

# Migration Amendment Regulations 1999 (No. 14) 1999 No. 260

## EXPLANATORY STATEMENT

### STATUTORY RULES 1999 NO. 260

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

#### *Migration Act 1958*

#### Migration Amendment Regulations 1999 (No. 14)

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 under provisions of the Act listed in Attachment A.

The purpose of the Regulations is to amend the *Migration Regulations 1994* to enable applicants who made an application for a class of visa created by disallowed Statutory Rules 1998 No. 285 and whose applications were undecided at the date of disallowance to be considered under new, similar, visa classes. In particular, the Regulations will:

- specify that a valid application for a Designated Parent (Migrant) (Class BY) or a Designated Parent (Residence)(Class BZ) visa will be made if the applicant is invited by the Minister, in writing, to apply for the specified visa class and indicates in writing to Immigration that they accept that invitation (Item 1);
- establish two new visa classes: Designated Parent (Migrant) (Class BY) and Designated Parent (Residence) (Class BZ) and prescribe how a valid application for those classes must be made (Items 1 and 2);
- establish a new visa subclass under visa class Designated Parent (Migrant) (Class BY): visa Subclass 118 (Designated Parent), which will require an applicant to have made a valid application for a Parent (Migrant) (Class AX) visa between 1 November 1998 and 30 March 1999, inclusive, which had not been decided on 30 March 1999 (Items 2 and 4);
- establish a new visa subclass under visa class Designated Parent (Residence) (Class BZ): visa Subclass 859 (Designated Parent), which will require an applicant to have made a valid application for a Parent (Residence) 4 (Class BP) visa between 1 November 1998 and 30 March 1999, inclusive, which had not been decided on 30 March 1999 (Items 2 and 4);
- provide that an application for the Designated Parent classes must be made between 1 November 1999 and 28 April 2000 (inclusive) (Item 2); and
- make consequential amendments (Item 5).

Details of the Regulations are set out in Attachment B.

The Regulations will commence on 1 November 1999.

## **ATTACHMENT A**

### Migration Amendment Regulations 1999 (No. 14)

Regulations may be made under:

- paragraph 504(1)(g) of the Act, which provides that the regulations may prescribe an assurance of support to be given in respect of an applicant for a visa to enter and remain in Australia;
- subsection 29(1) of the Act which provides that the Minister may grant a visa to a non-citizen which permits the holder of the visa to travel to and enter, or remain in Australia;
- subsection 29(2) of the Act which provides that the regulations may prescribe a period during which the holder of a visa may travel to, enter and remain in Australia;
- subsection 31(1) of the Act which provides that the regulations are to prescribe classes of visas;
- subsection 31(3) of the Act which provides that the regulations may prescribe criteria for visas of a specified class;
- subsection 31(4) of the Act which provides for the regulations to prescribe whether visas are visas to travel to and enter or remain in Australia, or both;
- subsection 40(1) of the Act which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 41(1) of the Act which 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;
- subsection 45(1) of the Act which provides that the regulations may make provision in relation to applications for visas;
- subsection 45(2) of the Act which 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 which 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;
- section 45B of the Act which provides that the amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application;
- subsection 45C(1) of the Act which provides that the regulations may provide that the visa application charge may be payable in instalments and specify how those instalments are to be calculated and specify when those instalments are payable; and
- subsection 71(1) of the Act which provides for the regulations to prescribe the way in which evidence of a visa is to be given.

## **ATTACHMENT B**

Migration Amendment Regulations 1999 (No. 14)

Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the *Migration Amendment Regulations 1999 (No. 14)*.

Regulation 2 - Commencement

This regulation provides that these Regulations commence on 1 November 1999.

Regulation 3 - Amendment of *Migration Regulations 1994*

This regulation provides that Schedule 1 amends the *Migration Regulations 1994* ("the Migration Regulations").

Schedule 1 - Amendments

Item 1 - After regulation 2.07AD

This item inserts new regulation 2.07AE, which provides that an application for a Designated Parent (Migrant) (Class BY) or a Designated Parent (Residence) (Class BZ) visa is validly made if the applicant is invited in writing by the Minister to apply for the visa and indicates in writing to Immigration that he or she accepts that invitation.

Item 2 - Schedule 1, after item 1111

This item inserts new item 1111A after item 1111. New item 1111A contains a new visa class: "Designated Parent (Migrant) (Class BY)".

The requirements for making a valid application in the new visa class "Designated Parent (Migrant) (Class BY)" are that:

- \* an application form is not required;
- \* the first instalment of the visa application charge is nil;
- \* the second instalment of the visa application charge (payable before grant of the visa) is:
  - if the applicant has turned 18 at the time of application: \$5000;
  - if the applicant has not turned 18 at the time of application: \$960;
- \* the application must be made outside Australia during the period from 1 November 1999 to the end of 28 April 2000; and
- \* an application may be made by a person claiming to be a member of the family unit of a person who is an applicant for a Designated Parent (Migrant) (Class BY) visa at the same time and place as, and combined with, the application made by that person.

