



Migration Amendment Regulations 2009 (No. 9)¹

Select Legislative Instrument 2009 No. 202

I, QUENTIN BRYCE, 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 12 August 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

CHRIS EVANS
Minister for Immigration and Citizenship

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1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 2009 (No. 9)*.

2 Commencement

These Regulations commence on 14 September 2009.

3 Amendment of *Migration Regulations 1994*

- (1) Schedule 1 amends the *Migration Regulations 1994*.
- (2) The amendments made by items [1] to [7] of Schedule 1 apply in relation to an application for a visa:
 - (a) made, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*), before 14 September 2009; or
 - (b) made on or after 14 September 2009.
- (3) The amendments made by items [9] to [11] of Schedule 1 apply in relation to an application for a visa made on or after 14 September 2009.
- (4) The amendments made by items [12] and [13] of Schedule 1 apply in relation to an application for a visa:
 - (a) made, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*), before 14 September 2009; or
 - (b) made on or after 14 September 2009.
- (5) The amendment made by item [14] of Schedule 1 applies in relation to an application for a visa made on or after 14 September 2009.
- (6) The amendments made by items [15] to [37] of Schedule 1 apply in relation to an application for a visa:
 - (a) made, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*), before 14 September 2009; or

(b) made on or after 14 September 2009.

4 Amendment of *Migration Regulations 1994*

- (1) Schedule 2 amends the *Migration Regulations 1994*.
- (2) The amendments made by Schedule 2 apply in relation to an application for an Educational (Temporary) (Class TH) visa made on or after 14 September 2009.

Schedule 1 Amendments relating to the Subclass 457 (Business (Long Stay)) visa

(regulation 3)

[1] Sub-subparagraph 1.08 (c) (i) (C)

omit

visa; or

insert

visa; and

[2] Sub-subparagraph 1.08 (c) (i) (D)

omit

[3] Subparagraph 1.08 (c) (iii)

omit

that visa.

insert

that visa; or

[4] After paragraph 1.08 (c)

insert

(d) he or she:

- (i) is an applicant for a Temporary Business Entry (Class UC) visa who seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and
- (ii) is identified in an approved nomination of an occupation made by:
 - (A) a standard business sponsor; or
 - (B) a former standard business sponsor; or
 - (C) a party to a labour agreement;who is specified in the application for that visa; and
- (iii) appears to the Minister, on the basis of information contained in the application, to satisfy the criteria for the grant of that visa.

[5] Paragraph 2.12F (3A) (b)

omit

paragraph 457.223 (4) (ed) or (ee) or (5) (ba)

insert

paragraph 457.223 (4) (aa)

[6] Sub-subparagraph 2.15 (1) (b) (ii) (B)

omit

[7] Subparagraph 2.15 (3) (b) (ii)

omit

[8] Subregulation 2.43 (3), definition of *business sponsor*

omit

[9] Schedule 1, item 1223A

substitute

1223A. Temporary Business Entry (Class UC)

(1) Form:

(a) Subject to paragraph (c), if the applicant seeks to satisfy the criteria for the grant of a Subclass 456 (Business (Short Stay)) visa: 456.

(b) If the applicant:

(i) seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and

(ii) is outside Australia at the time of application; and

(iii) is making the application for the visa:

(A) in connection with a standard business sponsor who is operating a business in Australia; or

(B) as part of a labour agreement; or

(C) in circumstances in which the person who proposes to nominate an occupation in relation to the applicant has made an application for approval as a standard business sponsor on Form 1196 (Internet); or

(D) in circumstances in which:

(I) an approved nomination of an occupation in relation to the applicant has been made by a person who was a standard business sponsor who is operating a business in Australia; and

(II) that nomination has not ceased to have effect under regulation 2.75: 1066 or 1066 (Internet).

(ba) If the applicant:

(i) seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and

(ii) is in Australia at the time of application; and

-
- (iii) is making the application for the visa:
 - (A) in connection with a standard business sponsor who is operating a business in Australia; or
 - (B) as part of a labour agreement; or
 - (C) in circumstances in which the person who proposes to nominate an occupation in relation to the applicant has made an application for approval as a standard business sponsor on Form 1196 (Internet); or
 - (D) in circumstances in which:
 - (I) an approved nomination of an occupation in relation to the applicant has been made by a person who was a standard business sponsor who is operating a business in Australia; and
 - (II) that nomination has not ceased to have effect under regulation 2.75; and
 - (iv) holds a substantive visa at the time of application for the Temporary Business Entry (Class UC) visa: 1066 or 1066 (Internet).
- (bb) If the applicant:
- (i) seeks to satisfy the secondary criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and
 - (ii) is not making a combined application with the applicant seeking to satisfy the primary criteria for the grant of that visa: 1066 or 1066S (Internet).
- (bc) If:
- (i) the applicant seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and
 - (ii) paragraphs (b), (ba) and (bb) do not apply: 1066.
- (c) If:
- (i) a person has made an application to a Government in accordance with subparagraph 2.07AA (2) (b) (i) or (ii); and

