

Migration Amendment (Extension of Subclass 485 (Temporary Graduate) Visa and Increase in Subclass 500 (Student) Visa Work Hours) Regulations 2023

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 19 June 2023

David Hurley

Governor‑General

By His Excellency’s Command

Clare O’Neil

Minister for Home Affairs

Contents

1 Name 1

2 Commencement 1

3 Authority 1

4 Schedules 1

Schedule 1—Amendments 2

Part 1—Amendments relating to Subclass 485 (Temporary Graduate) Visas 2

Migration Regulations 1994 2

Part 2—Amendments relating to Subclass 500 (Student) Visas 8

Migration Regulations 1994 8

Part 3—Application of amendments 9

Migration Regulations 1994 9

1 Name

This instrument is the *Migration Amendment (Extension of Subclass 485 (Temporary Graduate) Visa and Increase in Subclass 500 (Student) Visa Work Hours) Regulations 2023*.

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 | 1 July 2023. | 1 July 2023 |

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Amendments

Part 1—Amendments relating to Subclass 485 (Temporary Graduate) Visas

Migration Regulations 1994

1 Subparagraph 1229(2)(a)(i) of Schedule 1

Repeal the subparagraph (not including the table), substitute:

(ia) for an applicant:

(A) who is covered by subitem (2A); or

(B) whose application is combined, or sought to be combined, with an application made by that person;

the amount is nil; and

(i) for an applicant:

(A) who is covered by subitem (2B); or

(B) whose application is combined, or sought to be combined, with an application made by that person:

2 After subitem 1229(2) of Schedule 1

Insert:

(2A) An applicant is covered by this subitem if:

(a) the applicant holds a Subclass 485 (Temporary Graduate) visa in the Post‑Study Work stream or in the Replacement stream and is applying for a subsequent Subclass 485 (Temporary Graduate) visa in the Post‑Study Work stream; and

(b) the applicant holds a qualification specified, or of a kind specified, by the Minister in a legislative instrument made for the purposes of this paragraph; and

(c) the applicant is not seeking to satisfy the primary criteria set out in clause 485.232, 485.233, 485.234 or 485.235 of Schedule 2; and

(d) the applicant has not previously been granted a Subclass 485 (Temporary Graduate) visa in the Post‑Study Work stream:

(i) on the basis of an application to which subparagraph (2)(a)(ia) applied; or

(ii) permitting the holder to travel to, enter and remain in Australia for an additional period specified by the Minister under clause 485.513 of Schedule 2 on the basis that the applicant held a qualification mentioned in paragraph (b); and

(e) the applicant does not hold a Hong Kong passport or a British National (Overseas) passport.

(2B) An applicant is covered by this subitem if:

(a) the applicant holds a Subclass 485 (Temporary Graduate) visa in the Post‑Study Work stream or in the Replacement stream and is applying for a subsequent Subclass 485 (Temporary Graduate) visa in the Post‑Study Work stream; and

(b) the applicant is not covered by subitem (2A).

3 Paragraph 1229(3)(la) of Schedule 1

Omit “second”, substitute “subsequent”.

4 Subparagraphs 1229(4)(a)(v) and (vi) of Schedule 1

Omit “second”, substitute “subsequent”.

5 After paragraph 1229(4)(a) of Schedule 1

Insert:

(aa) if the visa applied for were granted, the total number of Subclass 485 (Temporary Graduate) visas held by the applicant, including that visa:

(i) must not be more than 4; and

(ii) must not include more than one of each of the following:

(A) a Subclass 485 (Temporary Graduate) visa in the Post‑Study Work stream granted on the basis of an application to which subparagraph (2)(a)(ia) applied;

(B) a Subclass 485 (Temporary Graduate) visa in the Post‑Study Work stream granted on the basis of meeting the requirements in clause 485.232, 485.233, 485.234 or 485.235 of Schedule 2;

(C) a Subclass 485 (Temporary Graduate) visa in the Replacement stream;

6 Paragraph 1229(4)(b) of Schedule 1

Repeal the paragraph, substitute:

(b) unless the applicant is covered by subitem (2A)—the applicant seeking to satisfy the primary criteria for the grant of the visa must be less than 50.

7 Before subparagraph 485.211(c)(i) of Schedule 2

Insert:

(ia) nominated the Post‑Study Work stream in the application and whose application is an application to which subparagraph 1229(2)(a)(ia) of Schedule 1 applied; or

8 Paragraph 485.211(d) of Schedule 2

Omit “2”, substitute “3”.

