subclause (2), (3) or (4).
- (2) The applicant meets the requirements of this subclause if the applicant:
- (a) has an exceptional record of achievement in an occupation, profession or activity; and
 - (b) would be an asset to the Australian community; and
 - (c) would have no difficulty in obtaining employment or in becoming established independently in Australia in that occupation, profession or activity; and
 - (d) produces a nomination testifying to the applicant's standing in the occupation, profession or activity from:
 - (i) an Australian citizen; or

- (ii) an Australian permanent resident; or
- (iii) an eligible New Zealand citizen; or
- (iv) an Australian organisation;
having a national reputation in relation to that occupation, profession or activity.

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

- (a) has a record of outstanding achievement, and is still prominent, in the arts or sport; and
- (b) produces a nomination testifying to the applicant's achievement and standing in the arts or sport from:
 - (i) an Australian citizen; or
 - (ii) an Australian permanent resident; or
 - (iii) an eligible New Zealand citizen; or
 - (iv) an Australian organisation;
having a national reputation in relation to the applicant's field of the arts or sport.

(4) The applicant meets the requirements of this subclause if, in the opinion of the Minister, acting on the advice of:

- (a) the Minister responsible for an intelligence or security agency within the meaning of the *Australian Security Intelligence Organisation Act 1979*; or
- (b) the Director-General of Security;
the applicant has provided specialised assistance to the Australian Government in matters of security.

858.22 Criteria to be satisfied at time of decision

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

858.222 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.

- 858.223 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 858 visa is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 858 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.
- 858.224 The Minister is satisfied that the grant of the visa would not prejudice the rights of any person who has custody or guardianship of, or access to, a dependent child of the applicant.

858.3 Secondary criteria

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

858.31 Criteria to be satisfied at time of application

- 858.311 The applicant is a member of the family unit of a person who:
- (a) has applied for a Distinguished Talent (Residence) (Class BX) visa; and
- (b) on the basis of the information provided in his or her application, appears to satisfy the criteria in Subdivision 858.21;
- and the Minister has not decided to grant or refuse to grant the visa to that other person.
- 858.312 Any sponsorship or nomination given in respect of that other person includes the applicant.

858.32 Criteria to be satisfied at time of decision

- 858.321 (1) The applicant meets the requirements of subclause (2), (3) or (4).
- (2) The applicant meets the requirement of this subclause if the applicant is a member of the family unit of a person (*the non-dependent holder*) who, having satisfied the primary criteria, is the holder of a Subclass 858 visa.
- (3) The applicant meets the requirements of this subclause if:
- (a) the applicant is the spouse of the non-dependent holder; and
 - (b) the relationship between the non-dependent holder and the applicant has ceased; and
 - (c) one or more of the following:
 - (i) the applicant;
 - (ii) a member of the family unit of the applicant who has made a combined application with the non-dependent holder;
 - (iii) a dependent child of the applicant or of the non-dependent holder;
has suffered domestic violence committed by the non-dependent holder.
- (4) The applicant meets the requirements of this subclause if:
- (a) the applicant is a member of the family unit of the spouse of the non-dependent holder; and
 - (b) the spouse meets the requirements of subclause (3); and
 - (c) the applicant has made a combined application with the non-dependent holder; and
 - (d) the spouse has been granted a Subclass 858 visa.

Note For special provisions relating to domestic violence, see Division 1.5.

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- 858.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 858.323 If an assurance of support has been requested by the Minister in relation to the relevant person who satisfies the primary criteria:
- (a) an assurance of support in relation to that person, that includes the applicant, has been given and has been accepted by the Minister; or
 - (b) an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.
- 858.324 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.
- 858.4 Circumstances applicable to grant**
- 858.411 The applicant must be in Australia, but not in immigration clearance, when the visa is granted.
- 858.5 When visa is in effect**
- 858.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.
- 858.6 Conditions: Nil.**
- 858.7 Way of giving evidence**
- 858.711 Visa label affixed to a passport.

Part 4 Amendments of Schedules 7 and 8

[1401] Schedule 7, Subdivision 1.1.1

substitute

Subdivision 1.1.1 Annual turnover

7101	In each of any 2 of the 4 fiscal years immediately preceding the making of the application, the applicant's main business, or the applicant's main businesses together, had an annual turnover equivalent to not less than AUD5,000,000	60
7102	In each of any 2 of the 4 fiscal years immediately preceding the making of the application, the applicant's main business, or the applicant's main businesses together, had an annual turnover equivalent to not less than AUD3,000,000	55
7103	In each of any 2 of the 4 fiscal years immediately preceding the making of the application, the applicant's main business, or the applicant's main businesses together, had an annual turnover equivalent to not less than AUD1,500,000	50
7104	In each of any 2 of the 4 fiscal years immediately preceding the making of the application, the applicant's main business, or the applicant's main businesses together, had an annual turnover equivalent to not less than AUD750,000	40
7105	In each of any 2 of the 4 fiscal years immediately preceding the making of the application, the applicant's main business, or the applicant's main businesses together, had an annual turnover equivalent to not less than AUD500,000	35

[1402] Schedule 8, condition 8202

substitute

- 8202 The holder:
- (a) must:
 - (i) in the case of an occupational trainee — satisfy the requirements of the course of occupational training approved by the Minister under subclause 442.222 (1); or
 - (ii) in the case of the holder of a Subclass 560 visa who is an AusAID or secondary school exchange student — be enrolled in a full-time course of study; or
 - (iii) in any other case — be enrolled in a registered course; and
 - (b) must (if the holder is not an occupational trainee):
 - (i) attend at least 80% of the classes and tutorials scheduled for the course, as evidenced by records of attendance of the education provider; or
 - (ii) if attendance cannot be evidenced, achieve an academic result that is certified by the education provider to be at least satisfactory; and
 - (c) must (if the holder is not an occupational trainee) comply with any requirement of the education provider in relation to payment of fees for the course.

Schedule 2 Amendment commencing on gazettal

(regulation 3)

[2101] Schedule 2, clause 449.612

substitute

449.612 Condition 8101 or 8104 may be imposed.

449.612A Condition 8303 may be imposed.

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, 68 (as amended by 1999 Nos. 81 and 132), 76 (as amended by 1999 Nos. 81 and 132), 81 (as amended by 1999 No. 132), 82, 132, 155 and 198.
2. Made by the Governor-General on *the Commonwealth of Australia Gazette* on / 1999, and notified in / 1999.

22 September
23 September