-
- (ii) that application, a copy of that application, or the information contained in that application, has been sent by the Government in accordance with paragraph 2.07AA (2) (c) to an office of Immigration that is approved in writing by the Minister for the purpose of receiving applications of that kind: Nil.
- (2) Visa application charge:
- (a) First instalment (payable at the time application is made):
- (i) Subject to subparagraphs (v), (vi), (vii), (viii) and (ix), in the case of an applicant who seeks to satisfy the criteria for the grant of a Subclass 456 (Business (Short Stay)) visa: \$105
- (iii) Subject to subparagraphs (v) and (vi), in the case of each applicant who seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa: \$260
- (v) In the case of an applicant who:
- (B) appears to the Minister, on the basis of the application, to be a person to whom privileges and immunities are, or are expected to be, accorded under the *International Organisations (Privileges and Immunities) Act 1963* or the *Overseas Missions (Privileges and Immunities) Act 1995*; and
- (C) is expected to be recommended by the Foreign Minister for the grant of a visa: Nil
- (vi) In the case of an applicant who:
- (A) seeks to satisfy the secondary criteria for the grant of a Subclass 456 (Business (Short Stay)) visa, and is a spouse, de facto partner or dependent child of an applicant mentioned in subparagraph (v); or
- (B) seeks to satisfy the secondary criteria for the grant of a Subclass 457 (Business (Long Stay)) visa, and is a member of the family unit of a person mentioned in subparagraph (v): Nil

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- (vii) In the case of an applicant who applies in the course of acting as a representative for a foreign government: Nil
 - (viii) In the case of an applicant who is an applicant referred to in paragraph (1) (c): Nil
 - (ix) In the case of an applicant who is in a class of persons specified by the Minister in an instrument in writing for this subparagraph: Nil
 - (b) Second instalment (payable before grant of visa): Nil.
 - (3) Other:
 - (a) In the case of an applicant who seeks to satisfy the criteria for the grant of a Subclass 456 (Business (Short Stay)) visa:
 - (i) the applicant must be outside Australia; and
 - (ii) the application must be made outside Australia.
 - (aa) Subject to paragraphs (ad), (ae), (af) and (ag), an application by an applicant who seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa may be made in or outside Australia, but not in immigration clearance.
 - (ad) An application by an applicant who:
 - (ia) seeks to satisfy the criteria for grant of a Subclass 457 (Business (Long Stay)) visa; and
 - (i) holds a Subclass 457 (Business (Long Stay)) visa granted on the basis that the applicant met the requirements of subclause 457.223 (7) of Schedule 2 as in force immediately prior to 14 September 2009; and
 - (ii) on the day on which the application is made:
 - (A) had been conducting the business in Australia as a principal for at least 15 months; or
 - (B) if the applicant had been conducting the business in Australia as a principal for less than 15 months — had received an endorsement of the business as beneficial to a State or Territory from the government of the State or Territory;

must be made in Australia, but not in immigration clearance.

- (ae) An application by an applicant who:
- (ia) seeks to satisfy the criteria for grant of a Subclass 457 (Business (Long Stay)) visa; and
 - (i) holds a Subclass 457 (Business (Long Stay)) visa granted on the basis that the applicant met the requirements of Subdivision 457.32 of Schedule 2; and
 - (ii) is the spouse or de facto partner of a person who holds a visa of the kind mentioned in subparagraph (ad) (i); and
 - (iii) on the day on which the application is made:
 - (A) had been conducting the business in Australia as a principal for at least 15 months; or
 - (B) if the applicant had been conducting the business in Australia as a principal for less than 15 months — had received an endorsement of the business as beneficial to a State or Territory from the government of the State or Territory;

must be made in Australia, but not in immigration clearance.

- (af) Subject to paragraph (ag), an application by an applicant who:
- (i) seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and
 - (ii) seeks to meet the requirements of subclause 457.223 (2), (4) or (10) of Schedule 2;
- must be made:
- (iii) in Australia, but not in immigration clearance; or
 - (iv) as an Internet application.