9 Subclause 485.212(2) of Schedule 2

Repeal the subclause, substitute:

(2) Subclause (1) does not apply to an applicant:

(a) whose application is an application to which subparagraph 1229(2)(a)(ia) of Schedule 1 applied; or

(b) who meets the requirements of clause 485.232, 485.233, 485.234 or 485.235; or

(c) who nominated the Replacement stream in the application.

Note: An applicant who meets the requirements of clause 485.236 or 485.237 is covered by paragraph (a).

10 Subclause 485.213(2) of Schedule 2

Repeal the subclause, substitute:

(2) Subclause (1) does not apply to an applicant:

(a) whose application is an application to which subparagraph 1229(2)(a)(ia) of Schedule 1 applied; or

(b) who meets the requirements of clause 485.232, 485.233, 485.234 or 485.235.

Note: An applicant who meets the requirements of clause 485.236 or 485.237 is covered by paragraph (a).

11 Subclause 485.231(1A) of Schedule 2

Repeal the subclause, substitute:

(1A) This clause does not apply to an applicant:

(a) whose application is an application to which subparagraph 1229(2)(a)(ia) of Schedule 1 applied; or

(b) who meets the requirements of clause 485.232, 485.233, 485.234 or 485.235.

Note: An applicant who meets the requirements of clause 485.236 or 485.237 is covered by paragraph (a).

12 Subclause 485.232(1) of Schedule 2

Repeal the subclause, substitute:

(1) This clause applies to an applicant for a visa (the ***second visa***):

(a) who held a Subclass 485 (Temporary Graduate) visa (the ***first visa***) in the Post‑Study Work stream when the application for the second visa was made; and

(b) who was granted the first visa on the basis of study undertaken in a regional centre or other regional area at an educational institution located in the regional centre or other regional area; and

(c) who declared in the application for the second visa that the applicant, and any member (the ***family member***) of the applicant’s family unit who made a combined application with the applicant, intend:

(i) to live only in a regional centre or other regional area; and

(ii) if the applicant or the family member also intends to work or study—to work or study only in a regional centre or other regional area; and

(d) to whom clause 485.236 does not apply.

13 Paragraph 485.233(1)(c) of Schedule 2

Omit “clause 485.232 does”, substitute “clauses 485.232 and 485.237 do”.

14 Subclause 485.234(1) of Schedule 2

Repeal the subclause, substitute:

(1) This clause applies to an applicant for a visa (the ***subsequent visa***):

(a) who previously held a Subclass 485 (Temporary Graduate) visa in the Post‑Study Work stream that was granted on the basis of study undertaken in a regional centre or other regional area at an educational institution located in the regional centre or other regional area; and

(b) who held, at the time the application for the subsequent visa was made:

(i) a Subclass 485 (Temporary Graduate) visa in the Post‑Study Work stream granted on the basis of an application to which subparagraph 1229(2)(a)(ia) of Schedule 1 applied; or

(ii) a Subclass 485 (Temporary Graduate) visa in the Replacement stream; and

(c) who declared in the application for the subsequent visa that the applicant, and any member (the ***family member***) of the applicant’s family unit who made a combined application with the applicant, intend:

(i) to live only in a regional centre or other regional area; and

(ii) if the applicant or the family member also intends to work or study—to work or study only in a regional centre or other regional area; and

(d) to whom clause 485.236 does not apply.

15 Subclauses 485.234(2) and (3) of Schedule 2

Omit “the third visa” (wherever occurring), substitute “the subsequent visa”.

16 Subclause 485.235(1) of Schedule 2

Repeal the subclause, substitute:

(1) This clause applies to an applicant for a visa (the ***subsequent visa***):

(a) who previously held a Subclass 485 (Temporary Graduate) visa in the Post‑Study Work stream that was granted on the basis of study undertaken in a designated regional area at an educational institution located in the designated regional area; and

(b) who held, at the time the application for the subsequent visa was made:

(i) a Subclass 485 (Temporary Graduate) visa in the Post‑Study Work stream granted on the basis of an application to which subparagraph 1229(2)(a)(ia) of Schedule 1 applied; or

(ii) a Subclass 485 (Temporary Graduate) visa in the Replacement stream; and

(c) to whom clauses 485.234 and 485.237 do not apply.

17 Subclauses 485.235(2) to (4) of Schedule 2

Omit “the third visa” (wherever occurring), substitute “the subsequent visa”.

18 At the end of Subdivision 485.23 of Schedule 2

Add:

485.236

(1) This clause applies to an applicant for a visa (the ***subsequent visa***):

(a) whose application is an application to which subparagraph 1229(2)(a)(ia) of Schedule 1 applied; and

(b) who held, when the application was made, a Subclass 485 (Temporary Graduate) visa in the Post‑Study Work stream that was granted on the basis of meeting the requirements in clause 485.232 or 485.234.

