

Migration Amendment Regulations 2000 (No. 4) 2000 No. 192

EXPLANATORY STATEMENT

STATUTORY RULES 2000 No. 192

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

Migration Act 1958

Migration Amendment Regulations 2000 (No. 4)

Subsection 504(1) 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, subsection 31(3) of the Act provides that regulations may prescribe criteria for a visa or visas of a specified class.

The purpose of the Regulations is to insert into the *Migration Regulations 1994* a new Subclass 786 Temporary (Humanitarian Concern) (Class UO) visa. The Regulations will provide certain safe haven visa holders, who have been identified as persons of humanitarian concern, with continued lawful residence in Australia.

Details of the Regulations are set out in the Attachment.

The Regulations commence on gazettal.

ATTACHMENT

Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the *Migration Amendment Regulations 2000 (No. 4)*.

Regulation 2 - Commencement

This regulation provides that these Regulations commence on gazettal.

Regulation 3 - Amendment of *Migration Regulations 1994*

This regulation provides for the *Migration Regulations 1994* to be amended as set out in Schedule 1 to these Regulations.

Schedule 1 - Amendments

Item 1 - Regulation 2.07AC, heading

This item adds Temporary (Humanitarian Concern) visas to the heading of Regulation 2.07AC.

Item 2 - Subregulation 2.07AC(1)

This item prescribes a Temporary (Humanitarian Concern) (Class UO) visa for the purposes of subsection 46(2) of the Act.

Item 3 - Subregulations 2.07AC (2) and (3)

This item omits specific reference in the subregulations to a Temporary Safe Haven (Class UJ) visa referring, instead, to a visa of a class mentioned in the amended subregulation (1) (that is, either a Temporary Safe Haven visa or a Temporary (Humanitarian Concern) visa).

Item 4 - Schedule 1, after item 1223B

This item inserts into Schedule 1 Part 2 of the *Migration Regulations 1994*, which deals with Temporary visas (other than Bridging visas), new Item 1223C detailing the new Temporary (Humanitarian Concern) (Class UO) visa.

Item 5 - Schedule 2, after part 785

This item inserts the criteria, conditions and other information concerning the new Subclass 786 Temporary (Humanitarian Concern) visa. The key features of the new visa are:

- * at the time of application for the visa, an applicant is to be the holder of a Temporary Safe Haven (Class UJ) visa;
- * at the time of decision, the Minister is to be satisfied that there are humanitarian reasons to allow the applicant to remain longer in Australia, the applicant is to have undergone a medical examination and the applicant is to satisfy public interest criteria;
- * the visa can only be granted to an applicant who is in Australia;
- * the duration of the visa is 36 months or a shorter period determined by the Minister; and

* the visa holder must not engage in activities that are prejudicial to Australian internal security.

Item 6 - Schedule 2, subclause 866.227(2)

This item amends the Subclass 866 Protection visa criteria so that it is clear that the bar in subclause 866.227(2) to a Protection visa application applies to an applicant, or a member of the family unit of an applicant, who was offered a temporary stay in Australia by the Australian government for the purpose of an application for a Temporary Safe Haven (Class UJ) visa as provided for in regulation 2.07AC.

Item 7 - Schedule 2, after clause 866.228

This item amends the Subclass 866 Protection visa criteria so that an applicant, or a member of the family unit of the applicant, is prevented from being granted a protection visa if the applicant was offered, less than 30 months before the date of decision (or such shorter period as the Minister specified in writing), a temporary stay in Australia by the Australian government for the purposes of a Temporary (Humanitarian Concern) (Class UO) visa as provided for in regulation 2.07AC.