

Direction no. 87
Migration Act 1958
Direction under section 499
Order of Consideration — Certain Skilled Migration Visas

I, *Alan Tudge*, Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs give this Direction under section 499 of the *Migration Act 1958*.

Dated: 2020

THE HON ALAN TUDGE MP

Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Part 1 - Preliminary

1. Name of direction

This Direction is Direction no. 87 Order of Consideration - Certain Skilled Migration visas.

It may be cited as Direction no. 87.

2. Commencement

This Direction commences on the day after it is signed.

3. Revocation

The Direction given under section 499 of the Act, titled *Direction no. 86 Order of Consideration – Certain Skilled Migration visas*, dated 8 November 2019, is revoked.

4. Application

- 1.** This Direction applies to all persons and bodies having powers under the Act, including the AAT, to consider and dispose of the applications for the visas specified in Schedule A and to review decisions pertaining to those applications.
- 2.** This Direction also applies to decision-makers, including the AAT, who consider nomination applications in relation to visas specified in Schedule A.
- 3.** Without intending to limit the scope of (1), this Direction applies to decision-makers performing functions or exercising powers:
 - a) under section 51 of the Act; and
 - b) under section 91 of the Act.
- 4.** This Direction does not apply to:
 - a) applications that have been remitted by the AAT for reconsideration;
 - b) applications where the AAT has set aside a decision and substituted a new decision;
 - c) applications where it is readily apparent that the criteria for grant of the visa would not be satisfied;

d) applications by visa applicants claiming to be a member of the family unit of a person who holds a visa granted on the basis of satisfying the primary criteria in Schedule 2 to the Regulations and who did not make a combined application with that person;

e) applications for a Subclass 489 (Skilled - Regional (Provisional)) visa where the applicant seeks to satisfy the criteria in the Second Provisional Visa stream or claims to be a member of the family unit of such an applicant;

f) applications for a Subclass 189 (Skilled - Independent) visa where the applicant seeks to satisfy the criteria in the New Zealand stream.

5. Subject to (4) above, this Direction applies to nomination applications and visa applications made both before, on or after the commencement of this Direction.

5. Preamble

1. Australia's Skilled Migration Program is designed to select people who will make a positive contribution to the Australian economy and labour market, and assist Australian businesses to access workers with skills that cannot be met from the local labour market, including in emerging new technology and growth sectors. The Australian Government also remains committed to assisting employers and communities in regional Australia through dedicated regional skilled visa programs.

2. In relation to the specified visas in Schedule A, this Direction directs persons and bodies to which it applies with respect to the performance of functions and exercise of powers (under section 51 or section 91 of the Act) to:

- consider and dispose of visa applications in the appropriate order of consideration; and
- to review decisions pertaining to those applications in the appropriate order of consideration.

3. Persons and bodies to whom this direction applies are to give due regard to the priority processing directions set out below in Part 2 of this Direction.

6. Interpretation

1. In this Direction:

AAT means the Administrative Appeals Tribunal.

Act means the *Migration Act 1958* in effect and as amended from time to time.

Approved sponsor with Accredited Status means approved sponsors under the Temporary Skill Shortage visa program awarded Accredited Status by the Department of Home Affairs.

Critical Sector means an industry or part of an industry (however defined), that has been identified by the Department as being of critical importance during the COVID-19 pandemic and post-pandemic recovery. The Department of Home Affairs will provide information about the sectors on its website.

Designated Area Migration Agreement means an arrangement between the Commonwealth of Australia and another party known as a designated area representative.

Designated Regional Area has the same meaning as in regulation 1.15M of the Regulations.

Employer Sponsored visa means a Subclass 186 (Employer Nomination Scheme) visa.

Global Talent Employer Sponsored Agreement means a labour agreement made under the Global Talent Employer Sponsored program.

Global Talent program refers to the cohort of visa applicants that are covered by the priority processing arrangements set out paragraph 7(1)(a) under Part 2 of *Direction no. 85 – Order of Consideration – Distinguished Talent visas*.

