

Migration Amendment (2021 Measures No. 1) Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor‑General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 18 February 2021

David Hurley

Governor‑General

By His Excellency’s Command

Alex Hawke

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Contents

1 Name 1

2 Commencement 1

3 Authority 1

4 Schedules 1

Schedule 1—Facilitating onshore grants of certain offshore visa applications 2

Migration Regulations 1994 2

Schedule 2—Subclass 300 (Prospective Marriage) visas 5

Migration Regulations 1994 5

Schedule 3—Temporary Skill Shortage (Class GK) visas 6

Migration Regulations 1994 6

Schedule 4—Distinguished Talent (Class BX) visas 7

Part 1—Names 7

Division 1—Main amendments 7

Migration Regulations 1994 7

Division 2—Amendments relating to Subclass 773 (Border) visas 7

Migration Regulations 1994 7

Part 2—Endorsement by Prime Minister’s Special Envoy for Global Business and Talent Attraction 8

Division 1—Prime Minister’s Special Envoy for Global Business and Talent Attraction 8

Migration Regulations 1994 8

Division 2—Endorsement 8

Migration Regulations 1994 8

Schedule 5—Application and transitional provisions 10

Migration Regulations 1994 10

1 Name

 This instrument is the *Migration Amendment (2021 Measures No. 1) Regulations 2021*.

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 | 27 February 2021. | 27 February 2021 |

Note: This table relates only to the provisions of this instrument as originally made.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 *Migration Act 1958.*

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 Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Facilitating onshore grants of certain offshore visa applications

Migration Regulations 1994

1 At the end of subregulation 4.02(4)

Add:

 ; (s) a decision made after 26 February 2021 to refuse to grant:

 (i) a Subclass 300 (Prospective Marriage) visa; or

 (ii) a Subclass 309 (Partner (Provisional)) visa; or

 (iii) a Subclass 445 (Dependent Child) visa;

 if the visa was applied for before the end of the concession period described in subregulation 1.15N(1) by an applicant who:

 (iv) was outside Australia when the application was made; and

 (v) was in Australia at any time during that concession period; and

 (vi) was in Australia on the day the decision was made.

2 Subregulation 4.02(5)

After “made by”, insert “the following”.

3 At the end of subregulation 4.02(5)

Add:

 ; (r) in the case of a decision to which paragraph (4)(s) applies—the sponsor.

4 Clause 101.411 of Schedule 2

Repeal the clause, substitute:

101.411

 (1) The applicant must be outside Australia when the visa is granted if the visa is not a visa to which subclause (2) applies.

 (2) This subclause applies to a visa if:

 (a) the visa is granted after 26 February 2021; and

 (b) the application for the visa was made before the end of the concession period described in subregulation 1.15N(1); and

 (c) the applicant for the visa:

 (i) was in Australia at any time during that concession period; and

 (ii) is in Australia, but not in immigration clearance, when the visa is granted.

5 Clause 102.411 of Schedule 2

Repeal the clause, substitute:

102.411

 (1) The applicant must be outside Australia when the visa is granted if the visa is not a visa to which subclause (2) applies.

 (2) This subclause applies to a visa if:

 (a) the visa is granted after 26 February 2021; and

 (b) the application for the visa was made before the end of the concession period described in subregulation 1.15N(1); and

 (c) the applicant for the visa:

 (i) was in Australia at any time during that concession period; and

 (ii) is in Australia, but not in immigration clearance, when the visa is granted.

6 Clause 300.412 of Schedule 2

Repeal the clause, substitute:

300.412

 (1) The applicant must be outside Australia when the visa is granted if the visa is not a visa to which subclause (2) applies.

 (2) This subclause applies to a visa if:

 (a) the visa is granted after 26 February 2021; and

 (b) the application for the visa was made before the end of the concession period described in subregulation 1.15N(1); and

 (c) the applicant for the visa:

 (i) was in Australia at any time during that concession period; and

 (ii) is in Australia, but not in immigration clearance, when the visa is granted.

