



Migration (LIN 19/216: Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Instrument 2019

I, David Coleman, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, make the following instrument.

Dated 29 October 2019

David Coleman
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

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Part 1—Preliminary

1 Name

- (1) This instrument is the *Migration (LIN 19/216: Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Instrument 2019*.
- (2) This instrument may be cited as LIN 19/216.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as Schedule 2 to the <i>Migration Amendment (New Skilled Regional Visas) Regulations 2019</i> commences.	16 November 2019

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following provisions of the *Migration Regulations 1994*:

- (a) paragraph 186.221(b) of Schedule 2;
- (b) paragraph 186.231(b) of Schedule 2;
- (c) subclause 186.234(3) of Schedule 2;
- (d) paragraph 187.221(b) of Schedule 2;
- (e) paragraph 187.222(b) of Schedule 2;
- (f) subclause 494.223(2) of Schedule 2;
- (g) subclause 494.224(7) of Schedule 2;
- (h) subclause 494.225(2) of Schedule 2.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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5 Definitions

Note: A number of expressions used in this instrument are defined in the Regulations, including the following:

- (a) ANZSCO;
- (b) designated regional area;
- (c) earnings;
- (d) the Act.

In this instrument:

academic applicant, in relation to an application for a visa, means a person in relation to whom all of the following paragraphs apply:

- (a) the nomination to which the visa application relates was made by an Australian university;
- (b) the nominated position to which the visa application relates is for an academic classified as Level A, B, C, D or E;
- (c) the nominated occupation to which the visa application relates, and its corresponding 6-digit code, correspond to an occupation and its corresponding 6-digit ANZSCO code specified in an item of the following table.

Exempt occupations		
	Column 1	Column 2
Item	Occupation	6-digit ANZSCO code
1	faculty head	134411
2	university lecturer	242111

high income threshold has the meaning given by section 333 of the *Fair Work Act 2009*.

medical practitioner means an occupation that:

- (a) is listed in ANZSCO; and
- (b) has ANZSCO occupation minor group code 253 (medical practitioners).

nominated occupation, in relation to an application for a visa, means:

- (a) if the visa application is for a Subclass 186 (Employer Nomination Scheme) visa or a Subclass 187 (Regional Sponsored Migration Scheme) visa—the occupation that relates to the position to which the visa application relates; or
- (b) if the visa application is for a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa—the occupation nominated by the nomination to which the visa application relates.

nominated position, in relation to an application for a visa, means:

- (a) if the visa application is for a Subclass 186 (Employer Nomination Scheme) visa or a Subclass 187 (Regional Sponsored Migration Scheme) visa—the position to which the visa application relates; or

- (b) if the visa application is for a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa—the position that relates to the nominated occupation that relates to the visa application.

nomination, in relation to an application for a visa, means:

- (a) if the visa application is for a Subclass 186 (Employer Nomination Scheme) visa or a Subclass 187 (Regional Sponsored Migration Scheme) visa—an application under regulation 5.19 of the Regulations for approval of the nomination of the position to which the visa application relates; or
- (b) if the visa application is for a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa—the nomination under paragraph 140GB(1)(b) of the Act identified in the visa application.

regional medical practitioner applicant, in relation to an application for a visa, means a person in relation to whom all of the following paragraphs apply:

- (a) the nominated position to which the visa application relates is located in a designated regional area;
- (b) at all times during the 3 years ending immediately before the day the visa application was made, the person was employed as a medical practitioner;
- (c) during those 3 years, the person spent at least 2 years (whether made up of a continuous period or 2 or more non-consecutive periods) employed, as a medical practitioner, at a place or places that, at the time, were located in a designated regional area;
- (d) at almost all times during those 3 years, the person held:
- (i) a Subclass 457 (Temporary Work (Skilled)) visa; or
 - (ii) a Subclass 482 (Temporary Skill Shortage) visa.

Regulations means the *Migration Regulations 1994*.

science applicant, in relation to an application for a visa, means a person in relation to whom all of the following paragraphs apply:

- (a) the person is any of the following relating to science:
- (i) researcher;
 - (ii) scientist;
 - (iii) technical specialist;
- (b) the nomination to which the visa application relates was made by a science organisation;
- (c) the ANZSCO skill level of the nominated occupation to which the visa application relates is level one or two.

science organisation means:

- (a) a science agency of the Commonwealth or of a State or Territory; or
- (b) an Australian university.

Subclass 444/461 worker, in relation to an application for a visa, means a person in relation to whom both of the following paragraphs apply:

- (a) during the 3 years ending immediately before the day the visa application was made, the person spent at least 2 years (whether made up of a continuous period or 2 or more non-consecutive periods) working:

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- (i) for the employer who made the nomination to which the visa application relates; and
- (ii) in the nominated occupation to which the visa application relates;
- (b) at almost all times during those 3 years, the person held:
 - (i) a Subclass 444 (Special Category) visa; or
 - (ii) a Subclass 461 (New Zealand Citizen Family Relationship (Temporary)) visa.