Labour agreement has the same meaning as in the Regulations.

Member of the family unit has the same meaning as in regulation 1.12 of the Regulations.

Minister means the Minister who administers the Act.

Primary criteria means the visa criteria under Schedule 2 to the Regulations for a specified visa subclass that is to be satisfied by the primary applicant.

Priority Migration Skills Occupation List means the list of priority occupations, as amended from time to time, identified by the Department of Home Affairs and the Department of Education, Skills and Employment, entitled the *Priority Migration Skilled Occupation List*, and published on the Department of Home Affairs website.

Regional sponsored visa means a Subclass 187 (Regional Sponsored Migration Scheme) visa and a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa.

Regulations means the *Migration Regulations 1994* in effect and as amended from time to time.

Section 85 cap means the maximum number of visas of a specified class that may be granted in a particular financial year, as specified by the Minister in a legislative instrument made under section 85 of the Act.

Skilled regional points-tested visa means a Subclass 489 (Skilled Regional (Provisional)) visa and a Subclass 491 (Skilled Work Regional (Provisional)) visa.

Part 2 - Directions

7. Order for considering nominations

1. The following processing priorities (with highest priority listed first) should be given due regard to in relation to nominations:

- a. Nominations lodged in relation to an occupation specified in the Priority Migration Skilled Occupation List, and separately nominations lodged in relation to a Global Talent Employer Sponsored Agreement, and separately nominations lodged in relation to a Subclass 188 visa in the Significant Investor stream;
- b. Nominations for an occupation within a Critical Sector, other than those mentioned in (a) above.
- c. Nominations lodged in relation to an Employer Sponsored visa or a Regional Sponsored visa by an employer who is a party to a labour agreement under a Designated Area Migration Agreement;
- d. Nominations lodged in relation to a Subclass 494 (Employer Sponsored Regional (Provisional)) visa. Within this priority, nominations lodged by approved sponsors with Accredited Status and nominations lodged by a party to a labour agreement not mentioned in paragraph (a) or (b) are to have precedence;
- e. All other nominations lodged in relation to an Employer Sponsored visa. Within this priority, nominations by approved sponsors with Accredited Status, or nomination lodged by a party to a labour agreement not mentioned in paragraph (a) or (b) are to have precedence;
- f. Nominations lodged in relation to a Subclass 187 (Regional Sponsored Migration Scheme) visa. Within this priority, nominations lodged by approved sponsors with Accredited Status are to have precedence.
- g. All other nominations.

2. For categories c – g above, priority will be given to onshore nominations ahead of offshore nominations.

8. Order for considering visa applications

1. The following processing priorities (with highest priority listed first) should be given due regard to in relation to applications for visas that are specified in Schedule A:

a. Visa applications for an Employer Sponsored visa or Regional Sponsored visa in relation to an occupation specified in the Priority Migration Skilled Occupation List, and separately visa applications where the applicant is nominated by an employer who is a party to a Global Talent Employer Sponsored Agreement, all applications identified through the Global Talent Program and separately visa applications for the Subclass 188 visa in the following order:

a. Subclass 188 visa applications in the Significant Investor stream

b. All other Subclass 188 visa applications.

b. Visa applications for an occupation within a Critical Sector.

c. Visa applications lodged in relation to an Employer Sponsored visa or a Regional Sponsored visa by an employer who is a party to a labour agreement under a Designated Area Migration Agreement;

d. Visa applications for a Subclass 494 (Employer Sponsored Regional (Provisional)) visa. Within this priority, visa applications where the applicant is nominated by an approved sponsor with Accredited Status or nominated by a party to a labour agreement not mentioned in paragraph (a) are to have precedence;

e. Visa applications for a Subclass 491 (Skilled Work Regional (Provisional)) visa;

f. Visa applications for an Employer sponsored visa. Within this priority, visa applications where the applicant is nominated by an approved sponsor with Accredited Status, or nominated by a party to a labour agreement not mentioned in paragraphs (a) and (b) have precedence;

g. Visa applications for a Subclass 187 (Regional Sponsored Migration Scheme) visa. Within this priority, visa applications where the applicant is nominated by an approved sponsor with Accredited Status are to have precedence;

h. Visa applications for a Subclass 489 (Skilled - Regional (Provisional)) visa;

i. Visa applications for a Subclass 190 (Skilled - Nominated) visa;

j. Visa applications for a Subclass 189 (Skilled - Independent) visa in the Points-tested stream;

k. All other visa applications.