7 Clause 309.412 of Schedule 2

Repeal the clause, substitute:

309.412

 (1) The applicant must be outside Australia when the visa is granted if the visa is not a visa to which subclause (2) applies.

 (2) This subclause applies to a visa if:

 (a) the visa is granted after 26 February 2021; and

 (b) the application for the visa was made before the end of the concession period described in subregulation 1.15N(1); and

 (c) the applicant for the visa:

 (i) was in Australia at any time during that concession period; and

 (ii) is in Australia, but not in immigration clearance, when the visa is granted.

8 Clause 445.411 of Schedule 2

Repeal the clause, substitute:

445.411

 (1) If the application is made outside Australia, the applicant must be outside Australia when the visa is granted if the visa is not a visa to which subclause (2) applies.

 (2) This subclause applies to a visa if:

 (a) the visa is granted after 26 February 2021; and

 (b) the application for the visa was made before the end of the concession period described in subregulation 1.15N(1); and

 (c) the applicant for the visa:

 (i) was in Australia at any time during that concession period; and

 (ii) is in Australia, but not in immigration clearance, when the visa is granted.

Schedule 2—Subclass 300 (Prospective Marriage) visas

Migration Regulations 1994

1 Clause 300.511 of Schedule 2

Repeal the clause, substitute:

300.511

 Temporary visa permitting the holder to travel to, enter and remain in Australia until:

 (a) a date specified by the Minister, which must be a date occurring at least 9 months, but not more than 15 months, from the date of grant; or

 (b) if the Minister does not specify a date—9 months from the date of grant.

Schedule 3—Temporary Skill Shortage (Class GK) visas

Migration Regulations 1994

1 Subparagraphs 1240(2)(a)(i) and (ii) of Schedule 1

Before “for” (first occurring), insert “subject to subparagraph (iii),”.

2 At the end of paragraph 1240(2)(a) of Schedule 1

Add:

 (iii) for an applicant in a class of persons specified in a legislative instrument made for the purposes of this subparagraph under subregulation 2.07(5), the amount is nil;

Schedule 4—Distinguished Talent (Class BX) visas

Part 1—Names

Division 1—Main amendments

Migration Regulations 1994

1 Subregulation 1.12(7) (heading)

Omit “*Distinguished*”, substitute “*Global*”.

2 Subregulation 1.12(7)

Omit “Distinguished”, substitute “Global”.

3 Subregulation 2.06AAB(1) (table item 30)

Omit “Distinguished”, substitute “Global”.

4 Paragraph 5.35AB(1)(m)

Omit “Distinguished”, substitute “Global”.

5 Item 1113 of Schedule 1 (heading)

Omit “**Distinguished**”, substitute “**Global**”.

6 Paragraph 1113(3)(c) of Schedule 1

Omit “Distinguished”, substitute “Global”.

7 Subitem 1113(4) of Schedule 1

Omit “Distinguished”, substitute “Global”.

8 Part 858 of Schedule 2 (heading)

Omit “**Distinguished**”, substitute “**Global**”.

9 Division 858.3 of Schedule 2 (note 2 to the heading)

Omit “Distinguished”, substitute “Global”.

10 Paragraph 858.311(a) of Schedule 2

Omit “Distinguished”, substitute “Global”.

Division 2—Amendments relating to Subclass 773 (Border) visas

Migration Regulations 1994

11 Paragraph 773.213(2)(zy) of Schedule 2

Omit “Distinguished”, substitute “Global”.

Part 2—Endorsement by Prime Minister’s Special Envoy for Global Business and Talent Attraction

Division 1—Prime Minister’s Special Envoy for Global Business and Talent Attraction

Migration Regulations 1994

12 Regulation 1.03

Insert:

***Prime Minister’s Special Envoy for Global Business and Talent Attraction*** means the SES employee, or acting SES employee, who occupies, or is acting in, the position of Prime Minister’s Special Envoy for Global Business and Talent Attraction.

