

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Regulations 1994

Migration (Arrangements for subclass 462 visa applications) Amendment Instrument (LIN 22/052) 2022

- 1 The instrument, Departmental reference LIN 22/052, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument amends *Migration (Arrangements for Work and Holiday (Subclass 462) Visa Applications) Instrument (LIN 21/019) 2021* (F2021L00152) (LIN 21/019) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument. This means that subregulation 2.07(5) of the Regulations also includes a power to amend or repeal an instrument made under that provision.
- 3 The instrument commences on 1 July 2022, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The instrument operates to specify arrangements for making a Work and Holiday (Subclass 462) visa (subclass 462 visa) application.
- 5 Item 1224A of Schedule 1 to the Regulations prescribes the requirements that an applicant for a subclass 462 visa must meet to make a valid visa application. Subitem 1224A(1) and paragraph 1224A(3)(aa) of Schedule 1 to the Regulations require that the application for a subclass 462 visa must be made using the approved form, at the place and in the manner specified in a legislative instrument made under subregulation 2.07(5) of the Regulations. Paragraph 1224A(3)(a) of Schedule 1 to the Regulations requires that an applicant for a subclass 462 visa must hold a valid passport issued by a foreign country specified in a legislative instrument. Subparagraph 1224A(3)(b)(iii) of Schedule 1 to the Regulations provides that an applicant for a subclass 462 visa is not required to provide evidence that the applicant has the support of the grant of the visa from their government, if the applicant is a member of a class of persons specified in a legislative instrument.
- 6 Division 462 of Schedule 2 to the Regulations prescribes the criteria to be considered for the grant of a subclass 462 visa once an application for that visa has been made. Paragraph 462.221(c) of Schedule 2 to the Regulations requires, at the time of decision, that an applicant must hold an educational qualification specified in an instrument, in relation to a foreign country specified for paragraph 1224A(3)(a) of Schedule 1 to the Regulations.
- 7 The purpose of the instrument is to amend LIN 21/019 to update the abovementioned matters.
- 8 LIN 21/019 required applicants who hold a valid passport issued by the People's Republic of China to make a subclass 462 visa application by attending an in-person appointment at an Australian Visa Application Centre (AVAC) in Beijing, Chengdu, Guangzhou, or Shanghai. However, following the

COVID-19 pandemic, this arrangement was paused leading to the closure of these four offshore AVAC offices in China. Valid Chinese passport holders who have received a written invitation from the Department of Home Affairs (the Department) inviting them to apply for a subclass 462 visa are now required to make the visa application using Form 1208 (Internet) in ImmiAccount as an Internet application, if they are not, and have not previously been, in Australia as the holder of a subclass 462 visa.

- 9 Applications for a subclass 462 visa may also be made using Form 1208 by email to WHM.invited.applications@homeaffairs.gov.au, if the applicants have received a written notice from the Department authorising them to do so.
- 10 The instrument specifies Brazil and Mongolia as eligible subclass 462 visa partner countries. The eligibility to apply for, and to be granted, a subclass 462 visa is restricted to applicants who hold a valid passport issued by an eligible subclass 462 visa partner country. The instrument also specifies the educational qualification requirements that applicants holding a valid Brazilian or Mongolian passport must have (amongst other things) in order to satisfy the primary criteria for a subclass 462 visa.
- 11 The instrument updates and adds Brazilian passport holders to the class of persons who are excluded from the requirement in subparagraph 1224A(3)(b)(iii) of Schedule 1 to the Regulations. This allows applicants from Brazil to make valid applications for a subclass 462 visa without providing evidence of support for the grant of the visa from their home government.
- 12 It has been consistent practice that specific detail regarding the lodgement of visa applications be included in delegated legislation. This facilitates the operation of a dynamic and responsive immigration program. Changing the manner in which subclass 462 visa applications are lodged and other minor administrative matters would not be an appropriate use of the parliament's time. Amending primary legislation would also likely cause a time delay in which subclass 462 visa applicants can be lodged. For these reasons, it is appropriate that the matters contained in the instrument and LIN 21/019 are specified in delegated legislation.

Consultation

- 13 The Department has undertaken bilateral negotiations with the Government of Brazil and the Government of Mongolia, respectively. The negotiations have been supported by the Department of Foreign Affairs and Trade. No concerns were raised with Brazil and Mongolia being added to the instrument as eligible subclass 462 visa partner countries.
- 14 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference numbers are OBPR22-01855 and 25157.
- 15 Further external consultation in relation to updating the approved form, place and manner for making an application for a subclass 462 visa was not necessary as the change was of a minor or machinery nature and does not substantially alter the existing arrangements prescribed by the amended instrument LIN 21/019.

Details of the instrument

- 16 Section 1 sets out the name of the instrument.

- 17 Section 2 provides for the commencement of the instrument on 1 July 2022.
- 18 Section 3 provides that Schedule 1 to the instrument amends LIN 21/019.
- 19 Item 1 of Schedule 1 to the instrument amends section 3 of LIN 21/019. It updates the definition of *written notice* to mean an email from the Department authorising an applicant for a Work and Holiday (Subclass 462) visa to submit Form 1208 to WHM.invited.applications@homeaffairs.gov.au.
- 20 Items 2 and 3 of Schedule 1 to the instrument amend subsection 4(2) of LIN 21/019 by adding Brazil and Mongolia to the table of foreign countries, where the eligibility to apply for, and to be granted, a subclass 462 visa is restricted to applicants who hold a valid passport issued by any of those foreign countries.
- 21 Item 4 of Schedule 1 to the instrument amends subsection 4(3) of LIN 21/019 by adding applicants holding a valid Brazilian passport to the class of persons who are exempt from providing evidence of home government support for the grant of a subclass 462 visa.
- 22 Item 5 of Schedule 1 to the instrument amends Schedule 1 to LIN 21/019. It removes the requirement for applicants who hold a valid passport issued by the People's Republic of China to make a subclass 462 visa application by attending an in-person appointment at an Australian Visa Application Centre in Beijing, Chengdu, Guangzhou, or Shanghai.
- 23 Items 6 and 7 of Schedule 1 to the instrument amend Schedule 2 to LIN 21/019. These amendments specify the educational qualifications required for applicants who hold a valid passport issued by Brazil or Mongolia.

Parliamentary scrutiny etc.

- 24 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under subregulation 2.07(5) of the Regulations, which is exempt from disallowance under paragraph (b) of item 20 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 25 The instrument is appropriate to be exempt from disallowance as it concerns matters of an administrative nature. Updating legislative instruments that specify administrative matters allows for consistent internal management of the migration policy framework in accordance with Departmental resources and arrangements.
- 26 The instrument is made by a delegate of the Minister, in accordance with subregulation 2.07(5) of the Regulations.