2. For categories c – g above, priority will be given to onshore applications ahead of offshore applications.

9. If a section 85 cap applies

1. Applications for a visa may be affected by a section 85 cap that allows processing to be conducted but prevents the grant of visas beyond a specified number in a specified time period.

2. In deciding the order for considering and disposing of visa applications (or reviewing decisions pertaining to such applications) when affected by a section 85 cap, the applications to which this Direction specifically applies should be given priority in the order as provided for above.

3. This Direction prevails over any other directions under section 499 of the Act that outline the order of consideration for visa applications not described in this Direction.

10. Schedule A

1. The following visas are specified:

a) Subclass 124 Distinguished Talent;

- b) Subclass 186 (Employer Nomination Scheme);
- c) Subclass 187 (Regional Sponsored Migration Scheme);
- d) Subclass 188 (Business Innovation and Investment);
- e) Subclass 189 (Skilled - Independent) (Points-tested Stream);
- f) Subclass 190 (Skilled - Nominated);
- g) Subclass 489 (Skilled - Regional (Provisional));
- g) Subclass 491 (Skilled Work Regional (Provisional));
- h) Subclass 494 (Employer Sponsored Regional (Provisional));
- i) Subclass 858 Distinguished Talent.

Direction no. 88
Migration Act 1958
Direction under section 499
Order of Priority Allocation within the Subclass 482 (Temporary Skill Shortage) visa program and Subclass 457 (Temporary Work (Skilled)) visa program

I, *Alan Tudge*, Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs give this Direction under section 499 of the *Migration Act 1958*.

Dated: 2020

THE HON ALAN TUDGE MP

Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Part 1 - Preliminary

1. Name of direction

This Direction is Direction no. 88 - Order of Priority Allocation within the Subclass 482 (Temporary Skill Shortage) visa program and Subclass 457 (Temporary Work (Skilled)) visa program.

It may be cited as Direction no. 88.

2. Commencement

This Direction commences on the day after it is signed.

3. Revocation

The Direction given under section 499 of the Act, titled *Direction no. 82 – Order of Priority Allocation within the Subclass 482 (Temporary Skill Shortage) visa program and Subclass 457 (Temporary Work (Skilled)) visa program*, dated 26 March 2019, is revoked.

4. Application

This Direction applies to decision-makers who consider visa applications under the Subclass 482 (Temporary Skill Shortage) visa program, and Subclass 457 (Temporary Work (Skilled)) visa program under section 51 of the Act.

This Direction also applies to decision-makers who consider nomination applications in relation to the Subclass 482 (Temporary Skill Shortage) visa program and Subclass 457 (Temporary Work (Skilled)) visa program.

5. Preamble

To ensure in particular that Subclass 482 (Temporary Skill Shortage) visa processing times are responsive, there is a need to manage the consideration of applications under this visa program by the Department of Home Affairs.

The order of priority for considering such applications is specified in this Direction to ensure appropriate allocation of resources in considering and disposing of such applications, and that certain cohorts of applications are given priority. This includes applications lodged by employers party to a Designated Area Migration Agreement or a Global Talent Scheme agreement, sponsors in regional Australia, sponsors who have been awarded Accredited Status by the Department of Home Affairs, as well as related applications.

Sponsors awarded Accredited Status are considered to be a reduced risk, particularly where they have a history of responsive and appropriate interactions with the Department of Home Affairs, compliance with relevant laws

and lodge high quality applications. As a result, the Australian Government considers that they should be able to access streamlined processing arrangements and their applications should be allocated to a decision-maker for initial assessment as a priority.