Note An Internet application is taken to have been made at the time, identified using Australian Eastern Standard Time or Australian Eastern Standard Time incorporating Daylight Saving Time in the Australian Capital Territory, that corresponds to the time at which the Internet application is made: see regulation 2.10C.

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- (ag) In the case of an applicant:
- (i) who seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and
 - (ii) in relation to whom the nomination of an occupation has been made, or is proposed to be made, by a person who does not operate a business in Australia;
- the applicant must be outside Australia and the application must be made outside Australia.
- (b) An application by an applicant who:
- (i) seeks to satisfy the criteria for the grant of a Subclass 456 (Business (Short Stay)) visa; and
 - (ii) claims to be a spouse or dependent child of another such applicant;
- may be made at the same time and place as, and combined with, the application of that other applicant.
- (c) An application by an applicant who:
- (i) seeks to satisfy the secondary criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and
 - (ii) claims to be a member of the family unit of a person who seeks to satisfy the primary criteria (the *primary applicant*);
- may be made at the same time and place as, and combined with, an application by the primary applicant or any other applicant who claims to be a member of the family unit of the primary applicant.
- (ca) An application by an applicant who:
- (i) seeks to satisfy the secondary criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and

-
- (ii) claims to be a member of the family unit of an applicant who seeks to satisfy, or has satisfied, the primary criteria on the basis of meeting the requirements of subclause 457.223 (2), (4) or (10) of Schedule 2;

(other than an applicant in relation to whom the nomination of an occupation in relation to the primary applicant has been made or is proposed to be made by a person who does not operate a business in Australia) must be made:

- (iii) in Australia, but not in immigration clearance; or
- (iv) as an Internet application.

Note An Internet application is taken to have been made at the time, identified using Australian Eastern Standard Time or Australian Eastern Standard Time incorporating Daylight Saving Time in the Australian Capital Territory, that corresponds to the time at which the Internet application is made: see regulation 2.10C.

- (d) In the case of an applicant who seeks to satisfy the primary criteria for the grant of a Subclass 457 (Business (Long Stay)) visa on the basis that the applicant meets the requirements of subclause 457.223 (4) of Schedule 2:

- (i) the application must specify the person who has nominated, or who proposes to nominate, an occupation in relation to the applicant; and
- (ii) the application must be accompanied by evidence that the person who has nominated, or proposes to nominate, the occupation is:
 - (B) a standard business sponsor; or
 - (C) a person who has applied for approval under regulation 2.61 as a standard business sponsor but whose application has not yet been decided; or

Note Item 49 of Schedule 1 of the *Migration Legislation Amendment (Worker Protection) Act 2008* provides that if:

- (a) a person applied for approval as a sponsor under section 140E of the Act as in force immediately prior to 14 September 2009; and
- (b) the person's application is not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*) before 14 September 2009;

the application is treated as if it had been made on 14 September 2009.

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- (D) a person whose approval as a standard business sponsor has ceased to have effect, but whose nomination of an occupation in relation to the applicant:
 - (I) has been approved under section 140GB of the Act; and
 - (II) has not ceased to have effect under regulation 2.75; and
 - (iii) the person who has nominated, or proposes to nominate, the occupation is not the subject of a bar under:
 - (A) section 140L of the Act as in force immediately prior to 14 September 2009; or
 - (B) section 140M of the Act.
 - (da) In the case of an applicant who seeks to satisfy the primary criteria for the grant of a Subclass 457 (Business (Long Stay)) visa on the basis that the applicant meets the requirements of subclause 457.223 (2) of Schedule 2:
 - (i) the application must specify the person who has nominated, or proposes to nominate, an occupation in relation to the applicant; and
 - (ii) either:
 - (A) if the applicant is outside Australia at the time of making the application — the labour agreement has been approved; or
 - (B) if the applicant is in Australia at the time of making the application:
 - (I) the labour agreement has been approved; or
 - (II) the person who proposes to nominate an occupation in relation to the applicant has made a submission to the Minister to enter into a labour agreement.

- (e) If:
- (i) the application is made outside Australia; and
 - (ii) the applicant seeks to satisfy the criteria for the grant of a Subclass 456 (Business (Short Stay)) visa;
- application must be made at:
- (iii) a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia; or
 - (iv) an office of a visa application agency that is approved in writing by the Minister with whom an application for a Temporary Business Entry (Class UC) visa may be made.
- (f) If the application is made in Australia, in accordance with subregulation 2.07AA (2), application must be made at an office of Immigration that is approved in writing by the Minister as an office to which an application for a Temporary Business Entry (Class UC) visa may be made.
- (4) Subclasses:
- 456 (Business (Short Stay))
 - 457 (Business (Long Stay)).

