Commonwealth Coat of Arms

Migration Amendment (Temporary Protection Visas) Regulation 2013

Select Legislative Instrument No. 234, 2013

I, Professor Marie Bashir AC CVO, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Migration Act 1958*.

Dated 17 October 2013

Marie Bashir

Administrator

By Her Excellency’s Command

Scott Morrison

Minister for Immigration and Border Protection

Contents

1 Name of regulation 1

2 Commencement 1

3 Authority 1

4 Schedule(s) 1

Schedule 1—Amendments 2

Migration Regulations 1994 2

1 Name of regulation

This regulation is the *Migration Amendment (Temporary Protection Visas) Regulation 2013*.

2 Commencement

This regulation commences on 18 October 2013.

3 Authority

This regulation is made under the *Migration Act 1958.*

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Migration Regulations 1994

1 Subregulation 2.07AQ(3) (table item 1, column headed “Criterion 2”, at the end of paragraph (d))

Add “granted before 18 October 2013”.

2 After regulation 2.08G

Insert:

2.08H Certain persons taken to have applied for Subclass 785 (Temporary Protection) visas

(1) For subsection 46(2) of the Act, a Protection (Class XA) visa is a prescribed class of visa.

(2) A valid application for a Protection (Class XA) visa made, but not finally determined, before 18 October 2013 is taken to also be a valid application for a Subclass 785 (Temporary Protection) visa if the applicant:

(a) holds a Subclass 785 (Temporary Protection) visa; or

(b) has held a Subclass 785 (Temporary Protection) visa since last entering Australia; or

(c) did not hold a visa that was in effect on the applicant’s last entry into Australia; or

(d) is an unauthorised maritime arrival; or

(e) was not immigration cleared on the applicant’s last entry into Australia.

3 Subitem 1127AA(3) of Schedule 1 (table item 1, column headed “Criterion 1”, at the end of paragraph (d))

Add “granted before 18 October 2013”.

4 At the end of subitem 1401(3) of Schedule 1

Add:

(d) An application by a person for a Protection (Class XA) visa is a valid application for a Subclass 785 (Temporary Protection) visa only if the person:

(i) holds a Subclass 785 (Temporary Protection) visa; or

(ii) has held a Subclass 785 (Temporary Protection) visa since last entering Australia; or

(iii) did not hold a visa that was in effect on the person’s last entry into Australia; or

(iv) is an unauthorised maritime arrival; or

(v) was not immigration cleared on the person’s last entry into Australia.

(e) An application by a person for a Protection (Class XA) visa is a valid application for a Subclass 866 (Protection) visa only if the person:

(i) does not hold a Subclass 785 (Temporary Protection) visa; and

(ii) has not held a Subclass 785 (Temporary Protection) visa since last entering Australia; and

(iii) held a visa that was in effect on the person’s last entry into Australia; and

(iv) is not an unauthorised maritime arrival; and

(v) was immigration cleared on the person’s last entry into Australia.

5 Subitem 1401(4) of Schedule 1

Repeal the subitem, substitute:

(4) Subclasses:

(a) Subclass 785 (Temporary Protection)

(b) Subclass 866 (Protection).

6 After Subclass 773 of Schedule 2

Insert:

Subclass 785—Temporary Protection

785.1—Interpretation

785.111

In this Part:

***Refugees Convention*** means the Refugees Convention as amended by the Refugees Protocol.

Note: ***Refugees Convention***, ***Refugees Protocol*** and ***member of the same family unit*** are defined in section 5 of the Act.

785.2—Primary criteria

Note: All applicants must satisfy the primary criteria.

785.21—Criteria to be satisfied at time of application

785.211

(1) One of subclauses (2) to (5) is satisfied.

(2) The applicant:

(a) claims to be a person in respect of whom Australia has protection obligations under the Refugees Convention; and

(b) makes specific claims under the Refugees Convention.

(3) The applicant claims to be a member of the same family unit as a person who is:

(a) mentioned in subclause (2); and

(b) an applicant who has made a valid application for a Subclass 785 (Temporary Protection) visa.

(4) The applicant claims to be a person in respect of whom Australia has protection obligations because the applicant claims that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.

(5) The applicant claims to be a member of the same family unit as a person who is:

(a) mentioned in subclause (4); and

(b) an applicant who has made a valid application for a Subclass 785 (Temporary Protection) visa.

785.22—Criteria to be satisfied at time of decision

785.221

(1) One of subclauses (2) to (5) is satisfied.

(2) The Minister is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention.

Note: See paragraph 36(2)(a) of the Act.

(3) The Minister is satisfied that:

(a) the applicant is a person who is a member of the same family unit as an applicant who is mentioned in subclause (2); and

(b) the applicant mentioned in subclause (2) has been granted a Subclass 785 (Temporary Protection) visa.

Note: See paragraph 36(2)(b) of the Act.

(4) The Minister is satisfied that the applicant:

(a) is not a person in respect of whom Australia has protection obligations under the Refugees Convention; and

(b) is a person in respect of whom Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Note: See paragraph 36(2)(aa) of the Act.