Subclass 457/482 worker, in relation to an application for a visa, means a person in relation to whom all of the following paragraphs apply:

- (a) at all times during the 3 years ending immediately before the day the visa application was made, the person was employed:
 - (i) by the employer who made the nomination to which the visa application relates; and
 - (ii) in the nominated occupation to which the visa application relates;
- (b) for each of those 3 years, the person's earnings for the year were equal to or greater than the high income threshold (as applying at the end of the year);
- (c) at almost all times during those 3 years, the person held:
 - (i) a Subclass 457 (Temporary Work (Skilled)) visa; or
 - (ii) a Subclass 482 (Temporary Skill Shortage) visa.

transitional 457 worker under 50, in relation to an application for a visa (the **new visa**), means a person who:

- (a) on 18 April 2017:
 - (i) held a Subclass 457 (Temporary Work (Skilled)) visa; or
 - (ii) was an applicant for a Subclass 457 (Temporary Work (Skilled)) visa that was subsequently granted; and
- (b) on the day the application for the new visa was made, had not turned 50.

working: a person is not **working** for an employer at a time if the person is on unpaid leave at that time.

Part 2—Exemptions from skill, age and English language requirements

6 Subclass 186 visas

Temporary Residence Transition stream—exemption from age requirement

- (1) For the purposes of paragraph 186.221(b) of Schedule 2 to the Regulations, the following classes of persons are specified:
 - (a) academic applicants;
 - (b) regional medical practitioner applicants;
 - (c) science applicants;
 - (d) Subclass 457/482 workers;
 - (e) transitional 457 workers under 50.

Direct Entry stream—exemption from age and skills requirements

- (2) For the purposes of paragraph 186.231(b) and subclause 186.234(3) of Schedule 2 to the Regulations, the following classes of persons are specified:
 - (a) academic applicants;
 - (b) science applicants;
 - (c) Subclass 444/461 workers.

7 Subclass 187 visas—Temporary Residence Transition stream

Exemption from age requirement

- (1) For the purposes of paragraph 187.221(b) of Schedule 2 to the Regulations, the following classes of persons are specified:
 - (a) academic applicants;
 - (b) regional medical practitioner applicants;
 - (c) science applicants;
 - (d) Subclass 457/482 workers;
 - (e) transitional 457 workers under 50.

Exemption from English language requirement

- (2) For the purposes of paragraph 187.222(b) of Schedule 2 to the Regulations, a class of persons is specified in relation to an application for a Subclass 187 (Regional Sponsored Migration Scheme) visa if, on the day the visa application was made, the persons had completed at least 5 years of full-time study in a secondary or higher education institution where all tuition was delivered in English.

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8 Subclass 494 visas—Employer Sponsored stream

Exemption from age requirement

- (1) For the purposes of subclause 494.223(2) of Schedule 2 to the Regulations, applicants are not required to have been under 45 for the purposes of Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visas in the Employer Sponsored stream in any of the following circumstances:
 - (a) the applicants are academic applicants;
 - (b) the applicants are regional medical practitioner applicants;
 - (c) the applicants are science applicants;
 - (d) the applicants are Subclass 444/461 workers;
 - (e) the applicants are Subclass 457/482 workers.

Exemption from skills and employment history requirements

- (2) For the purposes of subclause 494.224(7) of Schedule 2 to the Regulations, the requirements of subclauses 494.224(2) to (5) of that Schedule are not required to have been met for the purposes of Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visas in the Employer Sponsored stream in either of the following circumstances:
 - (a) the applicants are academic applicants;
 - (b) the applicants are Subclass 444/461 workers.
- (3) For the purposes of subclause 494.225(2) of Schedule 2 to the Regulations, applicants are not required to have been employed as mentioned in paragraph 494.225(1)(a) of that Schedule for the purposes of Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visas in the Employer Sponsored stream in either of the following circumstances:
 - (a) the applicant is an academic applicant;
 - (b) the applicant is a Subclass 444/461 worker.

Part 3—Application of this instrument

9 Application of this instrument

This instrument applies in relation to an application for a visa made on or after 16 November 2019.

10 Transitional provision—designated regional areas

For the purposes of this instrument, an area that was located in regional Australia (within the meaning of subregulation 5.19(16) of the Regulations) at a time occurring before 16 November 2019 is taken to have been located in a designated regional area at that time.

Schedule 1—Repeals

Migration (IMMI 18/045: Exemptions to Skill, Age and English Language Requirements for Subclass 186 and Subclass 187 Visas) Instrument 2018

1 The whole of the instrument

Repeal the instrument.