[10] Schedule 2, subparagraph 303.212 (a) (ii)

substitute

- (ii) an applicant for a Temporary Business Entry (Class UC) visa who seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and

[11] Schedule 2, clause 456.311

substitute

456.311 The applicant is the spouse, de facto partner, or a dependent child, of an applicant for a Temporary Business Entry (Class UC) visa who seeks to satisfy the criteria for the grant of a Subclass 456 (Business (Short Stay)) visa.

[12] **Schedule 2, clause 457.111, including the note**

substitute

457.111 (1) In this Part:

adverse information has the meaning given by subregulation 2.57 (3).

occupation includes an activity:

- (a) that was nominated under regulation 1.20G or 1.20GA as in force immediately prior to 14 September 2009; and
- (b) in relation to which the nomination has not ceased to have effect.

(2) In this Part, a business is of benefit to Australia if:

- (a) the conduct of the business contributes to:
 - (i) the creation or maintenance of employment for Australian citizens or Australian permanent residents; or
 - (ii) expansion of Australian trade in goods or services; or
 - (iii) the improvement of Australian business links with international markets; or
 - (iv) competitiveness within sectors of the Australian economy; and
- (b) the operator of the business:
 - (i) introduces to, or utilises or creates in, Australia new or improved technology or business skills; or
 - (ii) has a satisfactory record of, or a demonstrated commitment towards, training Australian citizens and Australian permanent residents in the business in Australia.

Note ***AUD, IASS agreement, labour agreement, ownership interest*** and ***standard business sponsor*** are defined in regulation 1.03.

(3) In this Part:

- (a) a person is ***associated with*** a corporation, partnership, unincorporated association or other entity that has made a nomination in relation to an applicant for a visa in the same way in which, under subregulation 2.57 (2), a person is associated with an applicant; and

- (b) subregulation 2.57 (2) is to be applied as if a reference in that subregulation to an applicant were a reference to the person who has made the nomination in relation to the applicant; and
- (c) an expression in subregulation 2.57 (2) that is defined in subregulation 2.57 (1) has the meaning given by that subregulation.

[13] Schedule 2, clauses 457.211 and 457.212

substitute

457.211 If the applicant is in Australia at the time of application:

- (a) the applicant holds a substantive visa, other than a Subclass 771 (Transit) visa or a special purpose visa; or
- (b) if the applicant does not hold a substantive visa at the time of application:
 - (i) the last substantive visa held by the applicant was not a Subclass 771 (Transit) visa or a special purpose visa; and
 - (ii) the applicant satisfies Schedule 3 criteria 3003, 3004 and 3005.

Note *Special purpose visa* is defined in subsection 5 (1) of the Act.

[14] Schedule 2, clause 457.221A

substitute

457.221A If the applicant was outside Australia at the time of making their application, but inside Australia at the time of the decision on the application:

- (a) the applicant holds a substantive visa, other than a Subclass 771 (Transit) visa or a special purpose visa; or
- (b) if the applicant does not hold a substantive visa at the time of the decision on the application:
 - (i) the last substantive visa held by the applicant was not a Subclass 771 (Transit) visa or a special purpose visa; and

-
- (ii) the applicant satisfies Schedule 3 criteria 3003, 3004 and 3005.

Note *Special purpose visa* is defined in subsection 5 (1) of the Act.

[15] Schedule 2, subclause 457.223 (1)

omit

(3), (4), (5),

insert

(4),

[16] Schedule 2, paragraph 457.223 (2) (a)

omit

activity

insert

occupation

[17] Schedule 2, paragraph 457.223 (2) (b)

substitute

(b) either:

(i) both of the following apply:

(A) the applicant and a business activity specified in the application and relating to the applicant were the subject of an approved business nomination under regulation 1.20H as in force immediately prior to 14 September 2009; and

(B) the approval has not ceased to have effect under subregulation 1.20H (5) as in force immediately prior to 14 September 2009; or

(ii) a nomination of an occupation in relation to the applicant:

(A) has been approved under section 140GB of the Act; and

(B) has not ceased to have effect under regulation 2.75; and

Note The definition of *occupation* in clause 457.111 includes the activity mentioned in subparagraph (i).

