



Migration (Refund of Visa Application Charge) Instrument (LIN 21/007) 2021

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

Dated 25 February 2021

Alex Hawke

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

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Part 1—Preliminary

1 Name

This instrument is the *Migration (Refund of Visa Application Charge) Instrument (LIN 21/007) 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	The day after this instrument is registered.	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Note: This table relates only to the provisions of this instrument as originally made.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 subparagraph 2.12F(1)(a)(ii) of the *Migration Regulations 1994*.

4 Definitions

In this instrument:

COVID-19 pandemic has the same meaning as in the *Migration (LIN 20/229: COVID-19 Pandemic event for Subclass 408 (Temporary Activity) visa and visa application charge for Temporary Activity (Class GG) visa) Instrument 2020*.

Regulations means the *Migration Regulations 1994*.

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Part 2—Refunds of first instalment of visa application charge

5 Refund—Subclass 300 (Prospective Marriage) visa

- (1) This section applies in relation to a refund of the amount paid by way of the first instalment of the visa application charge in relation to an application for a Subclass 300 (Prospective Marriage) visa unless:
 - (a) before the Subclass 300 (Prospective Marriage) visa ceased to be in effect, the visa holder, or the visa holder's sponsor, notified the Minister that the visa holder and the visa holder's sponsor no longer intended to marry; or
 - (b) at any time after the Subclass 300 (Prospective Marriage) visa was granted, the visa holder applied for a Subclass 801 (Partner) visa and paid the first instalment of the visa application charge for the Subclass 801 (Partner) visa under subparagraph 1124B(2)(a)(v) or 1124B(2)(a)(vi) of Schedule 1 to the Regulations.
- (2) For the purposes of subparagraph 2.12F(1)(a)(ii) of the Regulations, a circumstance set out in any of subsections (3), (4) and (6) is specified.
- (3) A circumstance is that all of the following apply:
 - (a) the visa ceased to be in effect during the period commencing on 20 March 2020 and ending on 5 October 2020;
 - (b) the visa ceased to be in effect while the visa holder was outside Australia;
 - (c) if the visa ceased to be in effect because it was cancelled, the cancellation occurred only because the visa holder asked the Minister to cancel the visa in accordance with paragraph 2.43(1)(g) of the Regulations;
 - (d) the request for the refund is made on or before 31 December 2022.
- (4) Subject to subsection (5), a circumstance is that all of the following apply:
 - (a) the visa ceased to be in effect during the period commencing on 20 March 2020 and ending on 5 October 2020;
 - (b) the visa ceased to be in effect while the visa holder was in Australia;
 - (c) if the visa ceased to be in effect because it was cancelled, the cancellation occurred only because the visa holder asked the Minister to cancel the visa in accordance with paragraph 2.43(1)(g) of the Regulations;
 - (d) the visa holder was unable to marry the visa holder's sponsor before the visa ceased to be in effect only because of restrictions imposed as a result of the COVID-19 pandemic;
 - (e) the request for the refund is made on or before 31 December 2022.
- (5) Paragraph (4)(d) does not apply if the visa holder did not marry the visa holder's sponsor only because restrictions imposed as a result of the COVID-19 pandemic:
 - (a) restricted the number of guests able to attend the proposed wedding of the visa holder and the visa holder's sponsor; or
 - (b) prevented guests, or particular guests, from attending the proposed wedding; or

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- (c) prevented the proposed wedding taking place at the time or location preferred by the visa holder and the visa holder's sponsor.
- (6) A circumstance is that all of the following apply:
- (a) the visa was in effect at any time during the period commencing on 6 October 2020 and ending on 10 December 2020;
 - (b) the visa holder:
 - (i) was outside Australia on 10 December 2020; and
 - (ii) did not enter Australia after 10 December 2020 as the holder of that visa;
 - (c) the request for the refund is made on or before 31 December 2022;
 - (d) at the time of the request:
 - (i) the visa had ceased to be in effect; or
 - (ii) the visa holder had asked the Minister to cancel the visa in accordance with paragraph 2.43(1)(g) or (h) of the Regulations.