The class contains one subclass, Subclass 118 (Designated Parent). The criteria for the grant of a visa in this subclass are inserted into Schedule 2 to the Migration Regulations by item 3 of these Regulations.

The note after subitem. 1111A(4) makes a cross-reference to new regulation 2.07AE, inserted by these Regulations, which makes provision for how an application for this new class of visa must be made.

This item also inserts new item 1111B, which contains a new visa class: "Designated Parent (Residence) (Class BZ)".

The requirements for making a valid application in the new visa class "Designated Parent (Residence) (Class BZ)" are that:

- \* an application form is not required;
- \* the first instalment of the visa application charge is nil;
- \* the second instalment of the visa application charge (payable before the grant of the visa) is:
  - if the applicant has turned 18 at the time of application: \$5000;
  - if the applicant has not turned 18 at the time of application: \$960;
- \* the application must be made in Australia but not in immigration clearance in the period from 1 November 1999 to the end of 28 April 2000;
- \* an applicant must be in Australia, but not in immigration clearance; and
- \* an application may be made by a person claiming to be a member of the family unit of a person who is an applicant for a Designated Parent (Residence) (Class BZ) visa at the same time and place as, and combined with, the application made by that person.

The class contains one subclass, Subclass 859 (Designated Parent). The criteria for the grant of a visa in this subclass are inserted into Schedule 2 to the Migration Regulations by item 4 of these Regulations.

The note after subitem 1111B(4) makes a cross-reference to new regulation 2.07AE, inserted by these Regulations, which makes provision for how an application for this new class of visa must be made.

Item 3 - Schedule 2, after Part 110

This regulation inserts new Part 118 in Schedule 2 to the Migration Regulations.

#### *Subclass 118 - Designated Parent*

This item introduces new Part 118 (Designated Parent). New Part 118 replicates old Part 113 (Aged Parent), which was introduced by Statutory Rules 1998 No. 285. Statutory Rules 1998 No. 285 was disallowed by the Senate on 31 March 1999. The intention of the new Part is to allow applicants who had made an application for a Parent (Migrant) (Class AX) visa between 1 November 1998 to 30 March 1999, which was not decided on 30 March 1999, to be able to be considered under similar provisions in a new visa class Designated Parent (Migrant) (Class BY).

New Division 118.1 makes a reference to specific terms used in Part 118, which are defined in the Migration Regulations.

New Division 118.2 inserts the primary criteria to be satisfied in respect of a Subclass 118 visa. It is noted that 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.

New Subdivision 118.21 sets out the primary criteria to be satisfied at the time of application. In particular, new clause 118.211 provides that an applicant must have made a valid application for a Parent (Migrant) (Class AX) visa in the period from 1 November 1998 to the end of 30 March 1999 and must meet the requirements of subclauses 118.211(2) and (3) and either subclause 118.211(4) or (5), inserted by these Regulations.

New subclause 118.211(2) specifies that a decision to grant or to refuse to grant the Parent (Migrant) (Class AX) visa must not have been made in the period from 1 November 1998 to the end of 30 March 1999.

New subclause 118.211(3) specifies that the application for the Parent (Migrant) (Class AX) visa must not have been withdrawn.

New subclause 118.211(4) provides that an applicant meets the requirements of the subclause if the applicant is a working age parent and has a dependent child who is:

- \* under 18 years old;
- \* in Australia; and
- \* a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.

New subclause 118.211(5) provides that an applicant meets the requirements of the subclause if the applicant is an aged parent of a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.

New subclause 118.212(1) requires that, if the applicant meets the requirements of new subclause 118.211(4), inserted by these Regulations, the applicant must be sponsored:

- by a person who:

- \* is a close relative or guardian of a settled dependent child of the applicant who has not turned 18; and
- \* has turned 18; and
- \* is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or

- by a community organisation.

New subclause 118.212(2) provides that the term "settled dependent child" means a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen who is a dependent child of the working age parent applicant.

New clause 118.213 requires that, if the applicant meets the requirements of subclause 118.211(5), the applicant must be sponsored:

- \* if the relevant child has turned 18 by:

- that child; or

- that child's cohabiting spouse, if that spouse:

\* has turned 18; and

\* is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or

\* if the relevant child has not turned 18, by:

- that child's cohabiting spouse, if that spouse:

\* has turned 18; and

\* is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or

- a person who:

\* is a close relative or guardian of the relevant child; and

\* has turned 18; and

\* is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or

- if the relevant child has a cohabiting spouse but the spouse has not turned 18 - a person who:

\* is a close relative or guardian of the relevant child's spouse; and

\* has turned 18; and

\* is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or

- a community organisation.