[18] Schedule 2, paragraph 457.223 (2) (d)

substitute

- (d) if the Minister requires the applicant to demonstrate that he or she has skills and experience that are suitable to perform the occupation — the applicant demonstrates that he or she has those skills and that experience in the manner specified by the Minister; and
- (e) the Minister is satisfied that the requirements of the labour agreement have been met in relation to the application; and
- (f) either:
 - (i) there is no adverse information known to Immigration about a party to the labour agreement or a person associated with the party to the labour agreement; or
 - (ii) it is reasonable to disregard any adverse information known to Immigration about a party to the labour agreement or a person associated with the party to the labour agreement.

[19] Schedule 2, subclauses 457.223 (3), (4) and (5), including the subheadings

substitute

Standard business sponsorship

- (4) The applicant meets the requirements of this subclause if:
 - (a) either:
 - (i) if the applicant and a business activity specified in the application and relating to the applicant were the subject of an approved business nomination

under regulation 1.20H as in force immediately prior to 14 September 2009:

- (A) the nomination was made by a person who was a standard business sponsor at the time the nomination was approved; and
 - (B) the approval of the nomination has not ceased to have effect under subregulation 1.20H (5) as in force immediately prior to 14 September 2009; or
- (ii) if a nomination of an occupation in relation to the applicant has been approved under section 140GB of the Act:
- (A) the nomination was made by a person who was a standard business sponsor at the time the nomination was approved; and
 - (B) the approval of the nomination has not ceased as provided for in regulation 2.75; and

Note The definition of **occupation** in clause 457.111 includes the activity mentioned in subparagraph (i).

- (aa) the nominated occupation is specified in an instrument in writing for paragraph 2.72 (10) (a) that is in effect; and
- (ba) if the business activities of the person who made the approved nomination include activities relating to either or both of:
 - (i) the recruitment of labour for supply to other unrelated businesses; and
 - (ii) the hiring of labour to other unrelated businesses;either:
 - (iii) the occupation is undertaken in a position with a business, or an associated entity, of the person who made the approved nomination; or
 - (iv) the occupation is specified by the Minister in an instrument in writing for this subparagraph; and
- (d) the Minister is satisfied that:
 - (i) the applicant's intention to perform the occupation is genuine; and

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- (ii) the position associated with the nominated occupation is genuine; and
- (e) if the Minister requires the applicant to demonstrate that he or she has the skills that are necessary to perform the occupation — the applicant demonstrates that he or she has those skills in the manner specified by the Minister; and
- (ea) if:
- (i) the applicant would be required to hold a licence, registration or membership that is mandatory to perform the occupation nominated in relation to the applicant; and
- (ii) in order to obtain the licence, registration or membership, the applicant would need to demonstrate a level of English language proficiency equivalent to the level of English language proficiency that is required to achieve an IELTS test score of more than 5 in each of the 4 test components of speaking, reading, writing and listening;
- the applicant has proficiency in English of at least the standard required for the grant (however described) of the licence, registration or membership; and
- (eb) if:
- (i) the applicant is not an exempt applicant; and
- (ii) subclause (6) does not apply to the applicant; and
- (iii) at least 1 of subparagraphs (ea) (i) and (ii) does not apply;
- the applicant has a level of English language proficiency that is required to achieve an IELTS test score of at least 5 in each of the 4 test components of speaking, reading, writing and listening; and
- (ec) if the Minister requires the applicant to demonstrate his or her English language proficiency — the applicant demonstrates his or her English language proficiency in the manner specified by the Minister; and

(f) either:

- (i) there is no adverse information known to Immigration about the person who made the approved nomination mentioned in paragraph (a) or a person associated with that person; or
- (ii) it is reasonable to disregard any adverse information known to Immigration about the person who made the approved nomination mentioned in paragraph (a) or a person associated with that person.

[20] Schedule 2, paragraph 457.223 (6) (a)

omit

activity

insert

occupation

[21] Schedule 2, subclause 457.223 (7)

omit

[22] Schedule 2, sub-subparagraph 457.223 (7A) (a) (i) (A)

after

subclause (7)

insert

as in force immediately before 14 September 2009

[23] Schedule 2, sub-subparagraph 457.223 (7A) (a) (i) (B)

after

subclause (7)

insert

as in force immediately before 14 September 2009

[24] Schedule 2, subparagraph 457.223 (7A) (c) (iii)

substitute

(iii) either:

- (A) there is no adverse information known to Immigration about the applicant or a person associated with the applicant; or
- (B) it is reasonable to disregard any adverse information known to Immigration about the applicant or a person associated with the applicant; and