6 Refund—Subclass 403 (Temporary Work (International Relations)) visa in the Pacific Labour Scheme stream

- (1) This section applies in relation to a refund of the amount paid by way of the first instalment of the visa application charge in relation to an application for a Subclass 403 (Temporary Work (International Relations)) visa in the Pacific Labour Scheme stream.
- (2) For the purposes of subparagraph 2.12F(1)(a)(ii) of the Regulations, the circumstance set out in subsection (3) is specified.
- (3) The circumstance is that all of the following apply:
 - (a) the visa was granted before 20 March 2020;
 - (b) the person to whom the visa was granted did not make the person's first entry into Australia under the visa by the date specified by the Minister for the purpose;
 - (c) the request for the refund is made on or before 31 December 2021;
 - (d) at the time of decision on the request, the visa had ceased to be in effect;
 - (e) if the visa ceased to be in effect because it was cancelled, the cancellation occurred only because the person asked the Minister to cancel the visa in accordance with paragraph 2.43(1)(g) of the Regulations.

7 Refund—Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream

- (1) This section applies in relation to a refund of the amount paid by way of the first instalment of the visa application charge in relation to an application for a Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream.
- (2) For the purposes of subparagraph 2.12F(1)(a)(ii) of the Regulations, the circumstance set out in subsection (3) is specified.
- (3) The circumstance is that all of the following apply:

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- (a) the visa was granted before 20 March 2020;
- (b) the person to whom the visa was granted did not make the person's first entry into Australia under the visa by the date specified by the Minister for the purpose;
- (c) the request for the refund is made on or before 31 December 2021;
- (d) at the time of decision on the request, the visa had ceased to be in effect;
- (e) if the visa ceased to be in effect because it was cancelled, the cancellation occurred only because the person asked the Minister to cancel the visa in accordance with paragraph 2.43(1)(g) of the Regulations.

8 Refund—Subclass 417 (Working Holiday) visa

- (1) This section applies in relation to a refund of the amount paid by way of the first instalment of the visa application charge in relation to an application for a Subclass 417 (Working Holiday) visa.
- (2) For the purposes of subparagraph 2.12F(1)(a)(ii) of the Regulations, the circumstance set out in subsection (3) is specified.
- (3) The circumstance is that all of the following apply:
 - (a) the visa was granted before 20 March 2020;
 - (b) either:
 - (i) the person to whom the visa was granted did not enter Australia under the visa; or
 - (ii) the person departed Australia during the period commencing on 20 March 2020 and ending on 31 December 2021 and did not re-enter Australia under the visa;
 - (c) the visa ceased to be in effect during the period commencing on 20 March 2020 and ending on 31 December 2021 while the person was outside Australia;
 - (d) if the visa ceased to be in effect because it was cancelled, the cancellation occurred only because the person asked the Minister to cancel the visa in accordance with paragraph 2.43(1)(g) of the Regulations;
 - (e) the person has not applied for another Subclass 417 (Working Holiday) visa;
 - (f) the person is unable to be granted another Subclass 417 (Working Holiday) visa because the person does not satisfy the age requirements mentioned in paragraph 417.211(2)(b) of Schedule 2 to the Regulations;
 - (g) the request for the refund is made on or before 31 December 2022.

9 Refund—Subclass 462 (Work and Holiday) visa

- (1) This section applies in relation to a refund of the amount paid by way of the first instalment of the visa application charge in relation to an application for a Subclass 462 (Work and Holiday) visa.
- (2) For the purposes of subparagraph 2.12F(1)(a)(ii) of the Regulations, the circumstance set out in subsection (3) is specified.
- (3) The circumstance is that all of the following apply:

- (a) the visa was granted before 20 March 2020;
- (b) either:
 - (i) the person to whom the visa was granted did not enter Australia under the visa; or
 - (ii) the person departed Australia during the period commencing on 20 March 2020 and ending on 31 December 2021 and did not re-enter Australia under the visa;
- (c) the visa ceased to be in effect during the period commencing on 20 March 2020 and ending on 31 December 2021 while the person was outside Australia;
- (d) if the visa ceased to be in effect because it was cancelled, the cancellation occurred only because the person asked the Minister to cancel the visa in accordance with paragraph 2.43(1)(g) of the Regulations;
- (e) the person has not applied for another Subclass 462 (Work and Holiday) visa;
- (f) the person is unable to be granted another Subclass 462 (Work and Holiday) visa because the person does not satisfy the age requirements mentioned in clause 462.212 of Schedule 2 to the Regulations;
- (g) the request for the refund is made on or before 31 December 2022.