



Migration (LIN 20/158: Class of Persons for Student (Temporary) (Class TU) Visa Applications) Instrument 2020

I, Michael Willard, as delegate of the Minister for Home Affairs, make the following instrument.

Dated 24 July 2020

Michael Willard
Senior Executive Service, Band Two
Immigration and Community Protection Policy Division
Department of Home Affairs

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Part 1—Preliminary

1 Name

- (1) This instrument is the *Migration (LIN 20/158: Class of Persons for Student (Temporary) (Class TU) Visa Applications) Instrument 2020*.
- (2) This instrument may be cited as LIN 20/158.

2 Commencement

This instrument commences on the day after this instrument is registered on the Federal Register of Legislation.

3 Authority

This instrument is made under subitem 1222(5) of Schedule 1 to the *Regulations*.

4 Definitions

Note 1: A number of expressions used in this instrument are defined in regulation 1.03 of the *Regulations*, including the following:

- (a) *defence student*;
- (b) *foreign affairs student*;
- (c) *member of the family unit*;
- (d) *registered course*;
- (e) *secondary exchange student*.

Note 2: A number of expressions used in this instrument are defined in subsection 5(1) of the Act, including *in Australia*

In this instrument:

Act means *Migration Act 1958*

Agreed starting day, for a registered course, means:

- (a) the day on which a course was scheduled to start; or
- (b) the later day agreed between the education provider and a student.

PHEIC means Public Health Emergency of International Concern designated by the World Health Organisation.

provider default in relation to a registered course, means the occurrence of one of the following events because a sanction has been imposed on the education provider under Division 1 or 2 of Part 6 of the *Education Services for Overseas Students Act 2000*:

- (a) the course does not start on the agreed starting day; or
- (b) the course ceases to be provided at any time after it starts, but before it is completed; or

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- (c) the course not being provided in full to a student.

provider default day in relation to a registered course for which provider default has occurred, means:

- (a) if the default occurred because of the event mentioned in paragraph (a) of the definition of *provider default*—the agreed starting day; or
- (b) if the default occurred because of the event mentioned in paragraph (b) or (c) of the definition of *provider default*—the day on which the course ceased to be provided.

reapplying applicant means an applicant:

- (a) whose Subclass 500 visa or Subclass 590 visa was cancelled under paragraph 116(1)(e) of the Act as a result of the risk, in relation to a relevant PHEIC, to the health, safety or good order of the Australian community, or a segment of the Australian community; and
- (b) who is seeking to apply for a Subclass 500 visa or Subclass 590 visa .

Regulations means the *Migration Regulations 1994*.

relevant PHEIC means the PHEIC on the basis of which a reapplying applicant's Subclass 500 visa or Subclass 590 visa was cancelled.

subsequent person is a person who is seeking to satisfy the secondary criteria for the grant of a Subclass 500 visa and who claims to be a member of the family unit of a person who is enrolled in a postgraduate research degree and holds a Subclass 500 visa.

Subclass 500 visa means a Subclass 500 (Student) visa.

Subclass 590 visa means a Subclass 590 (Student Guardian) visa.

5 Repeal

According to section 33(3) of the *Acts Interpretation Act 1901*, *Migration (LIN 20/099: Class of Persons for Student (Temporary) (Class TU) Visa Instrument 2020* is revoked.

Part 2—Classes of persons

6 Class of persons

For the purpose of paragraph 1222(5)(a) of Schedule 1 to the Regulations, subparagraph 1222(2)(a)(i) of Schedule 1 to the Regulations applies to each class of persons mentioned in sections 7 to 15.

Note: The amount of visa application charge for a person applying for one of the classes of visa mentioned in sections 7 to 15 is nil.