[25] Schedule 2, paragraph 457.223 (10) (a)

omit

activity

insert

occupation

[26] Schedule 2, paragraphs 457.223 (10) (b) and (c)

substitute

- (c) the party to the IASS agreement has agreed in writing to be the sponsor for the visa applicant; and

[27] Schedule 2, subclause 457.223 (11)

omit

subclauses (4) and (5)

insert

subclause (4)

[28] Schedule 2, clause 457.223A

substitute

457.223B For an applicant other than an applicant who has met the requirements of subclause 457.223 (8) or subclause

457.223 (9) — the applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

457.223C If the nominated occupation is a medical practitioner, the applicant's qualifications are recognised by the relevant authority in Australia for the registration of medical practitioners as entitling the applicant to practise as a medical practitioner.

[29] Schedule 2, subclause 457.226 (1)

substitute

(1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.

[30] Schedule 2, after clause 457.226

insert

457.226A If:

- (a) the applicant was the holder of a Student (Temporary) (Class TU) visa at the time of making the application for a Temporary Business Entry (Class UC) visa; and
- (b) is a fully funded student within the meaning given by clause 5A103,

the Minister is satisfied that it would not be detrimental to Australia's policies in relation to overseas students to grant the visa.

[31] Schedule 2, clauses 457.324, 457.324A, 457.324B and 457.324C

substitute

457.324 (1) The applicant is included in any nomination that is required in respect of the primary applicant in accordance with approved form 1196N or 1196 (Internet).

-
- (2) If the applicant is not included in any nomination that is required in respect of the primary applicant in accordance with approved form 1196N or 1196 (Internet):
- (a) the standard business sponsor who has the most recent approved nomination under section 140GB of the Act, or under regulation 1.20H as in force immediately prior to 14 September 2009, of an occupation in relation to the primary applicant has agreed in writing that the applicant may be a secondary sponsored person in relation to the standard business sponsor; or
 - (b) the former standard business sponsor who has the most recent approved nomination under section 140GB of the Act, or under regulation 1.20H as in force immediately prior to 14 September 2009, of an occupation in relation to the primary applicant has agreed in writing that the applicant may be a secondary sponsored person in relation to the former standard business sponsor; or
 - (c) a party to the labour agreement who has the most recent approved nomination under section 140GB of the Act, or under regulation 1.20H as in force immediately prior to 14 September 2009, of an occupation in relation to the primary applicant has agreed in writing that the applicant may be a secondary sponsored person in relation to that party; or
 - (d) a former party to the labour agreement who has the most recent approved nomination under section 140GB of the Act, or under regulation 1.20H as in force immediately prior to 14 September 2009, of an occupation in relation to the primary applicant has agreed in writing that the applicant may be a secondary sponsored person in relation to that former party.

457.324B Either:

- (a) there is no adverse information known to Immigration about the person who made the approved nomination mentioned in paragraph 457.223 (2) (b) or 457.223 (4) (a); or

- (b) it is reasonable to disregard any adverse information known to Immigration about the person who made the approved nomination mentioned in paragraph 457.223 (2) (b) or 457.223 (4) (a), or a person associated with that person.

457.324D Except for an applicant who seeks to satisfy the secondary criteria on the basis of being a member of the family unit of the primary applicant who has met the requirements of subclause 457.223 (8) or subclause 457.223 (9), the applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

[32] Schedule 2, paragraph 457.511 (a)

omit

more than 3 months, but not more than 4 years,

insert

not more than 4 years

[33] Schedule 2, paragraph 457.511 (b)

omit

more than 3 months, but not more than 4 years,

insert

not more than 4 years

[34] Schedule 2, after paragraph 457.511 (c)

insert

(ca) in the case of a holder whose visa was granted on the basis that the holder met:

- (i) the requirements of subclause 457.223 (2); or
- (ii) the secondary criteria for the grant of the visa as a member of the family unit of a person who met the requirements of subclause 457.223(2);

to remain in Australia until:

- (iii) the end of the period specified for the visa in the labour agreement mentioned in paragraph 457.223 (2); or
- (iv) if no period is specified in the labour agreement — the date on which the labour agreement ceases; and

[35] Schedule 2, subparagraph 457.511 (d) (i)

omit

(b) or (c)

insert

(b), (c) or (ca)

[36] Schedule 2, Division 457.6

substitute

457.6 Conditions

457.611 (1) For:

- (a) an applicant other than an applicant who has met the requirements of subclause 457.223 (8) or subclause 457.223 (9); or
- (b) an applicant other than an applicant who seeks to satisfy the secondary criteria on the basis of being a member of the family unit of the primary applicant who has met the requirements of subclause 457.223 (8) or subclause 457.223 (9);

condition 8501.

