



Migration Amendment Regulations 2008 (No. 5)¹

Select Legislative Instrument 2008 No. 168

I, PHILIP MICHAEL JEFFERY, 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 7 August 2008

P. M. JEFFERY
Governor-General

By His Excellency's Command

CHRIS EVANS
Minister for Immigration and Citizenship

1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 2008 (No. 5)*.

2 Commencement

These Regulations commence on 9 August 2008.

3 Amendment of *Migration Regulations 1994*

Schedule 1 amends the *Migration Regulations 1994*.

4 Transitional

- (1) The amendments made by Schedule 1 apply in relation to an application for a visa made, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*), before 9 August 2008.

Note Applications for certain kinds of visas made, but not finally determined, before 9 August 2008, may be taken to be valid applications for Resolution of Status (Class CD) visas — see regulation 2.07AQ of the *Migration Regulations 1994*.

- (2) However, those amendments do not apply in relation to an application for:
- (a) a Resolution of Status (Residence) (Class BL) visa; or
 - (b) a Return Pending (Temporary) (Class VA) visa;
- that was made, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*), before 9 August 2008.

Schedule 1 Amendments

(regulation 3)

Part 1 Amendments of *Migration Regulations 1994*

[1] Paragraph 1.20 (2) (a)

omit

, Resolution of Status (Residence) (Class BL)

[2] Regulation 2.07AN

omit

[3] After regulation 2.07AP

insert

**2.07AQ Applications for Resolution of Status (Class CD)
visas**

- (1) For subsection 46 (2) of the Act, a Resolution of Status (Class CD) visa is a prescribed class of visa.
- (2) An application for a Resolution of Status (Class CD) visa is taken to have been validly made by a person only if the requirements of subregulation (3) or item 1127AA of Schedule 1 have been met.
- (3) The requirements of this subregulation are met for a person if the criteria set out in at least 1 of the items of the table are satisfied.

Item	Criterion 1	Criterion 2	Criterion 3	Criterion 4
1	The person makes a valid application for a Protection (Class XA) visa	The person holds: (a) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or (b) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or (c) a Subclass 695 (Return Pending) visa; or (d) a Subclass 785 (Temporary Protection) visa	Nil	Nil
2	The person makes a valid application for a Protection (Class XA) visa	The person held, but no longer holds, a visa of a kind mentioned in criterion 2 of item 1, and the visa was not cancelled	The person: (a) has not left Australia; or (b) while holding a visa that permits re-entry to Australia, has left and re-entered Australia	The person does not hold a permanent visa
3	The person holds: (a) a Temporary Safe Haven (Class UJ) visa; or (b) a Temporary (Humanitarian Concern) (Class UO) visa	An offer of a permanent stay in Australia is made to the person by the Australian Government	The person indicates to an authorised officer that he or she accepts the offer of a permanent stay in Australia	The authorised officer endorses, in writing, the person's acceptance of the offer

Item	Criterion 1	Criterion 2	Criterion 3	Criterion 4
4	The person is a member of the family unit of a person who is taken to have made a valid application as a result of satisfying the criteria in item 3	An offer of a permanent stay in Australia is made to the person by the Australian Government	The person indicates to an authorised officer that he or she accepts the offer of a permanent stay in Australia	The authorised officer endorses, in writing, the person's acceptance of the offer

(4) If:

- (a) the application for the Resolution of Status (Class CD) visa is taken to have been validly made because the criteria in item 1 or 2 of the table in subregulation (3) have been satisfied; and
- (b) the application for the Protection (Class XA) visa mentioned in the item was made before 9 August 2008; the application is taken to have been made on 9 August 2008.

(5) If:

- (a) the application for the Resolution of Status (Class CD) visa is taken to have been validly made because the criteria in item 1 or 2 of the table in subregulation (3) have been satisfied; and
- (b) the application for the Protection (Class XA) visa mentioned in the item is made on or after 9 August 2008; the application is taken to have been made when the application for the Protection (Class XA) visa is made.

(6) If the application for the Resolution of Status (Class CD) visa is taken to have been validly made because the criteria in item 3 or 4 of the table in subregulation (3) have been satisfied, the application is taken to have been made when the authorised officer endorses the person's acceptance of the offer as described in the item.

- (7) Subregulation (2) applies whether or not the applicant holds, or held, a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa, a Subclass 451 (Secondary Movement Relocation (Temporary)) visa, a Subclass 695 (Return Pending) visa or a Subclass 785 (Temporary Protection) visa that is, or was, subject to a condition mentioned in paragraph 41 (2) (a) of the Act relating to the making of applications for other visas.

[4] Paragraph 2.08A (2A) (a)

omit

[5] Subregulation 2.08A (3)

omit

[6] Regulation 2.08F

omit

[7] Paragraphs 2.12 (1) (o), (p) and (q), not including the note

substitute

- (o) Resolution of Status (Class CD);
- (p) Child (Residence) (Class BT).

Part 2 **Amendments of Schedule 1 to *Migration Regulations 1994***

[8] **Schedule 1, item 1127A**

substitute

1127AA Resolution of Status (Class CD)

Note Subregulation 2.07AQ (3) sets out other circumstances in which a person is taken to have made a valid application for a Resolution of Status (Class CD) visa.

