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Migration Amendment Regulations 1999 (No. 12)

Statutory Rules 1999 No. 12

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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 20 OCT 1999 1999.

WILLIAM DEANE
Governor-General

By His Excellency's Command,

PHILIP RUDDOCK

Minister for Immigration and Multicultural Affairs



Migration Amendment Regulations 1999 (No. 12)¹

Statutory Rules 1999 No. 12²

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made under the

Migration Act 1958

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1999, 12

Migration Amendment Regulations 1999 (No. 12)

1

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12

1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 1999 (No. 1)*.

12

2 Commencement

These Regulations commence on gazettal.

3 Amendment of *Migration Regulations 1994*

Schedule 1 amends the *Migration Regulations 1994*.

4 Transitional

The amendments made by these Regulations do not apply in relation to a person who:

- (a) applied for a Protection (Class AZ) visa before the commencement of these Regulations; and
- (b) whose application was not finally determined before the commencement of these Regulations.

Schedule 1 Amendments

(regulation 3)

[1] **Schedule 1, item 1126**

omit

[2] **Schedule 1, after Part 3**

insert

Part 4 Protection visas

1401. Protection (Class XA)

- (1) Form: 866.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of each applicant who is in immigration detention and has not been immigration cleared: Nil
 - (ii) In any other case: \$30
 - (b) Second instalment (payable before grant of visa): Nil.
- (3) Other:
 - (a) Application must be made in Australia.
 - (b) Applicant must be in Australia.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Protection (Class XA) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

785 (Temporary Protection)

866 (Protection)

[3] Schedule 2, after Part 773*insert***Subclass 785 Temporary Protection****785.1 Interpretation**

785.111 In this Part:

Refugees Convention means the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees.

785.112 For the purposes of this Part, a person (**A**) is a member of the same family unit as another person (**B**) if:

- (a) A is a member of B's family unit; or
- (b) B is a member of A's family unit; or
- (c) A and B are members of the family unit of a third person.

785.2 Primary criteria

Note All applicants must satisfy the primary criteria.

785.21 Criteria to be satisfied at time of application

785.211 The applicant claims to be a person to whom Australia has protection obligations under the Refugees Convention and:

- (a) makes specific claims under the Refugees Convention; or

-
- (b) claims to be a member of the same family unit as a person who:
- (i) has made specific claims under the Refugees Convention; and
 - (ii) is an applicant for a Protection (Class XA) visa.

785.212 The applicant is not immigration cleared.

785.22 Criteria to be satisfied at time of decision

785.221 The Minister is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

785.222 In the case of an applicant referred to in paragraph 785.211 (b):

- (a) the Minister is satisfied that the applicant is a member of the same family unit as a person who has made specific claims under the Refugees Convention (a *claimant*); and
- (b) the claimant has been granted a Protection (Class XA) visa.

785.223 The applicant, or a member of the family unit of the applicant, has not been offered a temporary stay in Australia by the Australian Government for the purposes of regulation 2.07AC.

785.224 The applicant has undergone a medical examination carried out by a Commonwealth Medical Officer.

785.225 The applicant:

- (a) has undergone a chest x-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia; or
- (b) is under 16 years of age and is not a person in respect of whom a Commonwealth Medical Officer has requested such an examination; or
- (c) is a person:
 - (i) who is confirmed by a Commonwealth Medical Officer to be pregnant; and

- (ii) who has been examined for tuberculosis by a chest clinic officer employed by a health authority of a State or Territory; and
- (iii) who has signed an undertaking to place herself under the professional supervision of a health authority in a State or Territory and to undergo any necessary treatment; and
- (iv) who the Minister is satisfied should not be required to undergo a chest x-ray examination at this time.

785.226 The applicant satisfies public interest criteria 4001, 4002 and 4003.

785.227 The Minister is satisfied that the grant of the visa is in the national interest.

785.3 Secondary criteria

Note All applicants must satisfy the primary criteria.

785.4 Circumstances applicable to grant

785.411 The applicant must be in Australia.

785.5 When visa is in effect

785.511 Temporary visa permitting the holder to remain in, but not re-enter, Australia until the earlier of:

- (a) the end of 36 months from the date of grant of the visa; and
- (b) the day on which an application by the holder for a permanent visa is finally determined.

785.6 Conditions

785.611 The holder cannot be granted a substantive visa other than a protection visa.

785.7 Way of giving evidence

785.711 Visa label affixed to a Convention travel document or passport.

[4] Schedule 2, subparagraph 866.211 (b) (ii)

omit

(Class AZ)

insert

(Class XA)

[5] Schedule 2, after clause 866.211

insert

866.212 The applicant is immigration cleared.

[6] Schedule 2, paragraph 866.222 (b)

omit

Protection visa

insert

Protection (Class XA) visa

[7] Schedule 2, after clause 866.226

insert

866.227 The applicant, or a member of the family unit of the applicant, has not been offered a temporary stay in Australia by the Australian Government for the purposes of regulation 2.07AC.

- 866.228 If the applicant holds a Subclass 785 (Temporary Protection) visa, the applicant has held that visa for the lesser of:
- (a) a continuous period of 30 months; and
 - (b) a shorter period specified in writing by the Minister in relation to the applicant.

[8] Schedule 2, clause 866.511

after

travel

insert

to

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, 198 and 220.
2. Made by the Governor-General on *L* 1999, and notified in the *Commonwealth of Australia Gazette* on *L* 1999.

20 October
20 October