(2) If the applicant satisfies the primary criteria, condition 8107 applies unless the applicant meets the requirements of subclause 457.223 (7A).

(3) Any 1 or more of conditions 8303, 8403, 8502, 8516, 8522, 8525 and 8526 may be imposed.

Schedule 2 Amendments creating new Subclass 406 (Government Agreement) visa

(section 4)

[1] Sub-subparagraph 1.08 (c) (i) (B)

omit

[2] Schedule 1, after subparagraph 1208 (2) (a) (i)

insert

(ia) In the case of an applicant who:

(A) is seeking to satisfy the criteria for the grant of a Subclass 406 (Government Agreement) visa; and

(B) is an applicant of a kind specified by the Minister in an instrument in writing for this sub-subparagraph: Nil

[3] Schedule 1, subitem 1208 (4)

substitute

(4) Subclasses:

406 (Government Agreement)

415 (Foreign Government Agency)

419 (Visiting Academic)

442 (Occupational Trainee)

[4] Schedule 2, after Part 405

insert

Subclass 406 Government Agreement

406.1 Interpretation

406.111 In this Part:

Australian signatory is a department or agency of:

- (a) the Commonwealth; or
 - (b) a State or Territory;
- that is a signatory to the relevant agreement.

foreign signatory means a government, of a foreign country, that is a signatory to the relevant agreement.

relevant agreement means a written agreement that:

- (a) is in effect; and
- (b) is between:
 - (i) a department or agency of:
 - (A) the Commonwealth; or
 - (B) a State or Territory; and
 - (ii) a government of a foreign country; and
- (c) is at least partly for the purpose of facilitating the temporary entry of people to Australia; and
- (d) is not an agreement or arrangement, or a type of agreement or arrangement, that is specified by the Minister in an instrument in writing for this paragraph.

406.2 Primary criteria

Note The primary criteria must be satisfied by at least 1 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.

406.21 Criteria to be satisfied at time of application

Note No criteria to be satisfied at time of application if the application is made outside Australia.

406.211 If the application is made in the migration zone:

- (a) the applicant holds a substantive visa, other than 1 of the following:
 - (i) a Subclass 426 (Domestic Worker (Temporary) — Diplomatic or Consular) visa;
 - (ii) a Subclass 771 (Transit) visa;
 - (iii) a Subclass 995 (Diplomatic (Temporary)) visa;
 - (iv) a special purpose visa; or
- (b) the applicant:
 - (i) does not hold a substantive visa; and
 - (ii) the last substantive visa held by the applicant was not a visa mentioned in paragraph (a); and
 - (iii) the applicant satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

406.22 Criteria to be satisfied at time of decision

406.221 The Minister is satisfied that the applicant:

- (a) will be engaged in work or an activity in Australia in accordance with the terms and conditions of a relevant agreement; or
- (b) will direct the national operations in Australia of 1 of the following:
 - (i) the British Council;
 - (ii) the Alliance Française;
 - (iii) the Goethe-Institut;
 - (iv) the Istituto Italiano di Cultura.

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- 406.222 (1) If paragraph 406.221 (a) applies to the applicant, the criteria in subclauses (2) and (3) must be satisfied.
- (2) The Minister is satisfied:
- (a) that the applicant meets the requirements of the relevant agreement; and
- (b) that an Australian signatory agrees to the applicant's stay in Australia; and
- (c) that the foreign signatory agrees to the applicant's stay in Australia.
- (3) If the foreign signatory is not the national government of the relevant foreign country, the Minister is satisfied that the national government of the foreign country does not oppose the applicant's stay in Australia.
- 406.223 If paragraph 406.221 (a) applies to the applicant, the Minister may require the applicant to provide:
- (a) a copy of the relevant agreement written in English; or
- (b) a letter from an Australian signatory stating that the Australian signatory is satisfied that:
- (i) the applicant is to be employed or engaged in Australia in accordance with the standards for wages and working conditions provided for under relevant Australian legislation and awards; and
- (ii) the applicant has complied with any licensing, registration or equivalent requirements associated with the applicant's employment or engagement.
- 406.224 If paragraph 406.221 (b) applies to the applicant, the applicant gives to the Minister a statement supporting the application from the foreign ministry of the relevant foreign government.
- 406.225 The Minister is satisfied that the employment or engagement of the applicant would be of benefit to Australia.
- 406.226 The Minister is satisfied that the applicant genuinely intends to stay temporarily in Australia to engage in the work or activity mentioned in clause 406.221.
- 406.227 The Minister is satisfied that the applicant:
- (a) has adequate means to support himself or herself; or