The requirements for a standard business sponsor to receive Accredited Status are specified in *Procedural Instructions: Standard business sponsorship applications*, as amended from time to time.

6. Interpretation

In this Direction:

Act means the *Migration Act 1958* in effect and as amended from time to time.

Approved sponsor with Accredited Status means approved sponsors under the Temporary Skill Shortage visa program awarded Accredited Status by the Department of Home Affairs.

Critical Sector means an industry or part of an industry (however defined), that has been identified by the Department as being of critical importance during the COVID-19 pandemic and post-pandemic recovery. The Department of Home Affairs will provide information about the sectors on its website.

Department means the Department of Home Affairs.

Designated Area Migration Agreement means an arrangement between the Commonwealth of Australia and another party known as a designated area representative.

Global Talent Employer Sponsored Agreement means a labour agreement made under the Global Talent Employer Sponsored program.

Global Talent program refers to the cohort of visa applicants that are covered by the priority processing under paragraph 7(1)(a) under Part 2 of *Direction no. 85 – Order of Consideration – Distinguished Talent visas*.

Labour agreement has the same meaning as regulation 1.03 of the Regulations.

Priority Migration Skills Occupation List means the list of priority occupations, as amended from time to time, identified by the Department of Home Affairs and the Department of Education, Skills and Employment, titled the Priority Migration Skilled Occupation List, and published on the Department of Home Affairs website.

Regional Australia has the same meaning as subregulation 5.19(16) of the Regulations.

Regulations means the *Migration Regulations 1994* in effect and as amended from time to time.

Part 2 - Directions

7. Order for considering nominations

1. Paragraphs (a) to (f) of this item, set out the order of priority for considering TSS nominations and subclass 457 nominations (that is, the priority to be given due regard to when allocating such applications for assessment by a decision-maker), with paragraph (a) being the highest priority and paragraph (e) being the lowest priority:

(a) nominations lodged in relation to an occupation specified in the Priority Migration Skilled Occupation List, and nominations lodged in relation to a Global Talent Employer Sponsored Agreement;

(b) nominations lodged for an occupation within a Critical Sector not covered by (a) above.

(c) nominations lodged in relation to an occupation to be carried out in regional Australia. Within this priority, nominations lodged by a party to a labour agreement where the labour agreement was made under a Designated Area Migration Agreement, nominations lodged by approved sponsors with Accredited Status, and nominations lodged by a party to a labour agreement not mentioned in paragraph (a) should be given precedence;

(d) nominations lodged by approved sponsors with Accredited Status not mentioned in paragraph (a) or (b) above;

(e) nominations lodged by a party to a labour agreement not mentioned in paragraph (a), (b) or (c) above;

(f) all other nominations lodged in relation to the Subclass 482 (Temporary Skill Shortage) visa program, including those relating to existing Subclass 457 (Temporary Work (Skilled)) visa holders.

2. For categories c – g above, priority will be given to onshore nominations ahead of offshore nominations.

8. Order for considering visa applications

1. Paragraphs (a) to (g) of this item, set out the order of priority for considering Subclass 482 (Temporary Skill Shortage) visa applications and Subclass 457 (Temporary Work (Skilled)) visa applications (that is, the priority to be given due regard to when allocating such applications for assessment by a decision-maker), with paragraph (a) being the highest priority and paragraph (f) being the lowest priority:

(a) visa applications in relation to an occupation specified in the Priority Migration Skilled Occupation List and visa applications lodged in relation to a Global Talent Employer Sponsored Agreement and all applications identified through the Global Talent Program.

(b) visa applications for an occupation within a Critical Sector.