Division 2—Endorsement

Migration Regulations 1994

13 Paragraph 1113(3)(d) of Schedule 1

After “subclause 858.212(2)”, insert “of Schedule 2”.

14 Paragraph 1113(3)(e) of Schedule 1

After “subclause 858.212(4)”, insert “of Schedule 2”.

15 At the end of subitem 1113(3) of Schedule 1

Add:

 (f) If the applicant seeks to meet the requirements of subclause 858.229(2) of Schedule 2, the applicant must have been endorsed by the Prime Minister’s Special Envoy for Global Business and Talent Attraction as being likely to make a significant contribution to the Australian economy if granted a Subclass 858 (Global Talent) visa.

16 Subclause 858.212(1) of Schedule 2

Repeal the subclause, substitute:

 (1) Unless the applicant has been endorsed by the Prime Minister’s Special Envoy for Global Business and Talent Attraction as mentioned in paragraph 1113(3)(f) of Schedule 1, the applicant meets the requirements of subclause (2) or (4) of this clause.

17 At the end of Subdivision 858.22 of Schedule 2

Add:

858.229

 (1) This clause applies to an applicant who, at the time of application, had been endorsed by the Prime Minister’s Special Envoy for Global Business and Talent Attraction as being likely to make a significant contribution to the Australian economy if granted a Subclass 858 (Global Talent) visa.

 (2) The Minister is satisfied that the applicant is likely to make a significant contribution to the Australian economy if the visa is granted.

 (3) For the purposes of subclause (2), the Minister must not have regard to the fact that the applicant was endorsed by the Prime Minister’s Special Envoy for Global Business and Talent Attraction as being likely to make a significant contribution to the Australian economy if granted a Subclass 858 (Global Talent) visa.

Schedule 5—Application and transitional provisions

Migration Regulations 1994

1 In the appropriate position in Schedule 13

Insert:

Part 95—Amendments made by the Migration Amendment (2021 Measures No. 1) Regulations 2021

9501 Operation of Schedule 2 (Subclass 300 (Prospective Marriage) visas)

 The amendment made by Schedule 2 to the *Migration Amendment (2021 Measures No. 1) Regulations 2021* applies in relation to a Subclass 300 (Prospective Marriage) visa granted on or after 27 February 2021, whether the application for the visa was made before, on or after 27 February 2021.

9502 Operation of Schedule 4 (Distinguished Talent (Class BX) visas)

 (1) The amendments made by Division 1 of Part 1, and Division 2 of Part 2, of Schedule 4 to the *Migration Amendment (2021 Measures No. 1) Regulations 2021* apply in relation to an application for a visa made on or after 27 February 2021.

 (2) To avoid doubt, the reference in paragraph 773.213(2)(zy) of Schedule 2 to these Regulations to a Global Talent (Class BX) visa is taken to include a reference to a Distinguished Talent (Class BX) visa issued on the basis of an application made before 27 February 2021.

9503 Transitional provision—Subclass 124 (Distinguished Talent) visas and Subclass 858 (Distinguished Talent) visas

 (1) Division 124.4 of Schedule 2, as in force immediately before 14 November 2020, does not apply in relation to an application for a Subclass 124 (Distinguished Talent) visa if:

 (a) the application was made before 14 November 2020; and

 (b) the application was not finally determined before 27 February 2021; and

 (c) the applicant is not in immigration clearance when the visa is granted.

Note: Former Division 124.4 required an applicant to be outside Australia when a visa is granted.

 (2) Division 858.4 of Schedule 2, as in force immediately before 14 November 2020, does not apply in relation to an application for a Subclass 858 (Distinguished Talent)) visa if:

 (a) the application was made before 14 November 2020; and

 (b) the application was not finally determined before 27 February 2021; and

 (c) the applicant is not in immigration clearance when the visa is granted.

Note: Immediately before 14 November 2020, Division 858.4 required an applicant to be in Australia when a visa is granted.