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- (b) has access to adequate means to support himself or herself;
- taking into account the applicant's work rights during the period of the applicant's stay in Australia.
- 406.228 The Minister is satisfied that the applicant has made adequate arrangements in Australia for health insurance during the period of the applicant's stay in Australia.
- 406.229 If the application is made in the migration zone, the applicant has substantially complied with the conditions that apply or applied to:
- (a) the last substantive visa (if any) held by the applicant; and
 - (b) any subsequent bridging visa held by the applicant.
- 406.230 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 406.231 The applicant:
- (a) in all cases — satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014; and
 - (b) in the case of an applicant who has not turned 18 — satisfies public interest criteria 4012, 4017 and 4018; and
 - (c) in the case of an applicant who had turned 18 at the time of application — satisfies public interest criterion 4019.
- 406.232 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 406.233 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirement in subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or

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- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

406.234 The Minister is satisfied that:

- (a) the applicant is the holder of a valid passport that:
 - (i) was issued to the applicant by an official source; and
 - (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to be the holder of a passport.

406.3 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.

406.31 Criteria to be satisfied at time of application

406.311 The applicant is a member of the family unit of a person who has applied for an Educational (Temporary) (Class TH) visa on the basis of seeking to satisfy the criteria for the grant of a Subclass 406 visa.

406.312 If the application is made outside Australia and is made separately from that of the person satisfying the primary criteria:

- (a) the person satisfying the primary criteria is, or is expected soon to be, in Australia; and
- (b) the applicant intends to stay temporarily in Australia as a member of that family unit.

406.32 Criteria to be satisfied at time of decision

406.321 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 406 visa.

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- 406.322 If paragraph 406.221 (a) applies to the person satisfying the primary criteria, the Minister is satisfied that:
- (a) the relevant agreement permits the applicant to enter Australia as a member of the family unit of the person satisfying the primary criteria; and
 - (b) an Australian signatory has agreed to the applicant's stay in Australia.
- 406.323 If:
- (a) paragraph 406.221 (a) applies to the person satisfying the primary criteria; and
 - (b) the relevant agreement contains terms and conditions that apply to a member of the family unit of the person satisfying the primary criteria;
- the Minister is satisfied that the applicant meets the requirements of the terms and conditions.
- 406.324 The Minister is satisfied that the applicant:
- (a) has adequate means to support himself or herself; or
 - (b) has access to adequate means to support himself or herself;
- taking into account the applicant's work rights during the period of the applicant's stay in Australia.
- 406.325 The applicant:
- (a) in all cases — satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014; and
 - (b) in the case of an applicant who has not turned 18 — satisfies public interest criteria 4012, 4017 and 4018; and
 - (c) in the case of an applicant who had turned 18 at the time of application — satisfies public interest criterion 4019.
- 406.326 The Minister is satisfied that the applicant has made adequate arrangements in Australia for health insurance during the period of the applicant's stay in Australia.
- 406.327 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

- 406.328 If the application was made in the migration zone, the applicant has substantially complied with the conditions that apply or applied to:
- (a) the last substantive visa (if any) held by the applicant; and
 - (b) any subsequent bridging visa held by the applicant.
- 406.329 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirement in subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
 - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 406.330 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
 - (i) was issued to the applicant by an official source; and
 - (ii) is in the form issued by the official source; or
 - (b) it would be unreasonable to require the applicant to be the holder of a passport.

406.4 Circumstances applicable to grant

- 406.411 If the application is made in the migration zone, the applicant must be in the migration zone at the time of grant.
- 406.412 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

406.5 When visa is in effect

- 406.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

406.6 Conditions

- 406.611 If the applicant meets the primary criteria, condition 8107 must be imposed.
- 406.612 If the applicant meets the primary or secondary criteria, conditions 8501 and 8516 must be imposed.
- 406.613 If the applicant meets the primary or secondary criteria, any 1 or more of conditions 8101, 8102, 8103, 8106, 8109, 8111, 8203, 8301, 8303, 8502, 8503, 8522, 8525 and 8526 may be imposed.

406.7 Way of giving evidence

- 406.711 No evidence need be given.
- 406.712 If evidence is given, to be given by a label affixed to a valid passport.

[5] Schedule 2, Part 418

omit

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>.