(c) visa applications where the associated nomination is for an occupation to be carried out in regional Australia. Within this priority, visa applications where applicants are nominated by a party to a labour agreement where the labour agreement was made under a Designated Area Migration Agreement, visa applications where visa applicants are nominated by approved sponsors with Accredited Status, and visa applications where the applicant seeks to satisfy the criteria for grant in the Labour Agreement stream of the Subclass 482 (Temporary Skill Shortage) visa program, should be given precedence;

(d) visa applications where visa applicants are nominated by approved sponsors with Accredited Status not mentioned in paragraph (a) or (b) above;

(e) visa applications where visa applicants are nominated by a party to a labour agreement where the labour agreement was made under a Designated Area Migration Agreement not mentioned in paragraph (a), (b) or (c) above;

(f) visa applications where the applicant seeks to satisfy the criteria for grant in the Labour Agreement stream of the Subclass 482 (Temporary Skill Shortage) visa program not mentioned in paragraph (a), (b), (c) or (d) above;

(g) all other visa applications lodged under the Subclass 482 (Temporary Skill Shortage) visa program, including Subclass 457 (Temporary Work (Skilled)) visa applications.

2. For categories c – g above, priority will be given to onshore applications ahead of offshore applications.

Direction no. 89
Migration Act 1958
Direction under section 499
Order of Consideration – Subclass 858 and Subclass 124 visas

I, *Alan Tudge*, Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, give this Direction under section 499 of the *Migration Act 1958*.

Dated: 2020

THE HON ALAN TUDGE MP

Minister for Population, Cities and Urban Infrastructure

On behalf of the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Part 1 Preliminary

1. Name of direction

- (1) This Direction is Direction no. 89 - **Order of Consideration – Subclass 858 and Subclass 124 visas**
- (2) This Direction may be cited as Direction no. 89.

2. Commencement

This Direction commences on 17/12/2020.

3. Application

- (1) Subject to subsection (2), this Direction applies:
 - (a) to all persons having functions and powers under the Act who consider and dispose of applications for a Subclass visa 124 visa or a Subclass 858 visa ; and
 - (b) in relation to visa applications referred to in paragraph (1)(a):
 - (i) made on or after the commencement of this Direction; and
 - (ii) made before the commencement of this Direction and where a decision has not been made on commencement of this Direction.
- (2) This Direction does not apply to the AAT.

4. Preamble

To enable the Department of Home Affairs to give effect to the priority processing intentions of Government for the Global Talent cohort. This will support the responsive processing of applicants that are identified as highly desirable by Government.

5. Interpretation

In this Direction:

Act means the *Migration Act 1958* .

AAT means the Administrative Appeals Tribunal.

Subclass 124 visa means a Subclass 124 (Distinguished Talent) visa as prescribed by the Regulations.

Subclass 858 visa means a Subclass 858 (Distinguished Talent) visa as prescribed by the Regulations.

Regulations means the *Migration Regulations 1994*.

Part 2 Directions

6. Considering applications

(1) Section 51 of the Act provides that the Minister (or a delegate of the Minister) may consider and dispose of applications for visas in such order the Minister considers appropriate.

(2) In determining the order for considering applications for a Subclass 124 visa or a Subclass 858 visa, persons covered by subsection 3(1) of this Direction are directed to give due regard to the order set out in section 7 of this Direction.

7. Order for considering applications

(1) For subsection 6(2) of this Direction, the priority to be given due regard when allocating applications for assessment by a person covered by section 3(1) of this Direction are as follows (starting from paragraph (1)(a) which sets out the highest priority):

(a) applications made in relation to the sectors set out in subsection (2), or in a related sector, and where:

(i) there is written communication from an Australian employer offering employment in Australia with an annual salary equivalent to or higher than the Fair Work high income threshold; or

(ii) the primary applicant's current earnings is an amount equal or greater than the amount referred to in subparagraph (1)(a)(i); or

(iii) where there is evidence the primary applicant is to likely attract a salary that is equal to or greater than the amount referred to in subparagraph (1)(a)(i);

(b) applications that are not covered by paragraph (1)(a).

(2) For subsection (1), the sectors are the following:

(a) Resources;

(b) Agri-food and AgTech;

(c) Energy;

(d) Health industries;

(e) Defence, advanced manufacturing and space;

(f) Circular economy;

(g) Digitech;

(h) Infrastructure and tourism;

(i) Financial services and FinTech;

(j) Education.