New subclause 118.213(4) provides that the term "relevant child" means a settled Australian citizen, settled Australian permanent resident or settled eligible New Zealand citizen who is a child of the working age parent applicant.

New clause 118.214 requires the applicant to satisfy the balance of family test. The balance of family test is defined in regulation 1.05 of the Migration Regulations.

New Subdivision 118.22 sets out the primary criteria to be satisfied at the time of decision.

New clause 118.221 provides that the applicant must continue to satisfy the criteria specified in new clause 118.211, inserted by these Regulations.

New clause 118.222 provides that the sponsorship referred to in new clause 118.212 or 118.213, inserted by these Regulations, must be approved by the Minister and be still in force.

New clause 118.223 provides that the applicant must continue to satisfy the balance of family test.

New clause 118.224 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 118.225 requires that, if the applicant has previously been in Australia, the applicant must satisfy special return criteria 5001, 5002 and 5010.

New clause 118.226 requires that an assurance of support in relation to the applicant has been given, and been accepted by the Minister.

New subclause 118.227(1) requires each member of the family unit of the applicant who is an applicant for a Designated Parent (Migrant) (Class BY) visa to satisfy:

- \* public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- \* if the family member has previously been in Australia, special return criteria 5001, 5002 and 5010.

New subclause 118.227(2) requires each member of the family unit of the applicant who is not an applicant for Designated Parent (Migrant) (Class BY) visa to satisfy:

- \* public interest criteria 4001, 4002, 4003 and 4004; and
- \* public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo that assessment.

New clause 118.228 specifies that if a combined application with the applicant is made by:

- \* a dependent child who is a member of the family unit of the applicant; or
- \* a child under 18, who is usually resident with the applicant;

the Minister must be satisfied that the grant of a Subclass 118 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.

New Division 118.3 provides for the secondary criteria, which must be satisfied for the grant of a Subclass 118 visa. It is noted that the secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

New Subdivision 118.31 sets out the secondary criteria to be satisfied at the time of application.

New clause 118.311 provides that the applicant, at the time of application, must be a member of the family unit of, and have made a combined application with, a person who satisfies the primary criteria in Subdivision 118.21, inserted by these Regulations.

New clause 118.312 requires that, at the time of application, the sponsorship referred to in new clauses 118.212 or 118.213 (inserted by these Regulations) of the person who satisfies the primary criteria includes sponsorship of the applicant.

New Subdivision 118.32 sets out the secondary criteria to be satisfied at the time of decision.

New clause 118.321 provides that the applicant must continue to be a member of the family unit of a person who, having satisfied the primary criteria, holds a Subclass 118 visa.

New clause 118.322 provides that the sponsorship referred to in new clause 118.312 (inserted by these Regulations) must be approved by the Minister and still be in force.

New clause 118.323 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 118.324 requires that, if the applicant has previously been in Australia, the applicant must satisfy special return criteria 5001, 5002 and 5010.

New clause 118.325 requires that either:

- \* the applicant must be included in the assurance of support given in relation to the person who satisfies the primary criteria, and that assurance has been accepted by the Minister; or
- \* an assurance of support in relation to the applicant has been given, and been accepted by the Minister.

New clause 118.326 requires that if the applicant is a dependent child, the Minister must be satisfied that the grant of a Subclass 118 visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

New Division 118.4 provides for the circumstances applicable to the grant of the visa.

New clause 118.411 provides that the applicant must be outside Australia when the visa is granted. The note comments that the second instalment of the visa application charge must be paid before the visa can be granted.

New Division 118.5 provides for when the visa is in effect.

New clause 118.511 provides that a Subclass 118 visa is a permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

New Division 118.6 provides for conditions that are attached to the visa.

New clause 118.611 requires that an applicant's first entry as the holder of a Subclass 118 visa must be made before a date specified by the Minister for the purpose.

New clause 118.612 specifies that either or both of conditions 8502 and 8515 may be imposed. Condition 8502 provides that the holder of the visa must not enter Australia before the entry to Australia of a person specified in the visa. Condition 8515 requires that the holder of the visa must not marry before entering Australia.

New Division 118.7 provides for the way in which evidence of a valid visa is to be given.

New clause 118.711 requires that the visa be evidenced by way of a visa label affixed to a valid passport.

Item 4 - Schedule 2, after Part 851

This regulation inserts new Part 859 (Designated Parent) in Schedule 2 to the Migration Regulations.