- (1) Form: 1364.
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) Application must be made in Australia.
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (c) The criteria in at least 1 of the items in the table are satisfied.

Item	Criterion 1	Criterion 2	Criterion 3
1	Applicant holds: <ol style="list-style-type: none">(a) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or(b) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or(c) a Subclass 695 (Return Pending) visa; or(d) a Subclass 785 (Temporary Protection) visa	Nil	Nil

Item	Criterion 1	Criterion 2	Criterion 3
2	Applicant held, but no longer holds, a visa of a kind mentioned in criterion 1 of item 1, and the visa was not cancelled	Applicant: (a) has not left Australia; or (b) while holding a visa that permits re-entry to Australia, has left and re-entered Australia	Applicant does not hold a permanent visa
3	Applicant is a member of the same family unit as a person who: (a) has made a valid application for a Resolution of Status (Class CD) visa as a result of satisfying the criteria in item 1 or 2; or (b) is taken to have made a valid application for a Resolution of Status (Class CD) visa as a result of satisfying the criteria in item 1 or 2 of the table in subregulation 2.07AQ (3).	Applicant: (a) was in Australia on 9 August 2008 and was a member of the same family unit on that date; or (b) was born on or after 9 August 2008	Nil

(4) Subclasses:

851 (Resolution of Status)

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

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

[9] Schedule 1, item 1217AA

omit

[10] Schedule 1, subitem 1401 (4)

omit

785 (Temporary Protection)

[11] Schedule 1, subitem 1402 (4)

omit

447 (Secondary Movement Offshore Entry (Temporary))

451 (Secondary Movement Relocation (Temporary))

[12] Schedule 1, item 1403

omit

Part 3 Amendments of Schedule 2 to *Migration Regulations 1994*

[13] Schedule 2, after subparagraph 202.211 (2) (b) (ii)

insert

- (ia) the proposer is, or has been, the holder of a Resolution of Status (Class CD) visa, and the applicant was a member of the immediate family of the proposer on the date of application for that visa; or

[14] Schedule 2, Part 851

substitute

Subclass 851 Resolution of Status

851.1 Interpretation

Note There are no interpretation provisions specific to this Part.

851.2 Primary criteria

Note The primary criteria have to be satisfied by all applicants for Subclass 851 visas.

851.21 [No criteria to be satisfied at time of application]

851.22 Criteria to be satisfied at time of decision

- 851.221 The applicant has undergone a medical examination carried out by any of the following (a *relevant medical practitioner*):
- (a) a Medical Officer of the Commonwealth;
 - (b) a medical practitioner approved by the Minister for the purposes of this paragraph;

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- (c) a medical practitioner employed by an organisation approved by the Minister for the purposes of this paragraph.
- 851.222 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 11 years of age and is not a person in respect of whom a relevant medical practitioner has requested such an examination; or
 - (c) is a person:
 - (i) who is confirmed by a relevant medical practitioner 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.
- 851.223 A relevant medical practitioner:
- (a) has considered:
 - (i) the results of any tests carried out for the purposes of the medical examination required under clause 851.221; and
 - (ii) the radiological report (if any) required under clause 851.222 in respect of the applicant; and
 - (b) if he or she is not a Medical Officer of the Commonwealth and considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community, has referred any relevant results and reports to a Medical Officer of the Commonwealth.

- 851.224 If a Medical Officer of the Commonwealth considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community, arrangements have been made, on the advice of the Medical Officer of the Commonwealth, to place the applicant under the professional supervision of a health authority in a State or Territory to undergo any necessary treatment.
- 851.225 The applicant:
- (a) satisfies public interest criteria 4001, 4002 and 4003A; and
 - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 851.226 If the applicant was taken to have made an application because the criteria in item 4 of the table in subregulation 2.07AQ (3) were satisfied, the applicant and the other person mentioned in that item are members of the family unit.
- 851.227 If the criteria in item 3 of the table in paragraph 1127AA (3) (c) of Schedule 1 were satisfied, the applicant and the other person mentioned in that item are members of the same family unit.

851.3 Secondary criteria

Note There are no secondary criteria for the grant of a Subclass 851 visa.

851.4 Circumstances applicable to grant

- 851.411 The applicant must be in Australia.

851.5 When visa is in effect

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

851.6 Conditions: Nil.

851.7 Way of giving evidence

851.711 No evidence need be given.

851.712 If evidence is given, to be given by a label affixed to a valid passport, valid Convention travel document or an approved form.

[15] Schedule 2, clause 866.111, definition of *fraudulent document*

omit

[16] Schedule 2, after clause 866.230

insert

866.231 The applicant has not been made an offer of a permanent stay in Australia as described in item 3 or 4 of the table in subregulation 2.07AQ (3).

866.232 The applicant does not hold a Resolution of Status (Class CD) visa.

[17] Schedule 2, Division 866.3, second note

omit

[18] Further amendments — omissions

The following provisions of Schedule 2 are omitted:

- clause 200.212
- clause 202.212
- clause 204.213
- Part 447
- Part 451
- Part 695
- Part 785
- clause 866.212
- clause 866.213

- clause 866.214
- clause 866.215
- clause 866.222A
- clause 866.222B
- clause 866.228
- clause 866.228A
- clause 866.229.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.