(5) The Minister is satisfied that:

(a) the applicant is a person who is a member of the same family unit as an applicant mentioned in subclause (4); and

(b) the applicant mentioned in subclause (4) has been granted a Subclass 785 (Temporary Protection) visa.

Note: See paragraph 36(2)(c) of the Act.

785.222

(1) Subclause (2) or (3) is satisfied.

(2) 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.

(3) Section 91K of the Act does not apply to the applicant’s application because of a determination made by the Minister under subsection 91L(1) of the Act.

785.223

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;

(c) a medical practitioner employed by an organisation approved by the Minister for the purposes of this paragraph.

785.224

(1) One of subclauses (2) to (4) is satisfied.

(2) The applicant has undergone a chest x‑ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia.

(3) The applicant is under 11 years of age and is not a person in respect of whom a relevant medical practitioner has requested the examination mentioned in subclause (2).

(4) The applicant is a person:

(a) who is confirmed by a relevant medical practitioner to be pregnant; and

(b) who has been examined for tuberculosis by a chest clinic officer employed by a health authority of a State or Territory; and

(c) 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

(d) who the Minister is satisfied should not be required to undergo a chest x‑ray examination at this time.

785.225

(1) A relevant medical practitioner has considered:

(a) the results of any tests carried out for the purposes of the medical examination required under clause 785.223; and

(b) the radiological report (if any) required under clause 785.224 in respect of the applicant.

(2) If the relevant medical practitioner:

(a) is not a Medical Officer of the Commonwealth; and

(b) 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;

he or she has referred any relevant results and reports to a Medical Officer of the Commonwealth.

785.226

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.

785.227

The applicant:

(a) satisfies public interest criteria 4001 and 4003A; and

(b) if the applicant had turned 18 at the time of application—satisfies public interest criterion 4019.

785.228

(1) If the applicant is a child mentioned in paragraph 2.08(1)(b), subclause (2) or (3) is satisfied.

(2) Both of the following apply:

(a) the applicant is a member of the same family unit as an applicant mentioned in subclause 785.211(2);

(b) the applicant mentioned in subclause 785.211(2) has been granted a Subclass 785 (Temporary Protection) visa.

(3) Both of the following apply:

(a) the applicant is a member of the same family unit as an applicant mentioned in subclause 785.211(4);

(b) the applicant mentioned in subclause 785.211(4) has been granted a Subclass 785 (Temporary Protection) visa.

785.229

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 when the visa is granted.

785.5—When visa is in effect

785.511

Temporary visa permitting the holder to remain in Australia until the earlier of:

(a) the end of 36 months from the date of grant of the visa; and

(b) the end of any shorter period, specified by the Minister, from the date of grant of the visa.

785.6—Conditions

785.611

Conditions 8503, 8564 and 8565.

7 Subclauses 866.211(2) and (4) of Schedule 2

Omit “to whom”, substitute “in respect of whom”.

8 Subclauses 866.221(2) to (5) of Schedule 2

Repeal the subclauses, substitute:

(2) The Minister is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention.

Note: See paragraph 36(2)(a) of the Act.

(3) The Minister is satisfied that:

(a) the applicant is a person who is a member of the same family unit as an applicant who is mentioned in subclause (2); and

(b) the applicant mentioned in subclause (2) has been granted a Subclass 866 (Protection) visa.

Note: See paragraph 36(2)(b) of the Act.

(4) The Minister is satisfied that:

(a) the applicant is not a person in respect of whom Australia has protection obligations under the Refugees Convention; and

(b) the applicant is a person in respect of whom Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Note: For paragraph (b), see paragraph 36(2)(aa) of the Act.

(5) The Minister is satisfied that:

(a) the applicant is a person who is a member of the same family unit as an applicant mentioned in subclause (4); and

(b) the applicant mentioned in subclause (4) has been granted a Subclass 866 (Protection) visa.

Note: See paragraph 36(2)(c) of the Act.

9 After clause 866.221

Insert:

866.222

The applicant:

(a) does not hold a Subclass 785 (Temporary Protection) visa; and

(b) has not held a Subclass 785 (Temporary Protection) visa since last entering Australia; and

(c) held a visa that was in effect on the applicant’s last entry into Australia; and

(d) is not an unauthorised maritime arrival; and

(e) was immigration cleared on the applicant’s last entry into Australia.

10 Subclause 866.223

Omit “relevant medical practitioner”, substitute “***relevant medical practitioner***”.

11 At the end of Schedule 8

Add:

8565 The holder must notify Immigration of any change in the holder’s residential address within 14 days after the change occurs.

12 At the end of Schedule 13

Add:

Part 21—Amendments made by the Migration Amendment (Temporary Protection Visas) Regulation 2013

2101 Operation of Schedule 1

(1) The amendments of these Regulations made by Schedule 1 to the *Migration Amendment (Temporary Protection Visas) Regulation 2013* apply in relation to an application for a visa made on or after 18 October 2013.

(2) The amendment of these Regulations made by Schedule 1 to the *Migration Amendment (Temporary Protection Visas) Regulation 2013*, other than the amendments made by items 1, 3 and 4 of that Schedule, apply in relation to an application for a visa made, but not finally determined, before 18 October 2013.