#### *Subclass 859 - Designated Parent*

This item introduces new Part 859 (Designated Parent). New Part 859 replicates most of old Part 819 (Aged Parent), which was introduced by Statutory Rules 1998 No. 285. Statutory Rules 1998 No. 285 was disallowed by the Senate on 31 March 1999.

The intention of the new Part is to allow applicants who had made a valid application for a Parent (Residence) (Class BP) visa before 31 March 1999, which was not decided at 30 March 1999, to be able to be considered under similar provisions in new visa class Designated Parent (Residence) (Class BZ).

New Division 859.1 makes a reference to specific terms used in Part 859, which are defined in the Migration Regulations.

New Division 859.2 inserts the primary criteria to be satisfied in respect of a Subclass 859 visa. It is noted that 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.

New Subdivision 859.21 sets out the primary criteria to be satisfied at the time of application. In particular, new clause 859.211 requires that an applicant must be nominated for the grant of a Subclass 859 visa by a child of the applicant who has turned 18 and who is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen. New clause 859.212 requires an applicant:

- \* to be an aged parent of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- \* to have made a valid application for a Parent (Residence) (Class BP) visa in the period from 1 November 1998 to the end of 30 March 1999; and
- \* a decision to grant or to refuse to grant the Parent (Residence) (Class BP) visa was not made in that period; and
- \* the application for the Parent (Residence) (Class BP) visa has not been withdrawn.

New Subdivision 859.22 sets out the primary criteria to be satisfied at the time of decision.

New clause 859.221 requires the applicant to be an aged parent of the Australian citizen, Australian permanent resident or eligible New Zealand citizen of the person who nominated the applicant for the grant of the visa.

New clause 859.222 provides that the applicant must continue to satisfy the criterion specified in new clause 859.211 inserted by these Regulations.

New clause 859.223 requires an applicant to satisfy the balance of family test. The balance of family test is defined in regulation 1.05 of the Migration Regulations.

New clause 859.224 requires that an assurance of support in relation to the applicant must be given to, and be accepted by, the Minister.

New clause 859.225 requires an applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 859.226(1) requires each member of the family unit of the applicant who is an applicant for a Subclass 859 visa to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 859.226(2) requires each member of the family unit of the applicant who is not an applicant for a Subclass 859 visa to satisfy:

- \* public interest criteria 4001, 4002, 4003 and 4004; and

\* public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo that assessment.

New clause 859.227 requires the Minister to be satisfied that the grant of a Subclass 859 visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, a dependent child of the applicant.

Division 859.3 provides for the secondary criteria, which must be satisfied for the grant of a Subclass 859 visa. It is noted that the secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

New Subdivision 859.31 sets out the secondary criteria to be satisfied at the time of application.

New clause 859.311 provides that the applicant must be a member of the family unit of an applicant for a Subclass 859 visa mentioned in new clause 859.212 (inserted by these Regulations) and the Minister has not decided to grant or refuse to grant the visa to that other applicant.

New Subdivision 859.32 sets out the secondary criteria to be satisfied at the time of decision.

New clause 859.321 provides that the person referred to in new clause 859.311 (inserted by these Regulations) of whom the applicant is the spouse, or of whose family unit the applicant is a member, must be the holder of a Subclass 859 visa, having satisfied the primary criteria.

New clause 859.322 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 859.323 provides that, if an assurance of support is required, either:

\* an assurance of support in relation to the relevant person who satisfies the primary criteria, that includes the applicant, has been given, and been accepted by the Minister; or

\* an assurance of support in relation to the applicant has been given, and been accepted by the Minister.

New clause 859.324 requires that if the applicant is a dependent child, the Minister must be satisfied that the grant of a Subclass 859 visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

New Division 859.4 provides for the circumstances applicable to the grant of the visa.

New clause 859.411 requires that the applicant must be in Australia, but not in immigration clearance, when the visa is granted. The note comments that the second instalment of the visa application charge must be paid before the visa can be granted.

New Division 859.5 provides for when the visa is in effect.

New clause 859.511 provides that a Subclass 859 visa is a permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

New Division 859.6 provides for conditions that are attached to the visa. In this case, there are no conditions attached to this Subclass.

New Division 859.7 provides for the way in which evidence of a valid visa is to be given.

New clause 859.711 requires that the visa be evidenced by way of a visa label affixed to a passport.

Item 5 - Schedule 2, after paragraph 773.213(2)(zg)

This item inserts a reference to visa classes Designated Parent (Migrant) (Class BY) and Designated Parent (Residence) (Class BZ) into subclause 773.213(2) as a consequential amendment to the introduction of the two new classes by these Regulations.

The amendment made by this item allows holders of these classes of visa to be eligible for the grant of a Subclass 773 (Border) visa where they otherwise satisfy criteria for the grant of a Subclass 773 (Border) visa.