7 Class of persons 1—Subclass 500 visa - Student

This section applies to an applicant who:

- (a) is seeking to satisfy the primary criteria for grant of a Subclass 500 visa and who:
 - (i) has been granted approval under a students' training scheme approved by the Commonwealth to study in Australia; or
 - (ii) is a Foreign Affairs student to whom paragraph 1.04A(3)(b) of the Regulations applies; or
 - (iii) is a Defence student to whom paragraph 1.04B(b) of the Regulations applies; or
 - (iv) is a secondary exchange student; or
- (b) to whom each of the following circumstances applies:
 - (i) the applicant was not able to complete a registered course due to provider default; and
 - (ii) there is satisfactory evidence that the applicant was enrolled in that course on the provider default day; and
 - (iii) the applicant holds a Subclass 500 visa, or the applicant's last substantive visa was a Subclass 500 visa; and
 - (iv) the applicant requires a Subclass 500 visa to allow him or her to complete either an alternative registered course; or one or more registered courses after an alternative registered course; and
 - (v) the application is made no later than 12 months after the provider default day; and
 - (vi) the applicant has not made a previous application in the circumstances specified in this paragraph because of the same provider default described in subparagraph (i).

8 Class of persons 2—Students’ family members (combined applicants)

This section applies to an applicant who:

- (a) claims to be a member of the family unit of another applicant (*the primary applicant*) and the primary applicant is seeking to satisfy the primary criteria for the grant of a Subclass 500 visa; and
- (b) seeks to combine their application with the primary applicant’s application; and
- (c) the primary applicant is:
 - (i) included in the class of persons specified in section 7 of this instrument; or
 - (ii) enrolled in a postgraduate research course.

9 Class of persons 3—Students’ family members (Foreign Affairs students and Defence students)

This section applies to an applicant who:

- (a) is seeking to satisfy the secondary criteria for the grant of a Subclass 500 visa; and
- (b) who:
 - (i) claims to be a member of the family unit of a person (the primary person) who holds a Subclass 500 visa; and
 - (ii) the primary person is a Foreign Affairs student or a Defence student.

10 Class of persons 4—Students’ family members (postgraduate research students)

This section applies to an applicant who:

- (a) claims to be a member of the family unit of the subsequent person; and
- (b) seeks to combine their application with the subsequent person mentioned in paragraph (a).

11 Class of persons 5—Student Guardians

An applicant seeking to satisfy the primary criteria for grant of a Subclass 590 visa where each of the following applies:

- (a) the nominating student was not able to complete a registered course due to a provider default; and
- (b) there is satisfactory evidence that the nominating student was enrolled in that course on the provider default day; and

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- (c) the nominating student holds a Subclass 500 visa, or the nominating student's last substantive visa was a Subclass 500 visa; and
 - (d) the nominating student requires a Subclass 500 visa to allow him or her to complete an alternative registered course; or one or more registered courses after an alternative registered course; and
 - (e) the applicant's visa application is made no later than 12 months after the provider default day; and
 - (f) the applicant has not made a previous application in the circumstances specified in this subsection because of the same provider default described in paragraph (a).

12 Class of persons 6—Student Guardians' family members

This section applies to an applicant who is:

- (a) claiming to be a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of Subclass 590 visa; and
- (b) is making a combined application with that person; and
- (c) the person seeking to satisfy the primary criteria for the Subclass 590 visa is in a class of persons mentioned in section 11 of this instrument.

13 Class of persons 7—Students and Student Guardians' who are former visa holders affected by a PHEIC

This section applies to an applicant who:

- (a) is in Australia; and
- (b) is a reapplying applicant; and
- (c) makes an application for the Subclass 500 visa or the Subclass 590 visa within 3 months after the cancellation of the applicant's Subclass 500 visa or Subclass 590 visa.

14 Class of persons 8— Current or recent students whose studies were affected by COVID-19

This section applies to an applicant who:

- (a) is seeking to satisfy the primary criteria for the grant of a Subclass 500 visa; and
- (b) held a Subclass 500 visa at any time occurring on or after 1 February 2020; and

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- (c) is or was unable to complete the course of study to which the visa mentioned in paragraph (b) relates before the end of the visa period because of the coronavirus known as COVID-19.

15 Class of persons 9— Family member (combined applicants) of current or recent students whose studies were affected by COVID-19

This section applies to an applicant:

- (a) who claims to be a member of the family unit of another applicant (*the primary applicant*) and the primary applicant is seeking to satisfy the primary criteria for the grant of a Subclass 500 visa; and
- (b) who seeks to combine their application with the primary applicant's application; and
- (c) where the primary applicant held a Subclass 500 visa at any time occurring on or after 1 February 2020; and
- (d) where the primary applicant is or was unable to complete the course of study to which the visa mentioned in paragraph (b) relates before the end of the visa period because of the coronavirus known as COVID-19.