(2) The applicant must have:

(a) lived only in a regional centre or other regional area for a period of at least 2 years immediately before applying for the subsequent visa; and

(b) if the applicant also worked or studied—worked or studied only in a regional centre or other regional area for a period of at least 2 years immediately before applying for the subsequent visa.

(3) At the time of the decision on the application for the subsequent visa:

(a) the applicant lives only in a regional centre or other regional area; and

(b) if the applicant also works or studies at that time—the applicant works or studies only in a regional centre or other regional area.

(4) The applicant declared in the application for the subsequent visa that the applicant, and any member (the ***family member***) of the applicant’s family unit who made a combined application with the applicant, intend:

(a) to live only in a regional centre or other regional area; and

(b) if the applicant or the family member also works or studies (or proposes to work or study)—to work or study only in a regional centre or other regional area.

485.237

(1) This clause applies to an applicant for a visa (the ***subsequent visa***):

(a) whose application is an application to which subparagraph 1229(2)(a)(ia) of Schedule 1 applied; and

(b) who held, when the application was made, a Subclass 485 (Temporary Graduate) visa in the Post‑Study Work stream that was granted on the basis of meeting the requirements in clause 485.233 or 485.235.

(2) The applicant must have:

(a) lived only in a designated regional area for a period of at least 2 years immediately before applying for the subsequent visa; and

(b) if the applicant also worked or studied—worked or studied only in a designated regional area for a period of at least 2 years immediately before applying for the subsequent visa.

(3) At the time of the decision on the application for the subsequent visa:

(a) the applicant lives only in a designated regional area; and

(b) if the applicant also works or studies at that time—the applicant works or studies only in a designated regional area.

(4) The applicant declared in the application for the subsequent visa that the applicant, and any member (the ***family member***) of the applicant’s family unit who made a combined application with the applicant, intend:

(a) to live only in a designated regional area; and

(b) if the applicant or the family member also works or studies (or proposes to work or study)—to work or study only in a designated regional area.

19 Clauses 485.511 to 485.512B of Schedule 2

Repeal the clauses.

20 Clause 485.513 of Schedule 2

Omit “If clauses 485.511, 485.512, 485.512A and 485.512B do not apply, temporary”, substitute “Temporary”.

21 Clause 485.514 of Schedule 2

Repeal the clause.

22 Subclause 485.613(1) of Schedule 2

Omit “second”, substitute “subsequent”.

23 Subclause 485.613(1) of Schedule 2

Omit “or 485.235”, substitute “, 485.235, 485.236 or 485.237”.

24 Subclause 8610(1) of Schedule 8

Omit “or 485.234”, substitute “, 485.234 or 485.236”.

25 Subclause 8610(3) of Schedule 8

Omit “or 485.235”, substitute “, 485.235 or 485.237”.

Part 2—Amendments relating to Subclass 500 (Student) Visas

Migration Regulations 1994

26 After subclause 8104(3) of Schedule 8

Insert:

(3A) If the visa held is a Subclass 500 (Student) visa, or a bridging visa granted on the basis of a valid application for a Subclass 500 (Student) visa, this clause applies as if the reference in subclauses (1), (2C) and (3) to 40 hours were instead a reference to 48 hours.

27 After subclause 8105(2) of Schedule 8

Insert:

(2A) If the visa held is a Subclass 500 (Student) visa, or a bridging visa granted on the basis of a valid application for a Subclass 500 (Student) visa, this clause applies as if the reference in subclause (1) to 40 hours were instead a reference to 48 hours.

Part 3—Application of amendments

Migration Regulations 1994

28 In the appropriate position in Schedule 13

Insert:

Part 117—Amendments made by the Migration Amendment (Extension of Subclass 485 (Temporary Graduate) Visa and Increase in Subclass 500 (Student) Visa Work Hours) Regulations 2023

11701 Operation of amendments

(1) The amendments made by Part 1 of Schedule 1 to the *Migration Amendment (Extension of Subclass 485 (Temporary Graduate) Visa and Increase in Subclass 500 (Student) Visa Work Hours) Regulations 2023* apply in relation to an application for a visa made on or after the commencement of that Part.

(2) The amendments made by Part 2 of Schedule 1 to the *Migration Amendment (Extension of Subclass 485 (Temporary Graduate) Visa and Increase in Subclass 500 (Student) Visa Work Hours) Regulations 2023* apply in relation to work engaged in by a visa holder on or after the commencement of that Part, whether or not the visa was granted before, on or after that commencement.